Supreme Court of India
Municipal Committee, Khurari vs Dhannalal Sethi & Ors on 30 April, 1968
Equivalent citations: 1968 AIR 1458, 1969 SCR (1) 166
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
MUNICIPAL COMMITTEE, KHURARI

Vs.

RESPONDENT:
DHANNALAL SETHI & ORS.

DATE OF JUDGMENT:
30/04/1968

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
HEGDE, K.S.

CITATION:
1968 AIR 1458 1969 SCR (1) 166
CITATOR INFO :
RF 1992 SC 645 (26)

ACT:
Central Provinces and Berar Municipalities Act, 1922-Rules made providing for refund of octroi duty on export of goods on which duty paid at the time of import-R. 27, if gives a right of refund-Procedure prescribed in rr. 27 to 43 for obtaining refund not followed-Effect of.

HEADNOTE:
The first and the second respondents purchased a quantity of foodgrains from certain cultivators who had imported them into the municipal area of the appellant Committee and, at the time of importation, had paid octroi duty on those foodgrains. The first and the second respondents exported the identical goods out of the- municipal areas and there-upon applied for refund of octroi duty paid on the foodgrains. The appellant Committee refused to pay the refund mainly on the ground that the respondents had failed to produce the: receipts of duty paid on the importation of the foodgrains. An appeal to the Additional Deputy Commissioner as well as the revision application to the Board of Revenue were both dismissed, but a writ petition against these orders was allowed by the High Court which

held that an, exporter was entitled under r. 27 to the refund of 7/8th of the, duty paid on the goods exported. Subsequently a Division Bench, in appeal, remanded' the case to the Board for dealing with certain other contentions raised by the appellant -and after considering these, the Board get aside, the orders of the Committee and the Deputy Commissioner and directed payment of the refund.

The appellant Committee then filed a writ petition challenging the ,order of the Board but this was dismissed, the High Court holding, inter alia, that the Rules did not require a claimant who had exported dutiable goods to produce receipts of payment of duty and that the amount of refund is to be determined from the quantity of foodgrains exported or from their value. The Committee appealed by special leave to this Court. It was urged on its behalf that a person claiming refund would not be entitled to it unless he had followed the procedure prescribed by rr. 27 to 43, and that this had not been done in the present case.

HELD : Dismissing the appeal

Though the rules lay down a procedure which an appellant seeking refund has to follow, they do not provide at the game time that an applicant for refund who has failed do follow the procedure laid down in rr. 35 to 39 would be disentitled to claim the refund. In the absence of such a provision, coupled with the categorical language of r. 27 giving a right to an exporter of dutiable goods to claim 7/8th of the duty paid on such goods on their import, it becomes difficult to uphold the denial by the appellant Committee of the right of the first' and the second respondents to such a refund. [171 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 545 of 1965.

Appeal by special leave from the judgment and order dated, December 18, 1961 of the Madhya Pradesh High Court in Misc. Petition No. 247 of 1961.

M. S. Gupta and Yashpal Singh, for the appellant. S. K. Mehta and K. L. Mehta, for the respondents. The Judgment of the Court was delivered by Shelat, J. The appellant Municipal Committee is for the vil- lage Khurari, a notified area under the Central Provinces and Berar Municipalities Act, 1922. The Committee is entitled to levy and collect under the said Act and under the Rules made thereunder octroi duty inter alia on foodgrains brought into the municipal limits for sale. On March 8, 1954, respondents 1 and 2 applied for refund of octroi duty on the ground that they had exported from the municipal area foodgrains of which particulars were given in the schedule attached thereto. The appellant Committee replied that they would not be entitled to the refund unless they filed with their application the receipts of duty is- sued by the Committee at the time when it was paid on the importation of the said foodgrains. It may be mentioned that it was not the case of the Committee in

the said reply that the said goods were not exported by respondents 1 and 2 by rail or that they were not the same goods which were imported into the area and which were purchased by respondents 1 and 2 and on which duty would be payable by the cultivators from whom respondents 1 and 2 had purchased the said foodgrains. The Committee simply refused to pay the refund as the respondents failed to produce the said receipts. In the appeal filed by respondents 1 and 2 before the Additional Deputy Commissioner, that officer held, on a construction of rr. 27 and 34, that it would be the. person who had paid the duty when the goods were brought into the municipal area who alone could claim the refund if the goods exported by him were the same on which the duty was paid. The Board of Revenue before whom respondents 1 and 2 filed a revision application against the Deputy Commissioner's said order held that the word 'refund' in r. 27 meant that the person who had paid the duty could alone be entitled to claim the refund and that respondents 1 and 2 not being such persons could not apply for it. On that ground alone the Board rejected the revision application. Respondents 1 and 2 thereupon filed a writ petition in the High Court of Madhya Pradesh for quashing the said orders of the Deputy Commissioner and the Board of Revenue.

