

## **Cantonment Board,Dehu Road & Anr vs Mahindra Owen Ltd. & Anr on 31 March, 1986**

**Equivalent citations: 1986 AIR 1114, 1986 SCR (1) 961, AIR 1986 SUPREME COURT 1114, 1986 SCC (SUPP) 301, 1986 (1) MCC 36, 1986 2 UJ (SC) 37, 1986 MCC 1 36, (1986) 1 SCJ 706, (1986) 2 SUPREME 100, (1986) 1 CURCC 1006, 1986 BOM LR 88 344**

**Author: V. Balakrishna Eradi**

**Bench: V. Balakrishna Eradi, D.P. Madon**

PETITIONER:

CANTONMENT BOARD,DEHU ROAD & ANR.

Vs.

RESPONDENT:

MAHINDRA OWEN LTD. & ANR.

DATE OF JUDGMENT31/03/1986

BENCH:

ERADI, V. BALAKRISHNA (J)

BENCH:

ERADI, V. BALAKRISHNA (J)

MADON, D.P.

CITATION:

1986 AIR 1114

1986 SCR (1) 961

1986 SCC Supl. 301

1986 SCALE (1)633

ACT:

The Bombay Cantonment Board Act read with Notification No.SR0 318 dated 29.10.59 - Items 3, 11, 14 and 16(b) of the First Schedule thereto, scope of - Whether trailers and water tankers manufactured by the Respondent and supplied to the Defence Department falls under the aforesaid items - Whether the levy of octroi duty is illegal, in view of the specific provision (vi) contained in Schedule II.

HEADNOTE:

The first respondent company manufactures trailers and water tankers at its factory at Pimpri in the District of Poone. Pursuant to the acceptance of the tenders submitted to the Defence Department of the Union of India, the first

respondent sold different quantities of 100 C.W.D. and 10 C.W.D. trailers and two-wheeled water tankers. Under the terms of the contract, the ownership passed to the Government of India on inspection of the goods at the first respondent's factory premises at Pimpri and appropriation thereof to the contract consequent on approval of the goods but delivery was to be effected by the company free of charge within the cantonment limits of Dehu Road.

The first appellant Board claimed from the respondent company payment of octroi-duty aggregating Rs.3,37,628-08 on the trailers/water tankers so supplied to the Defence Department. In the appeal preferred by the first respondent under section 84 of the Cantonment Boards' Act, the District Magistrate held that the trailers/water tankers supplied did not fall within the scope of any of the items enumerated in the First Schedule to the Notification No. SRO 318 Dt.

29.10.59 and therefore the levy of octroi-duty was illegal. The appellants preferred a batch of Writ Petitions before the High Court which were dismissed upholding the Magistrate's judgment. Hence the appeal by certificate granted by the Bombay High Court under Article 133(1)(a) and (c) of the Constitution.

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Dismissing the appeals, the Court,

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HELD 1.1 None of the items 3, 11, 14 and 16(b) of the First Schedule to the Notification No SRO 318 dt 29 .10.59 will take within its scope the trailers/water tankers in respect of which the notices of demand of octroi-duty were issued to the first respondent company. The imposition and demand of the octroi duty in relation to them was wholly unwarranted. Entry No.3 read as a whole contains clear indication of the nature and type of the articles intended to be comprehended by the description "All articles of Galvanised, Iron or steel". Entries 11 and 14 deal with "machinery" and "machines" and the trailers/water tankers by themselves cannot be regarded as "machinery" or "machines" Under Entry 16(b), they cannot be regarded as "accessories" of conveyance either. [965 E; 966 C-G]

1.2 Even if it is assumed that any of the entries in the First Schedule to the Notification did cover the trailers/ water tankers, the levy of octroi duty in respect of them would still be illegal in view of clause (vi) of Schedule II to the Notification since no octroi duty shall be levied on "Military Stores" etc. [966 G-H 967 A]

1.3 The expression "Military Stores" used in Schedule II is comprehensive enough to cover articles essential for military use inclusive of trailers/water tankers' supplies of which are accumulated in the depot for being drawn upon when ever needed The matter is placed beyond doubt by the significant fact that in the Schedule to the acceptance of tenders Annexure 'A', pursuant to which the trailers/water-tankers were supplied, paragraph 12 which contains "despatch

instructions" specifically refers to the trailers/water tankers as 'stores'. Further, as per the tender terms the trailers/water tankers supplied to the Defence Department of the Government of India, had become the property of the Defence Department even prior to their entry into the Dehu Road cantonment Board. The requirement regarding certification by the Superintendent of Police has no application in respect of the "Military Stores". [967 G-H; 968 A-C]  
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**JUDGMENT:**

**CIVIL APPELLATE JURISDICTION :** Civil Appeal Nos. 48, 362 to 379 of 1972.

From the Judgment and Decree dated 23/24.11.1970 of the Bombay High Court in Special Civil Appln. No. 2217 of 1969.

