Bata Shoe Co. Ltd.

Vs

City of Jabalpur Corporation

Civil Appeal Nos. 1923-1924 Of 1972

(Y. V. Chandrachud, P. N. Shinghal JJ)

11.03.1977

JUDGMENT

CHANDRACHUD, J. –

1. These are cross appeals arising out of a judgment rendered by the Madhya Pradesh High Court in First Appeal 138 of 1952 modifying the decree passed by the First Additional District Judge, Jabalpur in Civil Suit 6-B of 1949. It would be convenient to refer to the parties as plaintiffs and defendants, plaintiffs being the Bata Shoe Co. Ltd. and the defendants being the Corporation for the City of Jabalpur.

2. Plaintiffs are a limited company having their registered office at Calcutta. At the relevant time they had their factories at Batanagar in West Bengal, Batapur in West Punjab, Palsia-Digha in Bihar and Faridabad near Delhi. The sales organisation of the plaintiffs is situated at Calcutta, and that organisation sells manufactured articles through the Company's retail shops situated in different parts of India and Pakistan. Three such retail shops were situated at Jabalpur.

3. In respect of the articles which were imported by the retail shops at Jabalpur within the limits of the then Jabalpur Municipal Committee between April 1, 1943 and March 31, 1945, the plaintiffs had paid to the Municipal Committee a sum of Rs. 16,526 odd as octroi duty. This duty was assessed by the Municipal Committee on an amount which was 40% less than the retail price of the goods which were brought within the municipal limits. In the year 1946-47 the Municipal Committee decided to reopen and revise the assessment by charging the octroi duty on an amount which was only 6 1/4% less than the retail price of the goods. The Municipal Committee further decided to levy double the duty by way of penalty for the aforesaid period on the ground that the plaintiffs had intentionally evaded the payment of the duty payable on the goods. Plaintiffs preferred an appeal against the decision of the Municipal Committee to the Sub-Divisional Officer, Jabalpur who by an order dated July 14, 1948 modified the decision of the Municipal Committee by permitting them to charge the octroi duty on an amount which was less by 12 1/2% than the retail price of the goods. The Sub-Divisional Officer however upheld the assessment of double duty. The revision application preferred by the plaintiffs to the Board of Revenue was rejected on October 4, 1948, on the ground that it was not maintainable.

4. In conformity with the appellate order, but under protest, plaintiffs paid to the Municipal Committee a sum of Rs. 21,071-1-3 on August 6, 1948. Defendants demanded a further sum of Rs. 10,604-2-6 alleging that they had overlooked asking for it through mistake. Plaintiffs paid that amount too on September 22, 1948 under protest. On June 20, 1949 they filed a suit against the Municipal Committee for recovery of the total amount of Rs. 31,677-3-9 with interest at 6% per

annum on the ground that the defendants were not entitled to recover the amount by way of octroi duty and penalty. During the pendency of the suit the Municipal Committee was succeeded by the Corporation for the City of Jabalpur who were substituted as defendants to the suit.

5. The trial Court decreed the suit to the extent of Rs. 32,629-7-0 calculating the interest at 4% holding that the defendants could not charge octroi duty on an amount arrived at by anything less than 40% from the retail sale price, that the recovery of octroi duty by deducting a sum of 12 1/2% only from the retail price was illegal and that the defendants were not justified in recovering double duty by way of penalty since the plaintiffs had not intentionally evaded the payment of proper duty. Defendants had raised contentions both as regards the jurisdiction of the Civil Court to entertain the suit and as regards limitation but the trial Court rejected those contentions and held that it had jurisdicion to entertain the suit and that it was not barred by limitation.

6. In appeal the High Court held that the defendants were entitled to revise the reopen the assessment and that the reassessment of octroi duty which was ultimately fixed in appeal by the Sub-Divisional Officer could not be questioned by the plaintiffs in the Civil Court. On the question of limitation the High Court held that applying the special period of limitation provided in Section 48 of the Central Provinces and Berar Municipalities Act, 1922 the suit was within limitation as regards the payment made by the plaintiffs on September 22, 1948 but that it was barred by limitation as regards the payment made on August 6, 1948. The suit in regard to the amount paid to the Municipal Committee in September, 1948, was held to be within limitation on account of the intervening summer vacation during which the courts were closed. According to the High Court the exaction of the double duty being beyond the powers of the defendants, the special period of limitation was not attracted and the plaintiffs were therefore entitled to recover the sum paid by way of double duty. In the result the High Court passed a decree in the sum of Rs. 24,103-12-3 which according to it, represented the double duty wrongly recovered by the defendants from the plaintiffs. The High Court has granted to both the parties a certificate to file an appeal to this Court under Article 133(1) of the Constitution and both parties being partly aggrieved by the decree of the High Court have filed cross appeals.