The admitted facts before the High Court were, (1) that res- pondents 1 and 2 had purchased the said foodgrains from certain cultivators; and (2) that those cultivators had in fact paid octroi duty when they brought the said foodgrains for sale within the municipal area. The contention of respondents 1 and 2 before the High Court was that as persons who had exported the said goods they were entitled to the refund of the duty paid by their vendors, the said cultivators,' and that the Board misconstrued the rules and was in error in refusing the refund to them. A learned Single Judge of the High Court held that under r. 9(c) a declaration had to be made if the goods were intended for consumption or use within the municipal area or if they were intended for immediate export. He observed that r. 9, however, did not 'provide for any such declaration if the goods brought into the municipal area were intended for sale. He then observed that s. 27 dealt with refund of octroi on the exportation of dutiable goods outside the municipal limits and the exporter thereunder was entitled to a refund of 7/8th of the duty paid on such goods. He held that the duty having admittedly been paid on such goods by the said cultivators and respondents 1 and 2 having purchased and exported those very goods, they were entitled to the refund. On this basis he quashed the orders of the Deputy Commissioner and the Board and allowed the writ petition. In the Letters Patent appeal filed by the appellant Committee, a division bench of that High Court agreed with the Single Judge on his construction of r. 27 but as the Board had considered only one question, namely, whether respondents 1 and 2 not having themselves paid the duty were not entitled to claim the refund, remanded the case for dealing with the rest of the questions. On remand to the Board, the Committee contended, (1) that respondents 1 and 2 had to establish that duty was paid on the said goods when they, were imported into the municipal area; and (2) that they 'had also to produce the receipts of payment of such duty and that without doing so they were not entitled to the refund. The Board rejected the contention and held on the strength of rr. 42 and 43 of the said Rules that except in the case of cloth or goods produced or manufactured within the municipal area, no proof by the person claiming refund of duty paid on importation was required and that such payment would be presumed in the case of goods other than the two aforesaid kinds of goods. The Board further held that r. 27 also did not lay down that the person who has exported the goods had to prove payment of octroi on those goods when they entered the area. The Board on this interpretation allowed the revision application of respondents 1 and 2 and set aside the orders of the Committee and the

Deputy Commissioner and directed payment of the refund. The Municipal Committee thereupon filed a writ petition in the High Court for quashing the Board's order contending once again that no octroi duty had been paid on the said foodgrains. The High Court rejected this contention in view of the admission made by the Committee before the Deputy Commissioner, the Board and the High Court in earlier proceedings that the goods exported by respondents 1 and 2 were duty paid. The High Court held that in view of those admissions the Committee could not require respondents 1 and 2 to produce the receipts to prove payment of the duty, apart from the fact that the rules did not require a claimant who had exported dutiable goods to produce receipts of payment of duty. The High Court further held that it was clear from rr. 28 and 29 that the amount of refund is to be determined from the quantity of foodgrains exported or from their value and, therefore, even for determining the amount of refund production of receipts by such a claimant was not necessary nor was such production required by rr. 42 and 43 except, as aforesaid, in the case of two categories of goods, viz., cloth and articles produced or manufactured within the municipal area. The High Court held that that being the position and there being no dispute as to the fact that the goods in question were duty paid and those very goods had been exported,, there was nothing in the rules which barred respondents 1 and 2 from recovering 7/8th of the duty paid on those goods. The High Court dismissed the writ petition. The Committee then filed a review petition before the High Court on the ground that it had not considered in its judgment its contention based on rr. 35 to 38 urged before it, The contention was that compliance of those rules by respondents 1 and 2 was a condition precedent to their being entitled to the refund. The High Court conceded in its judgment on the review petition that the said point was urged before it but observed that it did not deal with it as during the hearing of the writ petition it was pointed out to the counsel for the Committee that there was no substance in it. According to the High Court, rr. 35 to 37 did not require any compliance by respondents 1 and 2 as they dealt with matters to be done by the Octroi Superintendent and the Muharrir at the exit post when an application for refund is made by a person exporting the goods out of municipal limits and that the fact that respondents 1 and 2 did not present the challan at such exit post, did not debar them under the 'rules from claiming the refund. The review petition on this ground was, therefore, rejected. Aggrieved by the dismissal of its writ petition, the appellant Committee obtained special leave from this Court and filed this appeal.

