

Kirpal Singh Duggal

Vs

Municipal Board, Ghaziabad

Civil Appeal No. 725 of 1965

(J. C. Shah, V. Ramaswami – I, G. K. Mitter JJ)

26.03.1968

JUDGMENT

SHAH, J.-

Between August 1, 1953 and March 28, 1955, the appellant transported 521 truck-loads of "stone-grit" and other materials from Delhi to Muradnagar in execution of a contract to supply goods for use by the Government of India. The trucks of the appellant had to pass through the toll barrier of the Municipality of Ghaziabad, and toll at the rate of Rs. 8 per truck was collected from the appellant. The appellant obtained a certificate from the Garrison Engineer, M.E.S., Meerut, on June 10, 1955, that the goods transported by the appellant "were meant for Government work and had become the property of the Government". The appellant then applied on June 14, 1955, to the Municipality of Ghaziabad for refund of the amount of toll paid pursuant to the exemption granted by Government Order under s. 157(3) of the U.P. Municipalities Act, 1916, and the Municipality having declined to refund the amount, the appellant served the statutory notice and commenced an action against the Municipality in the Court of the Munsif at Ghaziabad on February 11, 1956, for a decree for Rs. 4,300. The trial court decreed the claim. In appeal, the IInd Civil Judge, Meerut, upheld the claim of the appellant only for the amounts paid after December 13, 1954. The High Court of Allahabad affirmed the order of the Civil Judge. The appellant has appealed to this Court.

The relevant provisions of the Act, the rules and the orders issued by the Government may first be noticed. Under s. 128 of the U.P. Municipalities Act, 1916, the Municipal Board is, subject to any general rules or special orders of the State Government in that behalf, competent to impose in the whole or part of a municipality the taxes specified in that section and one of the taxes specified is "a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality". Under s. 157(3) of the Act the State Government may, by order, exempt from the payment of a tax, or any portion of a tax, imposed under the Act any person or class of persons or any property or description of property. Pursuant thereto the Government of U.P. issued an order on April 15, 1939, which, insofar as it is material, provides :

".....the Provincial Government are . . . pleased to issue an order under section 157(3) of the U.P. Municipalities Act, 1916, exempting those goods which are the property of Government or which become so subsequent to their entry within a Municipality, from the payment to terminal tax or toll.

2. The procedure to be followed in giving effect to the exemption sanctioned above shall be as follows :-

"When goods are imported by a private person for supply to Government in fulfilment of a contract, or otherwise intended for the use of Government a written intimation to that effect shall be given to the officer collecting terminal tax/terminal toll who would immediately forward it to the Terminal Tax Superintendent. The tax/toll on goods shall then be paid but if subsequently they actually become the property of Government, it shall be refunded on a certificate of the officer authorised to receive the goods on behalf of Government" . . . .

The State Government is authorized by s. 296 to make rules consistent with the Act in respect, amongst others, of matters described in s. 157 "generally for the guidance of a board or any Government officer in any matter connected with the carrying out of the provisions of this or any other enactment relating to municipalities". The State Government framed rules relating to assessment and collection of toll in the Ghaziabad Municipality. Rules 1 and 5 are material.

"1. No person shall bring within the limits of the Ghaziabad Municipality any laden vehicle or other laden conveyances or laden animal in respect of which a toll is leviable, until the toll due in respect thereof has been paid to such persons and at such barriers or such other places as the board may from time to time appoint.

Explanation. - . . . . ."

"5. When goods are imported by a private person for supply to Government in fulfilment of a contract or otherwise intended for the use of Government, a written intimation to the effect shall be given to the officer collecting that tax who would immediately forward it to the Toll Tax Superintendent. The tax on goods shall then be paid, but if subsequently they actually become the property of Government, it shall be refunded on a certificate of the officer authorised to receive the goods on behalf of Government. . . .

The application for refund of the tax paid shall be made within fifteen days of the date of the certificate referred to above and within six months of the date or dates of payment of the tax and shall be accompanied by the original toll receipts.

Note :- . . . . ."