7. The first question for consideration is whether the civil court has jurisdiction to entertain the suit brought by the plaintiffs. It is undisputed that the Municipal Committee had the power under Section 66(1)(e) of the Act of 1922 to impose octroi tax on the goods brought within the Municipal limits for sale, consumption or use therein. Under Rule 6(b) framed by the Provincial Government in exercise of the powers conferred by Sections 71, 76 and 85 of that Act, octroi duty was payable on the "current price of articles" which is equivalent to the cost price of the articles to the importer plus the cost of carriage and not the price prevailing in the local market. Prior to 1940, plaintiffs used to submit to the defendants an invoice relating to the imported goods wherein the cost price used to be shown by deducting from the retail price the aggregate amount of expenses amounting to 40%. Defendants later disputed the deduction claimed by the plaintiffs and informed the latter by a letter of May 7, 1940 that octroi duty was leviable on the cost price of the goods as shown in the invoice plus the freight charges. Plaintiffs accepted that view and started showing in the invoices the cost price of the articles and the freight charges. Defendants used to assess octroi duty on those invoices until the dispute giving rise to the present suit arose during the year 1946-47, when the basis for charging the duty was fixed at 6 1/4% less than the retail price of the goods and the assessments already made were reopened with a view to revising them.

8. Section 83(1) of the Act of 1922 provides for appeal against the assessment or levy of any tax under the Act to the Deputy Commissioner or to such other officer as may be empowered by the

Provincial Government in that behalf. Section 84(3) of the Act which bears directly on the question of jurisdiction reads thus :

> 84. (3) No objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.

It is plain from this sub-section that any valuation, assessment or levy and the liability of any person to be assessed or taxed can be questioned only in the manner prescribed by the Act and by the authority mentioned in the Act and in no other manner or by any other authority. Since the sub-section expressly prohibits a challenge to a valuation, assessment or levy "in any other manner... than is provided in this Act" and since the Act has devised its own special machinery for inquiring into and adjudicating upon such challenges, the common remedy of a suit stands necessarily excluded and cannot be availed of by a person aggrieved by an order of assessment to octroi duty. Similarly, the sub-section excludes expressly the power of "any other authority than is provided in this Act" to entertain an objection to any valuation, assessment or levy of octroi. This part of the provision is in the nature of ouster of the jurisdiction of civil courts, at least by necessary implication, to entertain an objection to any valuation, assessment or levy. This is the evident intendment, meaning and implication of the provision.

9. In Wolverhampton New Waterworks Company v. Hawkesford ([1859] 6 CB (N.S.) 336) Willes, J. referred to various classes of cases in which the jurisdiction of ordinary Courts is excluded the third class of such cases being "where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it". The view of Willes, J., that with respect to that class of cases the party must adopt the from of remedy given by the statute and no other, was accepted by the Privy Council in Secretary of State v. Mask & Company (67 IA 222) and by the House of Lords in Neville v. London "Express" Newspaper, Limited ([1919] AC 368).

10. In Mask & Company's case the Privy Council was dealing with the provisions of the Sea Customs Act, 1876, Section 188 whereof gave a right of appeal to the person aggrieved by any decision or order passed by the Customs Officers under that Act. Section 191 further gave the aggrieved person a right to make an application to the Local Government for revision of the appellate decision or order. The last paragraph of Section 188 provided : "Every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final". There was no express exclusion of the civil court's jurisdiction to entertain a suit challenging an order passed by a Customs Officer but the Judicial Committee, while recognising that the exclusion of the jurisdiction of civil courts was not to be readily inferred and that such exclusion must either be explicitly expressed or clearly implied, observed that looking at the last paragraph of Section 188 of the Sea Customs Act it was difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil courts. If a provision merely giving finality to an order could be construed as ousting the civil courts' jurisdiction, Section 84(3) of the Act, which is far more expressive, can legitimately be construed to have the same effect. It excludes in terms a challenge to the various things therein mentioned, in any other manner or by any other authority than is provided in the Act.