V.M. Tarkunde and K.L. Hathi for the Appellants. F.J.S. Talyarkhan, B.H. Wahi, A.N. Haksar, P.K. Ram, A. Narayan and S. Sukumsran for the Respondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. These appeals which have been filed on the strength of a certificate dated September 14, 1971 granted by the High Court of Bombay under Article 133(1)(a) and (c) of the Constitution of India, as it then stood, are directed against the judgment of the High Court of Bombay dated November 23, 1970 dismissing a batch of Writ Petitions filed by the appellants herein challenging the order dated May 23, 1969 passed by the District Magistrate, Poone setting aside the notices of demand of Octroi Duty issued by the appellants to the first respondent-company.

The first appellant herein is the Cantonment Board, Dehu Road and the second appellant is its Executive Officer. The first respondent is a public limited company manufacturing trailers and water tankers at its factory at Pimpri in the District of Poone. The first respondent had submitted tenders to the Defence Department of the Union of India for the manufacture and supply of trailers and water tankers. Pursuant to the acceptance of those tenders, the first respondent manufactured and sold to the Union of India different quantities of 100 C.W.D and 10 C.W.D. trailers and two-wheeled water tankers. Under the terms of the contract the ownership passed to the Government of India on inspection of the goods at the first respondent's factory premises at Pimpri and appropriation thereof to the contract consequent on approval of the goods but delivery was to be effected by the first respondent-company free of charge within the Cantonment limits of Dehu Road. Accordingly, by June-July, 1965, 8,953 trailers/water tankers were delivered by the first respondent company within the limits of the Cantonment Board. Thereafter, 682 more such trailers/water tankers were also delivered by the first respondent-company to the Defence Authorities within the Dehu Road Cantonment limits during 1965 and 1966.

Under the provisions of the Cantonment Board Act, the appellant Board with the previous sanction of the Central Government could impose Octroi Duty in respect of articles brought into the limits of the Cantonment Board. Under a Notification dated October 29, 1959, bearing No. SRO 318, the first appellant imposed a non-refundable Octroi Duty in respect of articles brought within the limits of the Cantonment Board, for consumption, use or sale therein at the rates specified in the First Schedule.

Based on the aforesaid Notification the first appellant demanded from the first respondent-company payment of Octroi Duty on the trailers/water tankers which were brought within the limits of the Cantonment Board. The total amount so claimed from the first respondent aggregated to Rs. 3,37,628.08. Out of the said amount, the first respondent paid Rs. 3,18,620.08 under protest, and approached the High Court of Bombay by filing Special Civil Application No. 1720 of 1966 challenging the notices of demand and praying for directions being issued to the first appellant Board to cancel or withdraw the notices of demand and to refund the amount of Octroi Duty already paid under protest. On November 29, 1968, the High Court dismissed the said Writ Petition on the ground that the matter involved disputed question of facts and hence the first respondent should exhaust his alternate remedy by referring an appeal to the District Magistrate before seeking relief under Article 226 of the Constitution.

The first respondent-company thereafter preferred appeals before the District Magistrate, Poona under-Section 84 of the Cantonment Board's Act with a prayer for condonation of the delay in filing the appeals. The District Magistrate granted the prayer for condonation of delay and by a very detailed order allowed the appeals holding that the trailers/ water tankers manufactured and delivered by the first respondent-company did not fall within the scope of any of the items enumerated in the 1st Schedule to the Notification authorising the levy of Octroi Duty and hence the action of the appellants in demanding the payment of Octroi Duty in respect of them was illegal. He accordingly, set aside the notices of demand and directed the appellants to refund the amount of Duty already collected from the first respondent company.

Aggrieved by the said decision the appellants preferred a batch of Writ Petitions before the High Court challenging the legality and correctness of the aforesaid order passed by the District Magistrate. Those Writ Petitions were dismissed by the High Court under the impugned judgment. The High Court has upheld the view expressed by the District Magistrate that the trailers/water tankers did not fall within the scope of any of the entries in the First Schedule to the Notification authorising the levy of Octroi Duty. The correctness of the conclusion so recorded by the High Court is challenged by the appellants in these appeals.

