Supreme Court of India
Municipal Council Damoh vs Vraj Lal Manilal & Co. & Others on 23 February, 1982
Equivalent citations: 1982 AIR 844, 1982 SCR (3) 307
Author: V Tulzapurkar
Bench: Tulzapurkar, V.D.

PETITIONER:
MUNICIPAL COUNCIL DAMOH

Vs.

RESPONDENT:
VRAJ LAL MANILAL & CO. & OTHERS.

DATE OF JUDGMENT23/02/1982

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
SEN, AMARENDRA NATH (J)

CITATION:
1982 AIR 844 1982 SCR (3) 307
1982 SCC (1) 637 1982 SCALE (1)436

ACT:
Central Provinces & Berar Municipalities Act, 1922-Rules made under the Act-Rule 27(b) of the Octroi Rules-Octroi duty paid on raw material imported into the municipality for manufacture of bidis-Manufactured bidis exported outside the municipal limits-Refund, if allowable under rule 27(b).
Words & phrases: "manufacture" and "manufacturing process"-Meaning of.

HEADNOTE:
The respondents manufacture and sell bidis in the state. At the time of import of tobacco and other raw materials into the municipal limits for the manufacture of bidis they paid octroi duty payable under the rules. Their claim for refund of octroi duty on the raw materials utilised for the bidis which they manufactured and exported outside the municipal limits was rejected by the municipal council.
Rejecting the appellant-council's contention that the benefit of rule 27(b) of the Rules was not available to the respondents for the reason that the exported goods (bidis) were not the same or identical as the imported raw materials the Sub-Divisional Officer allowed the respondent's appeal.

In revision the High Court upheld the order of the Sub-Divisional Officer.

In appeal to this Court it was contended that refund is available under rule 27(b) only where even after undergoing the manufacturing process the imported article retained its essential character as such article and the same was exported outside the municipal limits. (2) The respondents were not entitled to refund as they failed to satisfy the committee that the same or identical goods had been exported.

Dismissing the appeal,

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HELD : 1 (a) Rule 27(b) of the Octroi Rules in terms provides for refund of octroi paid on imported raw materials when such raw material is actually used within the municipal limits for manufacturing the exported articles, Clause (b) of this rule itself speaks of the raw materials being "used in the manufacture"

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so that use or consumption which a manufacturing process entails was present to the mind of the framers of the rule when they provided for the refund on the export of finished goods manufactured within municipal limits. [313 F-H]

(b) The well settled connotation of "manufacture" and "manufacturing process" is that as a result of undergoing the process, a distinct commercial commodity different from the raw materials, comes into existence. Therefore the expression 'manufacture' occurring in rule 27(b) cannot be given a limited meaning as suggested by the appellant. [313 H, 314 A-B]

2. The proviso to the rule is not attracted to a case of manufactured goods falling under clause (b). The proviso is applicable to cases where there is an export of the imported goods themselves without subjecting them to any manufacturing process. It is in such cases that in order to claim refund the exporter has to satisfy the committee that the same goods on which import duty had been paid were being exported. The proviso is not a proviso to clause (b) at all but will be applicable to the other parts of the rule. [314 C, D, E]

3. It is not just to permit the appellant to raise the plea of limitation in the case because at one stage it acquiesced in the trial court's finding and did not raise the question in appeal before the High Court. While asking for a certificate for appeal the appellant did not raise the question of limitation before the High Court nor did it include the point of limitation in the memo of appeal filed in this Court. The point raised needs investigation into facts. [316 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1048 of 1970 & 845 of 1971.

Appeals by certificate from the judgment and decree dated the 11th March & 15th November 1969 of the Madhya Pradesh High Court (Jabalpur) in Misc Petition No. 96 of 1969 and in First Appeal No. 44 of 1966 respectively.

AND Civil Appeals Nos. 1047, 1048 & 1049 of 1971. Appeals by special leave from the judgment and decree dated the 17th April, 1971 of the Madhya Pradesh High Court at Jabalpur in Second Appeal Nos. 415, 416 & 417 of 1966 respectively.