11. But counsel for the plaintiffs contends that Section 84(3) cannot oust the civil court's jurisdiction to entertain the present suit because the defendants have no power at all either under the Act or under the Rules framed thereunder to reopen or revise an assessment to octroi duty. An assessment

once made is final subject to the remedies which the Act provides to the aggrieved party and since, according to the counsel, the reopening of assessment is wholly, without jurisdiction the suit to challenge it is competent. The argument, in other words, is that Section 84(3) may bar a suit to challenge an act which is within the purview of the Act or the Rules but it cannot bar a suit to challenge an act which is outside the Act or the Rules and is therefore wholly lacking in jurisdiction.

12. In support of the contention that the civil court has jurisdiction to entertain the suit plaintiffs rely principally on the decisions of this Court in Bharat Kala Bhandar Ltd. v. Municipal Committee, Dhamangaon ([1965] 3 SCR 499 : AIR 1966 SC 249 : (1966) 59 ITR 73), B. M. Lakhani v. Malkapur Municipality ([1970] 2 SCC 267) and Dhulabhai v. The State of Madhya Pradesh ([1968] 3 SCR 662 : AIR 1969 SC 78 : [1968] 22 STC 416). The appellants in Bharat Kala Bhandar's case filed a suit for recovery of excise tax paid by them under Section 66(1)(b) of the Central Provinces Municipalities Act, 1922 on the ground that after the coming into force of Section 142A of the Government of India Act, 1935 till January 25, 1950 a tax in excess of Rs. 50 per annum could not be imposed by the Municipal Committee and that after the coming into force of the Constitution, imposition of tax in excess of Rs. 250 per annum was unconstitutional. The trial Court decreed the suit but on appeal the High Court held that the suit was bad for non-compliance with Section 48 of the C. P. Act according to which a suit for anything done or purported to be done under the Act had to be instituted within six months from the date of the accrual of the cause of action. In answer the Municipal Committee contended that apart from the provisions of Section 48, the suit was barred by Section 84(3) under which no objection could be taken to any assessment in any other manner than is provided in the Act. That section is the very same provision under which the present suit, according to the defendants, is said to be barred from the cognizance of the civil courts. It was held by this Court by majority that since the Municipal Committee had no authority to levy a tax beyond what was permitted by Section 142A of the Government of India Act or Article 276 of the Constitution, the assessment proceedings were totally void in so far as they purported to levy a tax in excess of the constitutionally permissible limits and therefore the suit was maintainable.

13. The question involved in B. M. Lakhani v. Malkapur Municipality (supra) was similar, the contention being that the recoveries which were made in contravention of Section 142A of the Government of India Act, 1935 and Article 276(2) of the Constitution were wholly without jurisdiction and therefore a suit for refund of tax recovered by the Municipality in violation of the constitutional provisions was maintainable. That contention was accepted by this Court which treated the matter as concluded by the decision in Bharat Kala Bhandar's case.

14. In Dhulabhai v. The State of Madhya Pradesh (supra) the position was similar to that in the two cases noticed above. Section 17 of the Madhya Bharat Sales Tax Act provided that no assessment made and no order passed under the Act or the Rules made thereunder shall be called in question in any Court. It was conceded by the State Government that the sales tax levied on the appellants was unconstitutional in view of Article 301 of the Constitution but it was contended that the civil court had no jurisdiction to entertain the appellants' suit for refund of the tax in view of Section 17 of the Act. After an examination of various decisions including those to which we have referred in this judgment Hidayatullah, J. who spoke for the Constitution Bench formulated seven propositions bearing on the construction of statues which, expressly or by necessary implication, bar the jurisdiction of civil courts. It is unnecessary to examine each one of those propositions for the short reason that as in the case of Bharat Kala Bhandar and B. M. Lakhani, so in the case of Dhulabhai the recovery of sales tax was unconstitutional and the suit, for that reason, was held maintainable. Attention must, however, be drawn to propositions (1), (4) and (6). The first proposition states that where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction

must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. The fourth proposition is that when a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. The sixth proposition which bears more appropriately on the instant case says that questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