The Civil Judge was of the opinion that toll is immediately payable in all cases, but where goods are for the use of the Government, it becomes refundable when the property becomes the property of the Government, and a certificate is issued by the officer concerned to that effect. He further held that the application for refund be made within fifteen days of the date certificate and within six months of the date of payment, and an application for refund within six months from the date of actual payment is a condition precedent to the refund of the toll and even though a certificate by the prescribed authority is issued beyond six months of actual payment. The High Court agreed with that view.

Under the order issued by the Government under s. 157(3) of the Act the amount of toll paid by the appellant became refundable to him. The appellant was therefore entitled to claim against the Municipality that the amount be repaid. The right to enforce that claim was a right of a civil nature, and could be enforced in a civil suit, unless the suit was barred by the law of limitation or the right was by reason of some statutory provision extinguished, or the jurisdiction of the civil court was

barred expressly or by necessary implication, or that the enforcement of the right depended upon the fulfilment of a condition precedent or upon existence of some fact collateral to the actual matter which the Court had to try and which was not shown to exist. It was held by the Civil Judge, and rightly, that the claim was not barred by s. 326 of the U.P. Municipalities Act, 1916, because the suit was not in respect of any act done or purported to have been done in the official capacity. There is nothing in the order issued by the State Government, or any other provision of the law, that on the expiry of any particular period or on the happening of a contingency, the claim stands extinguished. The jurisdiction of the civil court to entertain a suit for refund of tax levied under s. 128 of the Act is also not barred by express enactment or by necessary implication, arising out of the provisions of ss. 153(c), 160, 162 and 164 of the Act. Section 153(c) merely provides for framing of the rules regulating the system on which refunds shall be allowed and paid. Section 160 makes provisions for appeals relating to taxation and the authorities to which the right to appeal may be exercised. Section 162 provides for a reference to the High Court where a question of liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt. Section 164 bars the jurisdiction of civil and criminal court in matters of valuation or assessment or about the liability of a person to be assessed or taxed. But the dispute in this case does not relate to valuation or assessment, or liability to be taxed or assessed. When the goods in respect of which toll was paid became the property of the Government, the toll paid by the appellant became refundable and the jurisdiction of the civil court to entertain a claim for refund of toll arising by virtue of an order under s. 157(3) was not excluded. It was not contended either in the trial court, the first appellate Court or even the High Court that the jurisdiction of the civil court to entertain a suit was excluded. The first appellate Court has in fact granted refund of a part of the amount paid and the right of the civil court to direct refund in appropriate cases has not been challenged in this Court

But counsel for the respondent contended that the rules framed by the Government regarding the procedure constituted a condition precedent to the exercise of the right to claim refund and recourse to the civil court being conditionally strict complain with the procedure prescribed the civil court was incompetent to decree the suit unless the condition was fulfilled. We are unable to agree with that contention. The rules framed by the Government merely set up the procedure to be followed in preferring an application to the Municipality for obtaining refund of the tax paid. The Municipality is under a statutory obligation, once the procedure followed is fulfilled, to grant refund of the toll. The application for refund of the toll must be made within fifteen days from the date of the issue of the certificate and within six months from the date of payment of the toll. It has to be accompanied by the original receipts. If these procedural requirements are not fulfilled the Municipality may decline to refund the toll and relegate the claimant to a suit. It would then be open to the party claiming a refund to seek the assistance of the court, and to prove by evidence which is in law admissible that the goods transported by him fell within the order issued under s. 157(3) of the Act. The rules framed by the Government relating to the procedure to be followed in giving effect to the exemptions on April 15, 1939, do not purport to bar the jurisdiction of the civil court if the procedure is not followed. In our judgment, the Civil Judge and the High Court exalted what were merely matters of procedure, which the Municipality was entitled to require compliance with in granting refund, into conditions precedent to the exercise of jurisdiction of the civil Court It is impossible on a bare perusal of the order issued by the Government and the rules framed by it to give to the order and the rules that effect.

The appeal is therefor allowed and the decree passed by the High Court is set aside and the decree passed by the trial court is restored with costs throughout.

# Appeal allowed.##

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