Indian Aluminium Company Limited

Vs

Thane Municipal Corporation

Special Leave Petition (Civil) No. 6497 of 1991

(K. Jayachandra Reddy, S. R. Pandian JJ)

25.09.1991

ORDER

JAYACHANDRA REDDY, J. –

1. The petitioner company is engaged in the business of manufacture of aluminium products and its factory is located at Kalwa in Thane District (Maharashtra). The company obtains aluminium as raw materials for consumption from another factory of theirs situated in a different State. With effect from October 1, 1982 the company at Kalwa was included in the municipal jurisdiction of Thane. Prior to that date the factory was not within the jurisdiction of Thane Municipality and did not have to pay any octroi on the raw materials brought into its factory at Kalwa. By a Notification dated August 23, 1982, the Government of Maharashtra constituted the Municipal Corporation of the City of Thane and Kalwa was brought within the jurisdiction of the Thane Municipal Corporation, the respondent therein and all goods imported into the area of the Thane Municipal Corporation were subjected to octroi at the rates mentioned in Schedule I to the Maharashtra Municipalities (Octroi) Rules, 1968 ('Rules' for short). Schedule I to the said Rules contains description of various goods and articles which were liable to octroi and minimum and maximum rates are prescribed. Item 77 in the said Schedule I to the said Rules covered non-ferrous metals, including aluminium and the entry provided for the levy of octroi duty on the aluminium and other goods mentioned therein at the minimum rate of 0.5 per cent and at the maximum of 4 per cent. The respondent Corporation was levying octroi duty on the imports of aluminium raw materials made by the petitioner company into Kalwa at the rate of 1.3 per cent from October 1, 1982 to April 14, 1987. Then with effect from April 15, 1987 the respondent Corporation was levying octroi at the rate of 2 per cent. On May 18, 1987 the Thane Manufacturers' Association made a representation to the respondent Corporation about the increase in octroi rates pointing out that the increase was having a disastrous effect on their industrial units located within the limits of the Corporation. In reply to the said representation, the respondent Corporation addressed a letter dated November 20, 1987 in which it was pointed out and clarified inter alia that goods specified in Entry 77 in Schedule I to the said Rules, when raw material is imported for use in the manufacture of finished goods it would be subject to the levy of octroi not exceeding 1.25 per cent and not less. On receipt of this letter the petitioner company made detailed enquiries and was informed that under Rule 4 of the said Rules the goods mentioned in Part I-A of that Schedule which were imported by certain industrial undertakings are liable to be subjected to octroi at a lower rate. The Company also noticed further that Part I-A of the Rules provided that the goods specified in Entry 77 when imported by an industrial undertaking for use as a raw material for processing within that under taking and if a declaration in Form 14 is filed, the levy of octroi in such cases would not exceed 1.25 per cent and would not be less than 0.25 per cent. The petitioner, however, did not file any such Form 14 duly filled in the according to them they acted under a mistake of law and under the bona fide impression that the octroi levied on the

recovered by the Corporation at the rate of 1.3 per cent in respect of the period from October 1, 1982 to April 14, 1987 and at the rate of 2 per cent from April 15, 1987 onwards, represented the correct rate. The petitioner however having later realised by going through the records and the financial accounts and other documents which are duly audited claimed refund of the excess of octroi duty which has been paid by them. On March 8, 1988 the petitioner company addressed a letter to the respondent Corporation pointing out that under a mistake of law they paid excess amount and therefore the excess amount so paid should be refunded. The respondent Corporation in their reply dated May 16, 1988 stated that the petitioner company had not complied with the procedure specified in Part I-A of the Schedule II to the said Rules for availing such concessional rates therefore the refund cannot be sanctioned. However, the petitioner company by their letter dated April 19, 1989 claimed a refund of total amount of Rs 13,54,101.79. The respondent again rejected the claim reiterating that the procedure specified in Part I-A of Schedule II to the Rules was not complied with. Being aggrieved the company filed a writ of mandamus seeking refund. A Division Bench of the High Court dismissed the same holding that the concessional rate of octroi duty was available only if the declaration in Form 14 was filed with the octroi authorities. Questioning the said order, this special leave petition has been filed and it is being disposed of at the admission stage itself after notice.