15. The plaintiffs' contention that the suit is not bared from the cognizance of the civil court is effectively answered by these propositions but even so, a discussion of the jurisdictional issue will not be complete without reference to a decision rendered by a seven-Judge Bench of this Court in Kamla Mills Ltd. v. State of Bombay ([1966] 1 SCR 64 : AIR 1965 SC 1942 : 57 ITR 643). The appellants therein were assessed to sales tax on sales which were treated by the Sales Tax authorities as 'inside sales' but which according to the decision in Bengal Immunity Co. Ltd. v. State of Bihar ([1955] 2 SCR 603 : [1955] 6 STC 446 : AIR 1955 SC 661) were 'outside sales' and therefore non-taxable under the Bombay Sales Tax Act, 1946. After the decision in Bengal Immunity case which came on September 6, 1955, the appellants discovered that they were illegally subjected to sales tax and since the period prescribed by the Act for adopting the remedies thereunder had expired, the appellants filed a suit for recovery of the sales tax illegally collected from them in respect of the outside sales. The State of Bombay contended that the suit was barred by Section 20 of the Act which provided, to the extent material, that no assessment made and no order passed under the Act or the Rules shall be called into question in any civil court. It was held by this Court that Section 20 protected all assessments made under the Act or the Rules made thereunder and that the protection was wide enough to cover assessments made by the appropriate authorities under the Act whether the assessments were made correctly or not. Observing that if the appropriate authority while exercising its jurisdiction and powers under the relevant provisions of the Act comes erroneously to the conclusion that a transaction which is an outside sale is not an outside sale and proceeds to levy sales tax on it, its decision cannot be said to be without jurisdiction, the Court held that the suit was barred from the cognizance of the civil court. In coming to this conclusion the Court relied upon the decision in Firm and Illuri Subbaya Chetty & Sons v. State of Andhra Pradesh ([1964] 1 SCR 752; AIR 1964 SC 322 : [1963] 14 STC 680), which had taken the view, while interpreting a similar provision in Section 18A of the Madras General Sales Tax Act, that the expression "any assessment made under this Act" was wide enough to cover all assessment made by the appropriate authorities under the Act, whether the said assessments were made correctly or not. The decision in Bharat Kala Bhandar was brought to the notice of the Court in Kamla Mills case but that decision was distinguished on the ground that the provision which fell for construction therein was worded differently and as observed in Mask & Co.,"decisions on other statutory provisions are not of material assistance, except in so far as general principles of construction are laid down". With great respect, the decision in Bharat Kala Bhandar is distinguishable for the weightier reason that the tax recovered in that case was unconstitutional and no provision of a statute could be construed as laying down that no Court shall have jurisdiction to order a refund of a tax collected in violation of a constitutional provision. If there were a provision which so provided or which could be so construed, that provision would itself be unconstitutional.

16. In Kamla Mills' case it was observed that if a statute creates a special right of liability, provides for the determination of that right or liability by tribunals specially constituted in that behalf and

lays down that all questions in regard to that right or liability shall be exclusively determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in a civil court are prescribed by the said statute or not. If the Court is satisfied that the Act provides no remedy for making a claim for the recovery of an illegally collected tax, the Court might hesitate to construe a provision giving finality to the orders passed by the tribunals specially created by the Act as creating an absolute bar to the suits and if such a construction was not reasonably possible, the Court would be called upon to examine the constitutionality of the provision excluding the civil court's jurisdiction in the light of Articles 19 and 31 of the Constitution. According to the 1st proposition in Dhulabhai's case, if the statute gives finality to the orders passed by the special tribunals created by it, the civil court's jurisdiction would be excluded if the statute provides adequate remedies to do what the civil courts are normally empowered to do in a suit. The 6th proposition in that case states that questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. Further, that in either case the scheme of the particular Act must be examined because it is a relevant enquiry. These considerations make it necessary to examine the relevant provisions of the Act of 1922 and the Rules framed thereunder with a view to seeing whether they provide adequate remedies to the aggrieved party to challenge a wrong or illegal exaction of octroi duty and whether correspondingly, the authorities specially created by the Act have the power to do what civil courts are generally empowered to do. This inquiry is relevant even though Section 84(3) of the Act does not merely say that orders passed by the special tribunals shall be final but provides that no objection shall be taken to any assessment, levy, etc. in any other manner or by any other authority than is provided in the Act.