In view of the aforesaid decision of the Board and the High Court in the earlier stages of this litigation, most of the contentions raised by the Committee justifying its refusal to refund have by now been concluded. It cannot now be disputed (1) that respondents 1 and 2 had purchased foodgrains from the cultivators who had imported them into the municipal area for sale; (2) that those cultivators had at that time paid the duty on those food;up.

Sup. C. I./68-12 gains; and (3) that respondents 1 and 2 had exported the identical goods by rail.

Counsel for the Committee, however, urged that the view taken by the High Court was erroneous and that if the rules regarding refund were read together, it would be clear that a person claiming refund would not be entitled to it unless he has followed the procedure thereunder prescribed. To appreciate this contention it would be necessary to turn to those rules. The rules dealing with refund of octroi are rr. 27 to 43. Rule 27 provides that on exportation of dutiable goods outside the municipal limits an exporter shall be entitled to a refund equal to 7/8th of the duty paid on them at

the time of their import. We do not detain ourselves on the proviso to this rule as it is not relevant for the purposes of this appeal. The object of r. 27 is clear, viz., that in case of dutiable goods, the Committee has to refund to the person who has exported them 7/8th of the duty paid thereon at the time when they were brought into the municipal limits. The rule does not require such an exporter to produce receipts of payment of duty levied at the time of their entry. Obviously, the Committee was wrong in insisting upon respondents 1 and 2 to produce receipts before they could be granted the refund, nor could it justify its demand that respondents 1 and 2 should prove that duty had been paid on the said goods at the time of their entry as the rule does not lay down any such obligation on the exporter. Rules 28 to 33 are not relevant and need not, therefore, be set out. Rule 34 provides that an application for refund is to be made in the prescribed form and that.the exporter after filling in the particulars has to present his application at the office appointed for that purpose. Rules 35 to 39 provide an elaborate procedure to be followed at the time of exportation. Rule 35 provides that on receipt of an application for refund, the Octroi Officer must, satisfy himself that the goods brought for export agree with those mentioned in the application and if satisfied, he must prepare a challan showing the amount of refund and hand it over to the exporter who then shall take the goods beyond the municipal limits. Under r. 36, the exporter has to present the challan in which the refund amount is calculated at the exit post within the time prescribed which shall not exceed twelve hours from the examination of the goods under r. 35 to their exportation. Under r. 37, the Muharrir has to check the goods at the exit post and ascertain that the goods agreed with those mentioned in the chalIan and then issue a certificate to the exporter on which the refund would be paid to him. Rule 38 provides that where the goods are not presented at the out- post as provided by r. 35, the exporter may get them verified by the officer who would then make an endorsement on the application and on such endorsement made the exporter would get the refund'. Under r. 39 when goods are exported by rail, the exporter has to produce the railway receipt as well as the refund challan bearing the certificate of the Muharrir at the exit post. It is clear from rr. 35 to 39 that they lay down the procedure for claiming refund. Counsel for the Committee, therefore, appears to be right in his contention that an exporter desiring to claim refund has to make his application at the time of exportation of the goods and in the manner prescribed in these rules. It appears also that there is considerable force in his contention ,that rr. 42 and 43 deal with only two categories of goods, viz., cloth and articles locally produced or manufactured and that r. 43 is confined to those two kinds of goods only and, therefore, when it provides that no further proof of duty having been paid on them is required, it means that no proof of such payment other than the one mentioned in r. 42 would be needed in respect of the said two categories of goods. In our view, r. 43 has to be read in the context of r. 42 and must, therefore, be read to mean that no further proof of payment other than the one mentioned in r. 42 would be required to respect of those two classes of goods and, therefore, r. 43 does not apply to other kinds of goods. The reason is that if r. 43 is read in the manner in which the High Court has read it, it would render rr. 35 to 39 totally nugatory, a construction which a court having to construe these rules, would be loath to adopt. It would seem, therefore, that these rules do provide a procedure which an exporter wishing to claim refund has to follow. But the question is whether in a case where an- exporter has not done so, is he disentitled from claiming the refund ? The real difficulty in the way of the appellant Committee is that though the rules lay down a procedure which such an applicant has to follow, they do not provide at the same time that an applicant for refund who has failed to follow the procedure laid down in rr. 35 to 39 would be disentitled to claim the refund. In the. absence of such a provision coupled with the

categorical language of r. 27 giving a right to an exporter of dutiable goods to claim 7/8th of the duty paid on such goods on their import, it becomes difficult to uphold the denial by the appellant Committee of the right of respondents 1 and 2 to such a refund. We are, therefore, of the opinion that in the present state of the rules, the appeal must fail though for reasons different from those given by the Board of Revenue and the High Court.

The appeal is dismissed with costs.

R.K.P.S. Appeal dismissed,