2. Most of the facts in this case are not in dispute. Admittedly the aluminium raw material was imported by the petitioner company and octroi duty at the normal rate was paid and no declaration in Form 14 was filed. It is only after the lapse of long time that the petitioner company has made a claim for refund. The learned counsel for the petitioner company submitted that a procedural failure should not disentitle the petitioner company provided if otherwise the company could have legitimately claimed. The learned counsel appearing for the respondent Municipal Corporation submitted that the concessional rate would be available only if the raw material was utilised by the company for manufacturing goods within the industrial undertaking. If a declaration had been filed in proper Form 14 there could have been a scope for verification and in the absence of such a declaration the question of refunding at this distance of time does not arise. It is also his further submission that the concession should have been availed at the time when it was available. Having failed to avail the question of claiming the same later does not arise and consequently no refund can be claimed.

3. The amended Rules came into force in 1970. Rule 4(2) provides for payment of octroi at a lower rate by certain industrial undertakings in respect of the goods mentioned in Part I-A of Schedule II to the Rules. Aluminium is at Entry 77. Part I-A reads thus :

> "PART I-A
>
> List of goods on which octroi shall be payable at a lower rate by certain industrial undertakings.
>
> (1) All goods specified in Entries 6(c), 35, 40, 64, 65, 71, 77 and 86 in Schedule I, and khobra mentioned in Entry 25, raw rubber and latex mentioned in Entry 70 in that Schedule, when imported by an industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is issued by the undertaking in Form 14, shall be subject to octroi by any Council at a rate not exceeding 1.25 per cent and not less than 0.25 per cent.
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It can be seen from the above rule that to avail the concession, a declaration in Form 14 has to be made in respect of the raw material imported. Form 14 is as under :

"FORM 14 (Parts I-A and II of Schedule II)##

Declaration to be made by an importer importing dutiable goods as raw material for his industrial undertaking.

> I ... do hereby declare that the goods in respect of which I have separately given a declaration under Rule 14 have been imported by me as raw material to be used in the manufacture of ... in my industrial undertaking, viz. (here give full name and address of the undertaking) ... and I shall not use them for any other purpose for sale or otherwise dispose them of to any other party for any other purpose, except, having previously paid the difference between the octroi due on such goods at ordinary rates and the octroi paid on concessional rates under Schedule II to the Maharashtra Municipalities (Octroi) Rules, 1968.
>
> #Date... Signature of the Importer"##

The declaration contemplated in Form 14 is to the effect that the goods imported shall not be used for any other purpose for sale or otherwise etc. It can thus be seen that an incentive is sought to be given to such entrepreneurs by such concession if the raw material which is imported is also utilised in the industrial undertaking without selling or disposing of otherwise. That being the object a verification at the relevant time by the octroi authorities becomes very much necessary before a concession can be given. In the absence of filing such a declaration in the required Form 14, there is no opportunity for the authorities to verify. Therefore the petitioner company has definitely failed to fulfil an important obligation under the law though procedural. The learned counsel, however, submitted that even now the authorities can verify the necessary records which are audited and submitted to the authorities and find out whether the material was used in its own undertaking or not. We do not think we can accede to this contention. Having failed to file the necessary declaration he cannot now turn around and ask the authorities to make a verification of some records. The verification at the time when the raw material was still there is entirely different from a verification at a belated stage after it has ceased to be there. May be that the raw material was used in the industrial undertaking as claimed by the petitioner company or it may not be. In any event the failure to file the necessary declaration has necessarily prevented the authorities to have a proper verification.

4. Shri Ganesh, learned counsel for the petitioner company relied on the judgment of this Court in Kirpal Singh Duggal v. Municipal Board, Ghaziabad [(1968) 3 SCR 551 : AIR 1968 SC 1416] in support of his submission that the non-fulfillment of procedural requirement does not bar the claimant from pursuing his remedy in a court of law. That was a case where the appellant entered into a contract and supplied the goods to the government. The Municipal Board collected toll when the trucks were passing through the toll barrier. The appellant obtained a certificate that the transported goods were meant for government work. The appellant claimed exemption on the basis of the certificate but not within time. The Court observed thus : (SCR p. 555)

> "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 compliance

> 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 Section 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."