17. Section 66(1)(b) of the C.P. and Berar Municipalities Act, 1922 empowers the Municipal Committee to impose an octroi on animals or goods brought within the limits of the municipality for sale, consumption or use within those limits. Section 83(1) provides that an appeal against the assessment or levy of, or refusal to refund, any tax under the Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the Provincial Government in that behalf. Sub-section 1-A of Section 83 gives to the person aggrieved by the decision of the appellate authority the right to apply to the State Government for revision of the decision on the ground (a) that the decision is contrary to law or is repugnant to any principle of assessment of a tax, or (b) that the appellate authority has exercised a jurisdiction not vested in it by law or has failed to exercise the jurisdiction vested in it by law. Section 83(2) empowers the appellate or revision authority to draw up a statement of the case and make a reference to the High Court for its decision if any question as to the liability to assessment or as to the principle of assessment arises in the matter on which the authority entertains a reasonable doubt. Then comes Section 84 which by sub-section (1) provides for a limitation of 30 days for appeal and by sub-section (3) lays down the injunction which is the bone of contention in the instant case that no objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be taxed or assessed be questioned in any other manner or by any other authority than is provided in the Act.

18. Section 71 of the act empowers the Provincial Government to make rules regulating the assessment of taxes and for preventing evasion of assessment. Section 76 which appears under the heading "Collection of taxes" empowers the Government to make rules regulating the collection of taxes including the prevention of evasion of payment and payment of lump sums in composition. Section 85 confers similar empowerment to make rules regulating the refund of taxes.

19. In exercise of the powers conferred by Sections 71, 76 and 85 and in supersession of the earlier

rules, the Provincial Government made rules "for the assessment, collection and refund of the octroi tax" which were gazetted on April 9, 1929 and were amended from time to time. Rule 1 provides that articles subject to octroi duty are liable to duty as soon as they enter the octroi limits. Rule 6(b) which prescribes the mode of calculating octroi duty provides that the current prices of articles liable to ad valorem duty shall be the cost price to the importer plus the cost of carriage and not the price prevailing in the local market. Rule 8 prescribes the details of the procedure for assessing the octroi duty. The note to that rule says that the duty shall be assessed on invoice and not on V. P. covers, bank receipts, letters and hundies. Rule 9(a)(b)(c), 10(b), 12, 13(a) and 13(b) provide for various matters relating to assessment and levy of octroi duty. Rule 14(b) provides that any person importing or bringing any dutiable articles within the octroi limits of the municipality "without paying the duty" or without giving declaration to the Octroi Moharrir shall be liable to pay double the duty and shall in addition be liable to be prosecuted for evasion of duty. Rules 29 onwards deal with "Refund of Octroi". Rule 31 out of that collocation of rules prescribes how and when applications for refunds may be made.

20. These provisions show in the fist place that the defendants indubitably possess the right and the power to assess and recover octroi duty and double duty on goods which are brought within the municipal limits for sale, consumption or use therein. The circumstance that the defendants might have acted in excess of or irregularly in the exercise of that power cannot support the conclusion that the assessment or recovery of the tax is without jurisdiction. Applying the test in Kamla Mills if the appropriate authority while exercising its jurisdiction and powers under the relevant provisions of the Act, holds erroneously that an assessment already made can be corrected or that an assessee is liable to pay double duty when Rule 14(b), in fact, does not justify such an imposition, it cannot be said that the decision of the authority is without jurisdiction. Questions of the correctness of the assessment apart from its constitutionality are, as held in Dhulabhai, for the decision of the authorities set up by the Act and a civil suit cannot lie of the orders of those authorities are given finality. There is no constitutional prohibition to the assessment which is impeached in the instant case as there was in Bharat Kala Bhandar, B. M. Lakhani, and Dhulabhai. The tax imposed in those cases being unconstitutional, its levy, as said by Mudholkar, J. who spoke for the majority in Bharat Kala Bhandar, was "without a vestige or semblance of authority or even a shadow of right".

21. That is in regard to the power of the authority concerned to re-assess and to levy double duty. Secondly, both the Act and the Rules contain provisions which we have noticed above, enabling the aggrieved party effectively to challenge an illegal assessment or levy of double duty. By reason of the existence and availability of those special remedies, the ordinary remedy by way of a suit would be excluded on a true interpretation of Section 84(3) of the Act.

22. The argument that double duty was levied on the plaintiffs though not justified by the terms of Rule 14(b) goes to the correctness of the levy, not to the jurisdiction of the assessing authority. That rule authorizes the imposition of double duty if dutiable articles are imported (a) without paying the duty or (b) without giving declaration to the Octroi Moharrir. It may be that neither of these two eventualities occurred and therefore there was no justification for imposing double duty. But the error could be corrected only in the manner provided in the Act and by the authority prescribed therein. The remedy by way of a suit is barred.

