

M/s. Hiralal Thakorlal Dalal

Vs

Broach Municipality and Others

Civil Appeal No. 1823 of 1969

(CJI A.N. Ray, M.H. Beg, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

15.04.1976

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave arises from the judgment of the Gujarat High Court dated January 27, 28 and 30, 1967. The two petitioners before the High Court were firms trading in certain commodities within the limits of the Municipal Borough of Broach. The grievance in one of the petitions was that the municipality had collected certain amounts wrongfully, and the grievance in the other petition was that the municipality had refused to refund some amounts even though they were refundable under its bye-laws. Both the petition concerned goods which were "imported" within the octroi limits of the municipality but came to be "exported" therefrom. The first petition was in respect of a consignment which was designated as a through consignment, and the second petition concerned goods in transit and goods for export other than those which could be called goods in transit. The amounts in dispute related to the levy of octroi under Section 73(1) of the Bombay Municipal Boroughs Act, 1925, hereinafter called the Act, which provides as follows :

73. (1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 75 and 76, a Municipality may impose for the purposes of this Act any of the following taxes, namely :-

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(iv) an octroi on animals or goods or both, brought within the octroi limits for consumption, use or sale therein;

The word "sale" was included within the ambit of octroi when the Act was amended in 1954. The High Court took note of the rules and the bye-laws and held that it was not possible to take the view that the rules contemplated that no refund was payable in case the goods had undergone a sale during the course of their stay in octroi limits. In accordingly came to the conclusion that in regard to goods meant for export in the sense defined in the rules, refund was claimable even if a sale transaction in the larger sense (i.e. in a sense other than a sale to a consumer or with the intention that the goods must pass into hands of the ultimate consumer) took place in regard thereto, provided that the other conditions were satisfied. The High Court then examined the correct interpretation of the word "sale" in clause (iv) of Section 73(1) of the Act and after considering this Court's judgment in *Burmah Shell Oil Storage and Distributing Co. India Ltd. v. Belgaum Borough Municipality* (1963 Supp 2 SCR 216 : 1963 SC 906), it held that the word "sale" could not be given the narrow meaning of a sale for consumption to the ultimate consumer because, in that sense, the Legislature

would be guilty of having introduced a word which it was not necessary for it to introduce. The High Court made a reference to the definition of "sale" in Section 4 of the Sale of Goods Act and held that the expression "sale" as used in the definition of "through consignments" in the rules had the same connotation as in the Sale of Goods Act and therefore

if a consignment is brought within the octroi limits and if the municipal authorities are satisfied that the consignment has been brought in for the purpose of effecting a sale in the aforesaid sense, then the consignment does not become a through consignment.

According to the High Court, it was not enough merely to prove that the consignment left the octroi limits within six hours after the goods were imported and that it was necessary to show that the goods were intended only to pass through in the sense that they were not meant for consumption, use or sale, and that in regard to such goods there was no intention of changing hands by way of sale or that there was no intention of breaking their bulk or detaining them beyond six hours or unloading them. In the view it took, the High Court issued some directions for compliance by the authorities concerned. The writ petitioners felt dissatisfied with the view taken by the High Court and applied for a certificate under Articles 132(1) and 133(1)(c) of the Constitution. The High Court held that no question arose under Article 132, and no certificate could be granted under Article 133 as there was no final order. The petitioners however applied to this Court for special leave on the ground, inter alia, that the High Court put a wrong interpretation on the expression "sale" in Section 73(1)(iv) of the Act in spite of the decision of this Court in *Burmah Shell's case*. As has been stated, they succeeded in obtaining special leave from this Court. When the case came up for hearing before a Division Bench, it noticed the decision in *Burmah Shell's case* and felt that there were "blurred areas" of sale within the territory which may attract a tax under entry 52 (List II of Seventh Schedule) left uncertain by the aforesaid decision of this Court so that the matter deserved consideration by a larger bench. This is how the case has come up before us for hearing. We have allowed Municipal Council, Jodhpur, to intervene in the hearing at its request.