D.V. Patel, S.S. Khanduja and C.L. Sahu for the Appellants in all the Appeals.

Dr.Y.S. Chitale and Rameshwar Nath for Respondent No. 1 in Civil Appeals Nos. 1048/70 & 845 of 1971.

Rameshwar Nath for Respondent No. 1 in Civil Appeals Nos. 1047-1049 of 1971.

Gopal Subramanium and S.A. Shroff for Respondents Nos. 2 & 3 in all the appeals.

The Judgment of the Court was delivered by TULZAPURKAR, J. The aforesaid five appeals, the first two on a certificate granted by the Madhya Pradesh High Court and the last three by special leave granted by this Court, raise a common question in regard to refund of octori duty collected by the appellant-Council from the respondent firms and are, therefore, disposed of by common judgment. The principal question raised in these appeals relates to the proper construction of Rule 27 of the Octroi Rules of Damoh Municipal Council (the appellant) framed in exercise of powers conferred by ss.71, 76 and 85 of the Central Provinces & Berar Municipalities Act, 1922-which Rules were continued in operation even after the coming into force of the new Act, the Madhya Pradesh Municipalities Act, 1961 and the question arises in these circumstances :

The two respondent firms in the two sets of appeals (M/s. Vraj Lal Manilal & Co. and M/s. Prabhudas Kishoredas) carry on business of manufacturing and selling bidis in Damoh and other cities in Madhya Pradesh and for that purpose they import tobacco and other raw material into the Municipal limits of Damoh city and after manufacturing bidis out of such imported raw material they export their finished product (bidis) outside Damoh Municipal limits. The respondents' case was that at the time of import of tobacco and other raw material into the municipal limits of Damoh they paid octroi duty as per Octroi Rules of the appellant Council and after utilising the said raw material for preparing bidis when they exported the manufactured bidis outside the limits of the appellant Council, they were entitled to a refund of the octroi duty paid by them on the raw material so utilized under Rule 27 of the Octroi Rules but inspite of refund vouchers having been issued by the concerned official of the appellant council and inspite of having complied with the Rules and procedure prescribed in that behalf, the appellant Council refused to pay the amounts of the refund vouchers to them. In Civil Appeal No. 1048 of 1970 since the claim for refund to the sum of Rs. 33,409.52 based on 1866 refund vouchers relating to the period from 4.12.1952 to 12.12.1959 arose under the old Act, namely, Central Provinces and Berar Municipalities Act 1922, the respondent

firm M/s Vraj Lal Mani Lal & Co. filed an appeal before the Sub Divisional Officer Damoh under s. 83 (1-A) of the Act against the refusal of the appellant-Council to make the refund. Apart from raising technical pleas such as non- maintainability of the appeal, bar of limitation etc. the appellant Council resisted the claim on merits on the two grounds: (a) that since the raw material had been used or consumed in the manufacture of bidis and since the exported goods (finished products) were not the same or identical as the imported raw material on which the octroi duty had been paid no refund under Rule 27 (b) was available to the respondent firm and (b) that the respondent firm had failed to prove to the satisfaction of the Municipal Council as required by the proviso to Rule 27 (b) that the same or identical goods were being exported on which import octroi had been paid by them. The Sub Divisional Officer by his order dated 30th June, 1961 negatived the technical pleas of the appellant council, which order was finally confirmed by the High Court on 25th February, 1963. The Sub Divisional Officer also over-ruled the defences raised by the appellant Council on merits and by his final order dated 4th April, 1964 directed that the amount of 1865 refund vouchers aggregating to Rs. 33409.52 minus the amount recovered under 19 vouchers should be refunded to the respondent firm. The appellant Council went in revision to the State Government but the same was dismissed on 28th September, 1968. The Sub Divisional Officer's decision as well as the State Government's order in revision were challenged by the appellant Council before the High Court by a Writ Petition (Miscellaneous Petition No. 96 of 1969) but the writ petition was dismissed by the High Court summarily and in doing so the High Court followed its earlier judgment in the case of Municipal Committee, Burhanpur v. Allauddin Aolia Saheb and Co. where in regard to a similar refund rule obtaining in Burhanpur Municipal Committee the Court had taken the view that "Octori duty paid on imported tendu leaves and tobacco is refundable under the provisions of Rule 25 (b) of the Rules framed under s. 85 of the Act when bidis manufactured within the limits of the Municipal Committee are exported." In the remaining four matters, being Civil Appeals 845, 1047, 1048 and 1049 of 1971 the claims for refund made by the respondents in similar circumstances were required to be prosecuted by filing civil suits against the appellant Council, inasmuch as when action was contemplated by the respondents, the new Act, namely, Madhya Pradesh Municipalities Act 1961 had come into force and no remedy by way of any appeal to Sub Divisional Officer was available. In each of these suits the appellant Council resisted the claims for refund on merits on the same grounds mentioned above. The respondents failed in their suits in the two lower courts but succeeded in second Appeals in the High Court.