Relying on these observations, Shri Ganesh, learned Counsel for the petitioner company contended that in the instant case though the procedural requirement is not fulfilled by filing a declaration in Form 14, still that is not a bar to invoke the jurisdiction of the civil court or the High Court by way of a writ and seek a refund. We are unable to agree. In Duggal case [(1968) 3 SCR 551 : AIR 1968 SC 1416], the appellant, as a matter of fact, obtained certificate but failed to make the application for refund within time. It is in that context this Court observed the Municipality was under a statutory obligation once the procedure followed is fulfilled and if it is not fulfilled the Municipality may decline. The granting of a certificate that the appellant used the goods for government work made all the difference. But, in the instant case, the non-fulfillment of the requirement even though procedural, has disentitled the petitioner company because there was no way to verify whether it was entitled for such concession. In HMM Limited v. Administrator, Bangalore City Corporation [(1989) 4 SCC 640 : 1990 SCC (Tax) 1] no doubt the view taken in Duggal case [(1968) 3 SCR 551 : AIR 1968 SC 1416] was confirmed but it does not make any difference so far as the present case is concerned for the reasons stated above. In that case the question was whether the goods namely Horlicks was consumed within the city or not and there was no dispute as to the quantum which was credited pursuant to the directions of the High Court. Hence no further verification was necessary. Therefore these two cases are distinguishable.

5. However, a concession has to be availed at the time when it was available and in the manner prescribed. The common dictionary meaning of the word "concession" is "the act of yielding or conceding as to a demand or argument, something conceded; usually implying a demand, claim, or request, a thing yielded, a grant". In the Dictionary of English Law by Earl Jowitt, the meaning of "concession" is given as under :

> "Concession, a grant by a central or local public authority to a private person or private persons for the utilisation or working of lands, an industry, a railway waterworks, etc."

6. The expressions "rebate" and "concession" in the commercial parlance have the same concept. In Halsbury's Laws of England, (4th edn., Vol. 39, para 198) it is observed as under :

> "Application for rebate. When a rating authority receives an application for a rebate it has a duty to determine whether the residential occupier is entitled to a rebate and,

> if so, the amount to which he is entitled; and it must request him in writing to furnish such information and evidence as it may reasonably require as to the persons who reside in the hereditament, his income, and the income of his spouse. Unless the rating authority is satisfied that the residential occupier has furnished all the information and evidence it requires, it is under no duty to grant a rebate." (emphasis supplied)

In Kedarnath Jute Manufacturing Co. v. CTO [(1965) 3 SCR 626 : AIR 1966 SC 12 : (1965) 16 STC 607] the appellant which was a public limited company, sought exemption under the provisions of the Bengal Finance (Sales Tax) Act, 1941 in respect of certain sales but did not produce before the officer the declaration forms from the purchaser dealers required to be produced under the proviso to that sub-clause granting exemption. It was contended on behalf of the appellant that proviso to the sub-clause was only directory and the dealer is not precluded where the proviso is not strictly complied with from producing other relevant evidence to prove that the sales were for the purposes mentioned in the said sub-clause. The contention on behalf of the respondent was that the dealer can claim exemption under the sub-clause but he must comply strictly with the conditions under which the exemption can be granted. Rejecting the appellant's contention, this Court held thus : (SCR p. 629)

> "Section 5(2)(a)(ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub-clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form."

It was further held as under : (SCR p. 630)

> "There is an understandable reason for the stringency of the provisions. The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

It can thus be seen that the submission namely that the dealer, even without filing a declaration, can later prove his case by producing other evidence, is also rejected. This ratio applies on all fours to the case before us. As already mentioned the concession can be granted only if the raw material is used in the industrial undertaking seeking such concession. For that a verification was necessary and that is why in the rule itself it is mentioned that a declaration has to be filed in Form 14 facilitating

verification. Failure to file the same would automatically disentitle the company from claiming any such concession.

7. In any event the petitioner company cannot claim concession at this distance as a matter of right. In Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430 : AIR 1991 SC 1676] it was observed thus : [SCC p. 498, para 69]

> "We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the court has, and must be held to have, a certain amount of discretion. It is well settled proposition that it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice."

In the instant case the octroi duty paid by the petitioner company would naturally have been passed on to the consumers. Therefore there is no justification to claim the same at this distance of time and the court in its discretion can reject the same. For the above reasons, this special leave petition is dismissed with costs.

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