

Fertilizer Corporation of India Ltd., Gorakhpur

Vs

Nagar Mahapalika, Gorakhpur

Civil Appeals Nos. 61-62 of 1989

(M.M. Punchhi, Sujata V. Manohar JJ)

24.04.1996

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. Delay in filing supplementary affidavit is condoned.
2. The appellant, Fertilizer Corporation of India, carries on the business of manufacturing fertilizers. It has a factory situated at Gorakhpur. Prior to 1982, the area in which the factory of the appellant is situated, was outside the city limits of Gorakhpur. This area was governed by the U.P. Town Areas Act, 1914 (2 of 1914) and it had a Notified Area Committee constituted under this Act to discharge the functions specified under this Act. The city of Gorakhpur, prior to 16-11-1981, had a municipality constituted under the U.P. Municipalities Act, 1916 (2 of 1916). With effect from 16-11-1981, by reason of a notification issued under Section 3(1) of the U.P. Nagar Mahapalika Adhiniyam, 1959 (2 of 1959), the city of Gorakhpur ceased to be governed by the U.P. Municipalities Act of 1916 and became a Nagar Mahapalika governed by the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959.
3. Thereafter the area in which the appellant's factory is situated was brought within the limits of Gorakhpur city with effect from 15-6-1982, by a notification issued under Section 3(2) of the U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the 'Adhiniyam of 1959'). As a result, the area in which the factory of the appellant is situated, which was previously under the jurisdiction of the Notified Area Committee, came under the jurisdiction of the Nagar Mahapalika of Gorakhpur city.
4. The dispute in these appeals relates to the levy and recovery of octroi from the appellant for the period 7-4-1979 to 22-12-1982. A sum of Rs 2.19 lakhs was recovered from the appellant by the Notified Area Committee by way of octroi for the period 7-4-1979 to 14-6-1982, and an amount of Rs 4.78 lakhs was recovered by the Nagar Mahapalika of Gorakhpur city by way of octroi from 14-6-1982 to 22-12-1982. It is the contention of the appellant-Corporation that it is not liable to pay octroi for the period 7-4-1979 to 15-6-1982 or for any period thereafter. The appellant made a representation to the Administrator of the Mahapalika claiming refund of the octroi paid for the said periods but the Administrator rejected the representation. The appellant thereafter filed petitions in the Court of Small Cause under Section 472 of the said Adhiniyam of 1959. These petitions were allowed on 30-8-1982 and the appellant was granted refund of the octroi paid as also a permanent injunction restraining the Nagar Mahapalika from recovering octroi. The Nagar Mahapalika of Gorakhpur preferred two appeals against these orders. The District Judge, however, dismissed these appeals by his order dated 4-10-1986. The order of the District Judge was challenged by the Nagar

Mahapalika of Gorakhpur city by filing two writ petitions before the Allahabad High Court. The High Court by its judgment and order dated 7-12-1987 allowed these writ petitions. Hence the present appeals have been filed by the appellant before us.

5. We have to examine whether octroi was validly collected from the appellant for the aforesaid periods.

I. 7-4-1979 to 14-6-1982

6. Prior to 7-4-1979 the Notified Area Committee had the power to levy octroi under the U.P. Town Areas Act, 1914.

7. On 7-4-1979, the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Ordinance, 1979 was promulgated which has been subsequently replaced by an Act. This Ordinance 6 of 1979 made amendments to the U.P. Municipalities Act, 1916, as also the U.P. Town Areas Act, 1914. By reason of Section 3 of the said Ordinance, the U.P. Town Areas Act, 1914 was amended. As a result, the power of a Notified Area Committee under the U.P. Town Areas Act, 1914, to levy, inter alia, octroi was taken away.

8. Prior to the said Ordinance, the Notified Town Area Committee, under Section 14(1)(g) of the U.P. Town Areas Act, 1914 had the power to impose any tax mentioned in Section 128(1) of the U.P. Municipalities Act, 1916. This included the power to levy octroi which was provided for under Section 128(1)(viii) of the U.P. Municipalities Act, 1916. By reason of the amendment made by the said Ordinance, the power to levy a tax mentioned in Section 128(1)(viii) of the U.P. Municipalities Act, 1916 was taken away from the Notified Area Committees under the U.P. Town Areas Act, 1914.