In these appeals the self-same two contentions were urged before us on behalf of the appellant-council. First, since Octroi duty is a levy on imported goods meant for use, consumption and sale there of within the municipal limits and since the raw material (tobacco) was used or consumed in the manufacture of bidis the same or identical goods were not exported by the respondent firms and so no refund under Rule 27 (b) was available to the respondent firms. Secondly no attempt was made by the respondent firms to satisfy the Municipal Committee that the same or identical goods had been exported as required by the proviso to Rule 27 (b). For both these reasons it was urged that the respondent firms' claim to refund of octroi should have been rejected. Counsel urged that these points did not arise and were not determined in Allaudin Saheb's case (supra).

The admitted facts in these appeals are that the respondent firms, who carry on the business of manufacturing and selling bidis imported or brought into the municipal limits of Damoh during the relevant period tobacco and other raw material, that they paid the requisite octroi duty on such raw material on its import at the prescribed rates, that they utilised the said raw material for manufacturing bidis and they exported the finished product (bidis) outside the municipal limits of Damoh and it was at that stage of export of bidis that they claimed under Rule 27 (b) a refund of octori duty paid by them on the raw material from the appellant Council. The question raised is whether under the said provision they are entitled to the refund of octroi as claimed by them. Rule 27 which deals with refund of octroi runs thus:

> "27. Refund of octroi. On the exportation of dutiable goods outside municipal limits the exporter shall be entitled to a refund of duty paid on them at the time of their import, provided that,
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> (a) no refund shall be given, if the amount to be refunded be less than Re. 1 or if the claim be made after the expiry of two months from the date of export, unless the exporter is able to explain satisfactorily the reason for the delay.
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> (b) the refund on the exported goods which have been manufactured within the municipal committee from imported raw materials liable to octroi, shall not exceed the octroi on the raw materials used in the manufacture, and Provided that the exporter shall not be entitled to a refund of octroi duty unless he proves to the satisfaction of the committee that the goods brought for export belong to him and are the same on which duty was paid by the importer in whose favour the octroi receipt is produced in support of the claim for refund of duty."

In support of their claim for refund the respondents obviously rely upon cl. (b) of Rule 27 under which refund is available on exported goods provided those have been manufactured within the municipal limits from out of the imported raw materials on which octroi has been paid and the clause indicates that quantum of refund shall not exceed the octroi duty actually paid on such raw materials at the time of their import. Counsel for the appellant, however, contended that in its very nature octroi is a duty levied on import of goods which are meant for use, consumption or sale within the municipal limits and counsel urged that it cannot be disputed that when raw material like tobacco is utilized in the manufacture of bidis such raw material is used or consumed in the process of manufacture and it is such finished product (bidis), a disputed commercial commodity that is being exported by the respondent-firms and, therefore, no refund under cl. (b) or Rule 27 would be available to them. Counsel urged that the word 'manufacture' occurring in the clause must be given a limited meaning, that is to say, only such manufacturing process is contemplated by that clause which does not alter or change the identity of the imported commodity and only in respect of the export of such manufactured goods the refund would be available and not where the imported commodity gets converted into an all together different commercial article. Counsel also invited our attention to the proviso following cl. (b) which states that the exporter shall not be entitled to refund of octroi duty unless he proves to the satisfaction of the committee that the goods brought for export are the same on which duty had been paid by the importer and according to Counsel the 'bidis'