2. The short question before us is whether this Court's decision in the *Burmah Shell's case* squarely covers the present controversy or whether that decision requires reconsideration. The learned Counsel have in fact confined their arguments to this narrow field.

3. In order to appreciate the controversy, it will be desirable to refer to the basic facts of the *Burmah Shell's case*. The *Burmah Shell Oil Storage and Distribution Co. India Ltd.*, hereinafter referred to as the company, was a dealer in petrol and other petroleum products which it manufactured in its refineries situated outside the octroi limits of Belgaum Municipality. It brought these products inside that area either for use or consumption by itself or for sale generally to its dealers and licensees who in their turn sold them to others. According to the company, the goods brought by it within the octroi limits could be divided into four categories as follows :

1. Goods consumed by the company;
2. Goods sold by the company through its dealers or by itself and consumed within the octroi limits by persons other than the company;
3. Goods sold by the company through its dealers or by itself inside the octroi limits to other persons but consumed by them outside the octroi limits; and
4. Goods sent by the company from its depot inside the octroi limits to extra-

municipal points where they are bought and consumed by persons other than the company.

This Court examined the scheme of taxation under the Act and the rules and the bye-laws made by the municipality for the levy of octroi. It also took note of the fact that the words "use or sale" were substituted for the words "or use" by Bombay Act 35 of 1954, which are the subject-matter of a fresh controversy before us, and made a reference to the Legislative Lists in the Government of India Act, 1935 and the Constitution. After examining the history of octrois and terminal taxes, this Court held that "octrois were taxes on goods brought into the local area for consumption, use or sale", and that "they were leviable in respect of goods put to some use or other in the area but only if they were meant for such user". It was specifically clarified that the word "sale" was included only in 1954 in order to bring the description of octroi in the Act in line with the Constitution, and that the expressions "consumption" and "use" together connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up.

4. Looking to the company, this Court held that sale by it directly to consumers or to dealers was "merely the means for putting the goods in the way of use or consumption" and that the word "therein" does not mean that all the acts of consumption must take place in the area of the municipality. The Court therefore went to hold as follows :

In other words, a sale of the goods brought inside, even though not expressly mentioned in the description of octroi as it stood formerly, was implicit, provided the goods were not re-exported out of the area but were bought inside for use or consumption by buyers inside the area. In this sense the amplification of the description both in the Government of India Act, 1935 and the Constitution did not make any addition to the true concept of 'octroi' as explained above. That concept included the bringing in of goods in a local area so that the goods come to a repose there. When the Government of India Act, 1935 was enacted, the word 'octroi' was deliberately avoided and a description added to forestall any dispute of the nature which has been raised in this case. In other words, even without the description the tax was on goods brought for 'consumption, use or sale'. The word 'octroi' was also avoided because terminal taxes are also a kind of octroi and the two were to be allocated to different legislatures.

In our opinion, even without the word 'sale' in the Boroughs Act the position was the same provided the goods were sold in the local area to a consumer who bought them for the purpose of use or consumption or even for resale to others for the purpose of use or consumption by them in the area. It was only when the goods were re-exported out of the area that the tax could not legitimately be levied.

This Court categorically held that the company was liable to pay octroi on goods brought into the local area (a) to be consumed by itself or sold by it to consumers direct, and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it, but it was "not liable to octroi in respect of goods which it brought into the local area and which were re-exported".

5. The law on the subject-matter of the present controversy has thus been laid down quite clearly in the *Burmah Shell's* case and the present case squarely falls to be governed by it. We are also in

agreement with that interpretation of the law. It may be mentioned that the learned Counsel have not been able to advance any new argument justifying a reconsideration of the decision.

6. The appeal is allowed, the impugned judgment of the High Court is set aside and the respondents are directed to examine and determine the claims of the appellant in accordance with the above decision. The appellant will be entitled to costs from the respondents.

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