9. Therefore, with effect from 7-4-1979 the Notified Area Committee had no power to levy and collect octroi from the appellant. This position continued up to 14-6-1982 when the area which was under the jurisdiction of the Notified Area Committee became a part of the Gorakhpur Nagar Mahapalika. Clearly, therefore, the sum of Rs 2.19 lakhs which has been collected by the Notified Area Committee from the appellant for the period 7-4-1979 to 14-6-1982 is without the authority of law.

II. 15-6-1982 to 22-12-1982

10. From 15-6-1982, the area in which the factory of the appellant is situated became a part of Gorakhpur Nagar Mahapalika. It is the contention of the respondent that even when Gorakhpur city had a municipality under the U.P. Municipalities Act, 1916, octroi was being validly levied in Gorakhpur city. After the Gorakhpur City Municipality became Gorakhpur Nagar Mahapalika under the Adhinyam of 1959, octroi was continued in the city of Gorakhpur. Therefore, when the Nagar Mahapalika of Gorakhpur was extended to the area in which the factory of the appellant is situated, this area also became subject to octroi. Therefore, the appellant is bound and liable to pay octroi from 15-6-1982. This submission has been challenged by the appellant.

11. Now, under sub-section (2) of Section 3 of the Adhinyam of 1959 (as it stood at the relevant time), the State Government may from time to time, after consultation with the Mahapalika, by a notification in the Official Gazette, alter the limits specified for any city under sub-section (1) so as to include or to exclude therefrom such area as may be specified. Accordingly a notification was issued under Section 3(2). As a result, as from 15-6-1982, the area in which the appellant's factory is

situated came to be included in the limits of Gorakhpur city. Section 3(4) of the said Adhiniyam of 1959 provides as follows :

"3. (4) When by reason of a notification under sub-section (2), any area is included in a city constituted under sub-section (1), such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions issued or made under this or any other enactment and in force in the city at the time immediately preceding the inclusion of such area, and all taxes, fees and charges imposed under, this Act shall be and continue to be levied and collected in the aforesaid area."

12. Therefore, by reason of sub-section (4) of Section 3, once the area in which the appellant's factory is situated is included in Gorakhpur city, all notifications, rules, bye-laws etc. of Gorakhpur city in force, automatically apply to the freshly included area; and all taxes, fees and charges imposed under the Adhiniyam can be levied and collected from the newly included area.

13. Section 3(4), however, was not in existence at the time when the appellant's factory area was included in Gorakhpur city. Section 3(4) has been inserted in the said Adhiniyam of 1959 by reason of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1987, being U.P. Act 3 of 1987. Section 6 of the Amending Act which adds Section 3(4) to the U.P. Adhiniyam of 1959 provides that Section 3(4) shall be and shall always be deemed to have been inserted in the said Adhiniyam. Therefore, Section 3(4) has been inserted with retrospective effect and will apply to the levy and collection of octroi in the newly included area with effect from 15-6-1982. Section 18 of the said Amending Act 3 of 1987 further provides as follows :

"18. (1) Notwithstanding any judgment, decree or order of any court or other authority to the contrary, any tax, fee or charge, levied, charged or collected or purporting to have been levied, charged or collected before the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1987 and any action taken or thing done before such commencement in relation to the assessment, re-assessment, levy or collection of such tax, fee or charge under the provisions of the principal Act referred to in Chapter IV or Chapter V, as the case may be, and the rules made thereunder, shall be deemed to be as valid and effective as if such assessment, re-assessment, levy of collection or action or thing had been made, taken or done under the principal Act referred to in Chapter IV or Chapter V, as the case may be, as amended by the Uttar Pradesh, Urban Local Self-Government Laws (Amendment) Act, 1987 and the rules and bye-laws made thereunder.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing and person -

(a) form questioning in accordance with the provisions of the principal Act referred to in Chapter IV or Chapter V, as the case may be, as amended by the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1987, any assessment, re-assessment, levy or collection of any tax, fee or charge referred to in sub-section (1);
or

(b) from claiming refund of any amount paid by him in excess of the amount due from him by way of any tax, fee or charge under the principal Act referred to in Chapter IV or Chapter V, as the case may be, as amended by the Uttar Pradesh Urban

Local Self-Government Laws (Amendment) Act, 1987."

14. Therefore, any tax, fee or charge levied, charged or collected before the Amending Act 3 of 1987 shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection had been done under the said Adhiniyam of 1959 as amended by the Amending Act 3 of 1987. By reason of these retrospective amendments, it is not open to the appellant to challenge the imposition of octroi in the extended area of Gorakhpur city with effect from 15-6-1982.