cannot be said to be the same goods on which the respondent-firms could be said to have paid the duty. In other words refund is available under cl. (b) in cases where even after undergoing the manufacturing process the imported article or commodity retains its essential character as such article or commodity and the same is exported outside the municipal limits. It is not possible to accept the aforesaid construction sought to be placed on cl. (b) of Rule 27 of the Octroi Rules by the appellant's counsel for reasons which we shall presently indicate. In the first place, though it is true that octroi by its nature is a levy on import within the municipal limits of articles or goods meant for use, consumption or sale therein that does not prevent a Municipal Council from framing a rule either granting exemption from that duty or refund of such duty after its collection in cases of certain type of use or consumption of the imported articles or goods for certain purposes. Secondly, a Municipal Council may do so for achieving certain objectives like increasing industrialisation by encouraging manufacturing activities within its limits. Clearly the avowed object of Rule 27 (b) appears to be of this nature for in terms it provides for refund of octroi paid on imported raw materials when such raw-material is actually used within the municipal limits for manufacturing the exported article and it is in light of this objective that the said rule will have to be interpreted. Looked at from this angle it will be difficult to accept the narrow or limited construction of the word 'manufacture' appearing in cl. (b) as is suggested by Counsel for the appellant and the same could not have been intended by the framers of the rule. Further clause (b) itself speaks of the raw materials being "used in the manufacture" so that use or consumption which a manufacturing process entails was present to the mind of the framers of the Rule when they provided for the refund on the export of finished goods manufactured within the municipal limits. Moreover, the well-settled connotation of the concept of 'manufacture' and 'manufacturing process' is that as a result of undergoing the process a distinct commercial commodity different from the raw materials comes into existence; it is difficult to visualise degrees of manufacture as suggested by counsel for the appellant and in any case none could be attributed to the framers of the Rule. It is, therefore, not possible to accept the contention that the expression "manufacture" occurring in cl. (b) of Rule 27 should be given a limited meaning as is suggested. Turning to the proviso on which strong reliance was placed by the counsel for the appellant, it seems to us that the proviso by its very terms is not attracted to a case of manufactured goods falling under cl. (b). If cl. (b) confers the benefit of refund of octroi duty on the export of goods manufactured out of raw material then it is difficult to appreciate how the exporter will be able to satisfy the Municipal Committee that the exported goods are the same or identical on which duty has been paid, for admittedly the exported goods are the finished product and no import duty is paid thereon by the exporter. The proviso in our view is applicable to cases where there is an export of the imported goods themselves without subjecting them to any manufacturing process and it is in such cases that the exporter has to satisfy the Committee that the same goods on which import duty has been paid are being exported which would entitle the exporter to claim a refund; in other words it is not a proviso to cl. (b) at all but will be applicable to the other parts of the Rule. It is thus clear to us that when raw materials like tobacco etc. were imported by the respondent-firms within the limits of Damoh, on which they paid octroi-duty and when they manufactured bidis out of such raw-materials and exported the same they were entitled to get refund to the extent of quantum mentioned in cl. (b) of Rule 27.

In view of our aforesaid conclusion that the proviso is not applicable to cases of manufactured goods falling under cl. (b) of the rule the second contention urged by the Counsel for the appellant that the

respondent-firms were not entitled to refund as they failed to satisfy the Municipal Committee that the same or identical goods had been exported does not survive. That apart, the High Court has on a conspectus of the Octroi Rules came to the conclusion and in our view rightly, that the Octroi Superintendent is responsible for the proper administration of the Octroi Department in all its branches which necessarily includes that it is he who should be satisfied as to the identity of the goods that are to be exported or that are utilized in the manufacture of goods which are to be exported.