Having given our careful consideration to the arguments advanced by the learned Counsel appearing on both sides, we have unhesitatingly come to the conclusion that there is no merit in these appeals and that the decision of the High Court does not call for any interference.

The entries in the First Schedule to the Notification which were relied on by the High Court are those appearing as Item Nos. 3, 11, 14 and 16(b). Those entries are respectively in the following terms :-

"3. All articles of Galvanised iron, or steel such as All Machinery parts, Buckets, channels, Iron Utensils, Karahi tubs, Ordinary country weighing scales pipes, safes, springs, suit cases, tanks, tin, containers, trunks, tubs and wheels of all vehicles (except those specified elsewhere), Axle, Chassis, Heavy iron chains, Wire and Wire ropes, hardwares such as barbed wires, bolts, files, Hammers, Hinges, Nails, Nuts, pipes, Pliers, Rivets, Saws, Screws, Tools, Washers, Wire Nettings, Wrench etc. (Excepting articles of cast iron and those mentioned elsewhere).

11. All kinds of machinery (not specified elsewhere.

14. All other machines (not specified elsewhere).

16. Vehicles:

... ..

(b) All parts and accessories of Motor cars, Motor trucks or similar conveyances except axles, chassis, rubber solution, springs, tubes, tyres and wheels."

Entry No.3 read as a whole contains clear indication of the nature and type of the articles intended to be comprehended by the description "All articles of Galvanised, Iron or Steel". In our opinion the High Court was perfectly right in its view that the trailers/water tankers manufactured and delivered by the first respondent-company did not fall within the scope of the said entry. Entries Nos. 11 and 14 deal with 'machinery' and 'machines' and those entries also will not take within their scope trailers/water tankers, since, by themselves they cannot be regarded as either machinery or machines. While dealing with entry No. 16(b), the High Court has dwelt in detail upon the exact nature of the trailers/water tankers manufactured by the appellants and the uses to which they are put, and expressed the view that they cannot be regarded as "accessories" of conveyances. We are in agreement with the said view expressed by the High Court.

Thus the position that emerges is that none of the aforesaid entries contain in the First Schedule to the Notification relied on by the appellants will take within its scope the trailers/water tankers in respect of which the notices of demand of Octroi Duty were issued to the first respondent-company. The imposition and demand of Octroi Duty in relation to them was hence wholly unwarranted.

Quite apart from what has been stated above, even if it is assumed for purpose of discussion that any of the entries in the First Schedule to the Notification did cover the trailers/water tankers, the levy of Octroi Duty in respect of them would still be illegal in view of the specific provision contained in Schedule II to the Notification that

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"No Octroi shall be levied on

(vi) Military Stores and other articles of Police equipment pertaining to uniforms including similar articles of National Volunteer Corps and equipment of Police Radio Service; provided that each consignment is certified by the Superintendent of Police of the district concerned or in the case of National Volunteer Corps by an Officer authorised by the State Commandant, National Volunteer Corps in this behalf, to be the property of Government in the Police Department."

It has been found by the District Magistrate as well as by the High Court that the trailers/water tankers were supplied to the Defence Department of the Government of India and that they had become the property of Defence Department prior to their entry into the Dehu Road Cantonment Board.

The expression "stores" has been defined in the Dictionaries as meaning -

"Articles of particular kind or for special purpose accumulated for use, supply of things needed, (military, naval etc.)" -The Concise Oxford Dictionary.

"Supply or stock of something, especially essentials, for a specific purpose: the ship's stores." Collins English Dictionary. "Supplies of provisions, ammunition etc. for an army, ship etc." Chambers Twentieth Century Dictionary. G In our opinion the expression "military stores" used in Schedule II is comprehensive enough to cover articles essential for military use inclusive of trailers/water tankers supplies of which are accumulated in the depot for being drawn upon whenever needed. The matter is placed beyond doubt by the significant fact that in the Schedule to the acceptance of tenders - Annexure 'A', pursuant to which the trailers/water tankers were supplied, paragraph 12 which contains "despatch instructions" specifically refers to the trailers/water tankers as stores while stating thus:

"The stores after inspection will be delivered at Vehicle Depot, Dehu."

The requirement regarding certification by the Superintendent of Police has no application in respect of "military stores". The exemption provision was therefore clearly attracted and the levy of Octroi Duty on the trailers/water tankers was clearly illegal.

These appeals are, therefore, devoid of merit and they will accordingly stand dismissed. The parties will bear their respective costs.

S.R.

Appeals dismissed.