15. In the case of Hindustan Gum and Chemicals Ltd. v. State of Haryana ((1985) 4 SCC 124) the factory premises of the appellant were included within the municipal limits of Bhiwani by a notification dated 10-8-1965, issued under Section 5(3) of the Punjab Municipal Act, 1911 (3 of 1911). Sub-section (4) of Section 5 was amended retrospectively by the Punjab Municipal (Haryana Amendment and Validation) Act, 1971, whereby the levy and collection of octroi in the extended area were validated. In sub-section (4), the expression 'notification' was retrospectively added thereby including within its scope a notification imposing octroi which would now automatically apply with retrospective effect to the extended area. This Court held that by reason of the retrospective amendment of Section 5(4), imposition of octroi in the extended area was valid from the date when the new area became included within the municipal limits. The facts of the present case are very similar to this case. Therefore, by reason of the Amending and Validating Act 3 of 1987 the levy and collection of octroi in the extended area of Gorakhpur city must be upheld with effect from 15-6-1982.

16. In the case of Bhaskar Textile Mills Ltd. v. Jharsuguda Municipality ((1984) 2 SCC 25 : 1984 SCC (Tax) 122) (SCC pp. 33-34, para 20), a similar provision in Section 5 of the Orissa Municipal Act, 1950 (23 of 1950) was considered by this Court. Section 5 which is worded in manner similar to Section 3(4) which is before us, inter alia, provided that any bye-law immediately in force before the inclusion of a new area shall be deemed to apply to such new area. The Court said that when the area of a municipality is extended to cover a new area, the existing municipal bye-laws automatically apply to the extended area and no separate steps as prescribed under the Municipal Act are necessary to be taken before applying such bye-laws to the extended area. It was contended before this Court in the above case that when the Municipal Act requires specific steps to be taken before bye-laws can be enacted and enforced in the municipal area, such steps must be taken afresh when the municipal area is extended to cover new areas. It was contended that the bye-laws will not be enforceable in the new area without such steps being taken. This argument was negated by this Court in view of the provisions of Section 5 of the Orissa Municipal Act of 1950. Following this decision, the argument of the appellant that procedure under Sections 199 to 219 of the Adhiniyam of 1959 must be followed for imposing octroi in the extended area, must be rejected.

17. The appellant next contended that even prior to 15-6-1982 octroi was not validly levied and collected in the original Gorakhpur city. The appellant contended that procedure under Sections 199 to 219 of the said Adhiniyam of 1959 was at no time followed for the levy of octroi in the original Gorakhpur city. Hence octroi could not be extended to the newly included area of the appellant's factory after 15-6-1982. According to the respondent, however, even prior to 16-4-1981, (when the Adhiniyam of 1959 became applicable), under the U.P. Municipalities Act, 1961, Section 128(1)(viii) authorised the Municipality of Gorakhpur to levy octroi. The Municipality of Gorakhpur had levied octroi. When the Municipality of Gorakhpur city was succeeded by the Mahapalika of Gorakhpur city under the said Adhiniyam of 1959 with effect from 16-4-1981, the existing octroi was continued. Section 577 of the said Adhiniyam of 1959, inter alia, provides that any tax, bye-law, regulation etc. imposed under the U.P. Municipalities Act, 1961, shall, insofar as it

is not inconsistent with the provisions of the Adhiniyam, continue in force until it is superseded by any tax etc. imposed under the Adhiniyam of 1959. The respondent, therefore, rightly submits that it was not required to follow the procedure under Sections 199 to 219 of the said Adhiniyam of 1959, as octroi was not levied under the Adhiniyam of 1959. It was levied earlier and continued under Section 577 when Gorakhpur city came under the Adhiniyam of 1959, Octroi which was imposed under the U.P. Municipalities Act, 1916 remained in force. This octroi was levied and collected from the extended area when the extended area became a part of Gorakhpur city.

18. It was also contended by the appellant that by reason of the Uttar Pradesh Urban Local self-Government Laws (Amendment) Ordinance, 1979 referred to earlier, the power to levy octroi under the U.P. Municipalities Act, 1916 was also taken away, just as it was taken away in the case of a Notified Area committee under the U.P. Town Areas Act, 1914. This contention, however, has no merit. Section 2 of the said Ordinance deals with amendment to the U.P. Municipalities Act, 1916. It substitutes for clause (vii) of sub-section (1) of Section 128, a new clause (vii) which is set out there. This clause deals with imposition of a toll. Clause (viii) of sub-section (1) of Section 128, which deals with the imposition of octroi, is not in any manner affected by the said Ordinance of 1979.