The last contention sought to be urged on behalf of the appellant-council before us related to the bar of limitation to the respondents' claim arising under section 319 (2) of the Madhya Pradesh Municipalities Act, 1961 and counsel fairly stated that this arises only in Civil Appeal No. 845 of 1971. The facts in this behalf are these: Civil Suit No. 1-B of 1964, out of which the aforesaid appeal arises, was filed by the respondent-firm M/s Vraj Lal Manilal & Co. on 7.5.1964 claiming refund in respect of goods exported during the years 1959-1964; in other words, part of the claim from 1959 to 31st January, 1962 arose under 1922 Act while the claim pertaining to the period from 1.2.1962 to April 1964 arose under the 1961 Act, which came into force from 1.2.1962. The trial Court as well as the High Court took the view that non-payment of refund under the 1922 Act could be agitated only by way of an appeal under section 83 and other remedies were barred under s. 84 of the Act and, therefore, that part of the respondent's claim was dismissed as being not tenable but both the Courts held that non-payment of refund after 1.2.1962 could be agitated by a suit and the same was tenable On the question of limitation the trial Court held that that part of the claim was not barred but since it had negatived the respondent's claim for refund on merits it dismissed the respondent's suit entirely but the High Court, which reversed the trial Court's view on merits allowed the respondent's claim in respect of refund vouchers which had been certified and presented after 1.2.1962. Since, however, it was not possible for it to sort out the refund vouchers which had been certified the High Court by its judgment and decree dated 15.12.1969 remanded the matter to the trial Court for determining the amount payable to the respondent-firm. Upon remand the trial Court on the basis of statements made by the parties passed a decree in respondent's favour for Rs. 21,023.53 with interest thereon 4% and this decree was drawn up on 23.4.1970.

Section 319 (2) of the 1961 Act runs thus;

"Every such suit shall be dismissed unless it is instituted within 8 months from the date of the accrual of the alleged cause of action."

Relying upon this provision counsel for the appellant urged that since the suit had been filed on 7.5.1964 the respondent's claim for refund during 8 months prior to 7.5.1964 would be within limitation but the rest of the claim from 1.2.1962 to 7.9.1963 would be barred by limitation and to that extent the decree in favour of the respondent-firm deserves to be modified We are not inclined to entertain this contention sought to be urged by counsel for the appellant before us for more than one reason. It is true that this bar of limitation under s. 319 (2) was pleaded by the appellant council in its written statement and an issue thereon was also raised at the trial but the trial Court held that the claim arising under the new Act after 1.2.1962 was not barred by limitation because cause of action arose on 24.9.1963 when there was refusal to pay or accede to the notice of demand but when

the matter was carried in appeal to the High Court by the respondent firm against the dismissal of their claim on merits and the High Court reversed the trial Court's view on merits and held that the plaintiffs' claim for the period subsequent to 1.2.1962 was liable to be decreed, this point of limitation arising under s. 319 (2) was neither raised nor pressed before the High Court. No contention was raised that the refusal to pay on 24.9.1963 did not give rise to the cause of action but that it arose on dates when goods were exported and refund vouchers were presented or certified. Had it been pressed the High Court would have, while remanding the matter given appropriate directions to the trial Court in that behalf. This shows that the appellant council acquiesced in the trial Court's finding on the question of limitation, namely, the cause of action arose on 24.9.1963. Secondly, while applying for a certificate from the High Court for appeal to this Court the appellant-Council sought the certificate on points touching the merits of the claim and not on the question of limitation. Further in the Memo of Appeal filed in this Court the grounds do not include the point of limitation. Lastly the point raised cannot be said to be a pure question of law as it will require investigation into facts to ascertain the exact date or dates of accrual of the cause of action. When on the point of limitation the appellant- Council had at one stage acquiesced in the trial Court's finding and did not raise the question in appeal before the High Court we do not think it would be fair or just to permit the appellant-Council to raise the plea of limitation in this Court, especially when the result of allowing such plea might be to defeat the just claim of the respondent firm.

In the result the appeals are dismissed and each party will bear its own costs.

P.B.R. Appeals dismissed.