23. Plaintiffs sought support to their contention as regards the maintainability of the suit for refund of double duty and revised duty, from certain observations contained in Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana ([1964] 2 SCR 273, 284 : AIR 1963 SC 1547 : [1963] 50 ITR 187) to the effect that "a suit in a civil court will always lie to question the order of a

tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions". In the first place, the assessment in the instant case was made by the authority duly empowered to do so and secondly, the authority was acting under the Act while revising the assessment and imposing double duty. It had the power to assess and levy double duty. If it exceeded that power it acted wrongly, not without jurisdiction. In Firm Seth Radha Kishan, the Municipal Committee being entitled to impose a certain rate of tax on common salt and higher rate in respect of salt of other kinds, imposed tax at the higher rate on "sambhar salt" which was a variety of common salt. Section 86 of the Punjab Municipal Act, 1911, provided that the liability of any person to be taxed cannot be questioned in any manner or by any authority other than that provided in the Act. That provision is identical with Section 84(3) of the C. P. Municipalities Act, 1922, with which we are concerned in the instant case. Section 86(2) of the Punjab Act provided that no refund of any tax shall be claimed by any person otherwise than in accordance with the provisions of the Act and the Rules thereunder. It was held by this Court that the liability to pay terminal tax was created by the Act and since a remedy was given to the party aggrieved in the enforcement of that liability, the suit for refund was not maintainable by reason of Section 86. The observations on which plaintiffs rely cannot, in the context, be taken to mean that the Act protects correct assessments only and that every incorrect or wrong order of assessment can be challenged by a suit though the statute gives it finality and provides full and effective remedies to challenge it. Except in matters of constitutionality and the like, a self-contained Code must have priority over the common means of vindicating rights. We would like to add that if the observations on which plaintiffs rely are to be understood literally, they are contrary to the decision in Kamla Mills case where, speaking for a seven-Judge Bench, Gajendragadkar, C. J., observed that if the appropriate authority while exercising its jurisdiction and powers under the relevant provisions of the Act comes to an erroneous conclusion, it cannot be said that the decision is without jurisdiction (p. 78).

24. Plaintiff's reliance on the 1st proposition in Dhulabhai's case is equally misconceived. The first two propositions formulated in that case contain a dichotomy. The 1st proposition refers to cases where the statute merely gives finality to orders of special tribunals. In such cases, according to that proposition, the civil court's jurisdiction would not be excluded if "the provisions of the particular Act are not complied with". The instant case does not fall under the 1st proposition because Section 84(3) of the Act does not merely give finality to the orders passed by the special tribunals. It provides, expressly, that such orders shall not be questioned in any other manner or by any other authority than is provided in the Act. The 2nd proposition deals in its first paragraph with cases where there is an express bar to the civil court's jurisdiction. The second paragraph of that proposition deals with cases where there is no express exclusion. The instant case falls under either one or the other paragraph of this proposition, which rendered it necessary to examine whether the Act creates special rights and liabilities, provides for their determination by laying down that such rights and liabilities shall be determined by the special tribunals constituted under it and whether remedies normally associated with actions in civil courts are prescribed by the Act. Upon that examination we concluded that the suit is barred from the cognizance of the civil court.

25. Not only that the Act of 1922 provides an effective remedy to an aggrieved party to challenge the assessment of octroi duty and to claim refund of duty illegally paid or recovered, but the plaintiffs in fact availed themselves of those remedies. In 1946-47 when the Municipal Committee re-opened and revised the past assessments by charging octroi duty on an amount which was only 6 1/4% less than the retail price of the goods and when it levied double duty by way of penalty, plaintiffs preferred an appeal against the decision of the Municipal Committee to the Sub-Divisional Officer, Jabalpur, who by an order dated July 14, 1948 modified the decision of the Committee by

asking them to charge octroi duty on an amount which was less by 12 1/2% instead of 6 1/4% than the retail price of the goods. Plaintiffs succeeded to an extent though the Sub-Divisional Officer upheld the assessment of double duty. Having exhausted their remedies under the Act and having been benefited by the appellate decision, though partly, plaintiffs turned to the civil court to claim the refund. That is impermissible in view of the provision contained in Section 84(3) of the Act.

26. In the result, Civil Appeal 1923 of 1972 filed by the plaintiffs fails and is dismissed. Civil Appeal 1924 of 1972 filed by the defendants succeeds and is allowed with the result that the plaintiffs' suit will stand dismissed. Considering that the defendants revised the assessment after a lapse of time, parties will bear their costs throughout.

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