19. The Ordinance, however, also amends Section 338 of the U.P. Municipalities Act, 1916. It is this amendment which is relied upon by the appellant. Section 338 of the U.P. Municipalities Act, 1916 deals with the extension of certain enactments to and imposition of taxes in and constitution of committees for notified areas. It provides that the State Government may by notification apply or adopt to a notified area the provisions of any section of this Act or impose in the whole or a part of such notified area any tax which might be imposed under the provisions of the U.P. Municipalities Act, 1916 as if the notified area were a municipality. To this the Ordinance has made an amendment by carving out an exception. It has provided that the taxes which can be so imposed in a notified area shall be taxes other than those taxes referred to in clauses (vii) and (viii) of sub-section (1) of Section 128. These two clauses deal with toll and octroi. The amendment thus, takes away the right to impose octroi in any notified area. A notified area is described in Section 337 as an area other than a municipality, town area or agricultural village which may be so notified by the State Government by a notification as set out therein. In such a notified area octroi cannot be imposed under Section 338 as amended by the Ordinance. Section 338 has no application to municipality constituted under the U.P. Municipalities Act, 1916. Such a municipality has and continues to have the power to impose octroi under Section 128(1)(viii) of the said Act. The contention, therefore, that the Gorakhpur Municipality prior to 16-4-1981 had no power to levy octroi must be rejected. Octroi was validly levied and imposed in Gorakhpur city under the U.P. Municipalities Act, 1916 and it continued to be validly levied when Gorakhpur city came to be governed by the U.P. Adhiniyam of 1959. Hence octroi was leviable in the extended area which became a part of Gorakhpur city with effect from 15-6-1982.

20. To sum up, the Notified Area Committee had no power to levy and collect octroi from the appellant from 7-4-1979 to 14-6-1982 by virtue of the said Ordinance 6 of 1979. But with effect from 15-6-1982, the Gorakhpur Mahapalika has validly levied octroi on the appellant.

21. The respondent has tried to justify the collection of octroi by the Notified Area Committee for the period 7-4-1979 to 14-6-1982 on the basis of Section 18 of the Amending Act 3 of 1987. The respondent contends that by reason of Section 18 of the Amending Act 3 of 1987 which has been set out earlier, any purported levy and collection of tax has been validated. A perusal of Section 18, however, makes it clear that what is validated is a purported levy and collection of octroi under the

provisions of the principal Acts referred to in Chapter IV or V of the Amending Act 3 of 1987. These two chapters of the said U.P. Act 3 of 1987 deal with the said Adhinyam of 1959 and the U.P. Municipalities Act, 1916 respectively. Section 18, therefore, will not validate a purported levy of octroi under the U.P. Town Areas Act, 1914 levied by the Notified Area Committee.

22. It is lastly submitted by the appellant that it is by virtue of the retrospective introduction of sub-section (4) of Section 3 in the said Adhinyam of 1959 that the levy and collection of octroi from 15-6-1982 is validated. This retrospective imposition puts an unreasonable burden on the appellant. The appellant has relied upon a decision of this Court in *J.K. Cotton Spg. and Wvg. Mills Ltd. v. Union of India* (1987 Supp SCC 350 : 1988 SCC (Tax) 26 : (1988) 1 SCR 700) (SCR at 713) where this Court has said in connection with the retrospective levy of excise duty, that the period of limitation prescribed under Section 11-A of the Central Excises and Salt Act, 1944 would apply even to the levy and collection retrospectively of excise duty. The ratio of this judgment cannot apply to the present case since we have not been shown any provision similar to Section 11-A in the said Adhinyam of 1959. What is more, in the present case, from January 1983 to 7-2-1987, which is the date of the High Court judgment, the collection of octroi by the respondent was stayed by reason of court orders. Therefore, all that we can observe is, that the respondent shall collect octroi for any period subsequent to 22-12-1982 in accordance with the provisions of law. But the respondent, who is the successor of the Notified Area Committee, is also liable to refund to the appellant octroi collected for the period 7-4-1979 to 14-6-1982. Looking to the fact that the appellant has closed its unit, it will be open to the respondent to adjust the amount of octroi refundable to the appellant against the liability of the appellant to pay octroi for a period subsequent to 22-12-1982 if the respondent is entitled, in accordance with law, to collect such octroi for periods subsequent to 22-12-1982.

23. The appeals are accordingly partly allowed. There will, however, be no order as to costs.