

Administrator, Municipality, Jammu

Vs

Shri Nar Singh Dass and Another

C.A. Nos. 2202-03/1985

(Kuldip Singh, K. Ramaswamy JJ)

20.11.1990

### JUDGMENT

1. The Jammu & Kashmir Government issued a Notification dated Jan. 8, 1943 u/ S. 6 of the Octroi Act exempting wheat and wheat products from the levy of octroi. At that point of time, the octroi levy was being collected by the Excise Department of the Government. Later on, by a Notification dated April 22, 1974, the Municipal Committees in the respective cities were authorised the levy and collection of octroi duty under the provisions of the Municipal Act. Under the Municipal Act, bye-laws were framed and a schedule was appended showing the commodities on which the octroi was to be levied. Item No. 9 therein relates to foodgrains. At the end of the schedule, the commodities which were exempt from the levy of the octroi were mentioned. Cl. 6 therein is as under:-

"Such other exemptions as have already been granted by the Government from time to time shall continue to be in force."

2. The Jammu & Kashmir Government reimposed octroi on wheat and wheat products after the Notification dated April 22, 1974, on the assumption that the earlier Notification dated January 8, 1943, stood superseded by implication. The respondents in these appeals filed writ petitions challenging the action of the Government, inter alia, on the ground that the Notification dated January 8, 1943 was holding the field and wheat and wheat products were exempt from levy of octroi.

3. The High Court on the interpretation of the Octroi Act, the Municipal Act, the schedule under the bye-laws and the two Notifications mentioned above came to the conclusion that the Notification dated Jan. 8, 1943, exempting wheat and wheat products was still holding the field and had not been superseded. The High Court allowed the writ petitions. These appeals via special leave petitions are against the judgment of the High Court.

4. We have heard Mr.A.T.M. Sampath, learned counsel appearing for the Municipal Committee, Jammu. He has taken us through the judgment of the High Court and the relevant provisions of law. Relying on clause 6 of the Schedule reproduced above and' taking into consideration other provisions of the Octroi Act and the Municipal Act the High Court held that the exemption granted by Notification dated Jan. 8, 1943 continued to operate. We agree with the reasoning and the conclusions reached by the High Court.

5. The appeals are dismissed with no orders as to cost.

Appeals dismissed.

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