

SUPREME COURT OF INDIA

Billimora Nagar Palika

Vs.

Wood Polymer Ltd.

(S Agrawal, S Kurdukar and S S Quadri JJ.)

26.08.1998

ORDER

1. These appeals are directed against the judgment of the Gujarat High Court dated 21-11-1980/28-11-1980 in Special Civil Application No, 1379 of 1977 filed by M/s. Wood Polymer Ltd. (hereinafter referred to as "the petitioner").

2. The petitioner was engaged in the manufacture of laminated sheets in its factory at Billimora within the limits of Billimora Nagar Palika (hereinafter referred to as "the Nagar Palika"). For manufacture of laminated sheets the petitioner was importing paper for use as raw material. The Nagar Palika levied octroi duty on the paper imported by the petitioner for manufacture of laminated sheets. The said octroi duty was levied on the basis of the price of the imported paper inclusive of excise duty. The petitioner claimed that since the laminated sheets after manufacture were exported out of the municipal limits of the Nagar Palika, the petitioner was entitled to refund of the octroi duty paid by it on the paper brought by it within the municipal limits. The said claim of the petitioner was not accepted by the Nagar Palika and the petitioner filed the writ petition, which has given rise to these appeals, wherein the petitioner challenged the validity of Rule 7 of the Octroi Rules framed by the Nagar Palika which required an importer to produce the original invoice and to make a declaration. The petitioner also challenged the validity of the bye-laws made by the Nagar Palika with regard to the refund of octroi duty and particularly challenged the validity of Bye-law 14. It was also claimed by the petitioner in the writ petition that the petitioner was not liable to pay octroi on the excise duty paid on the paper imported by it and that octroi duty was payable only on the cost of paper excluding excise duty, since the element of duty that is paid on the paper imported

by the petitioner is adjustable against the excise duty payable on the manufactured product under Rule 56-A of the Central Excise Rules.

3. By the impugned judgment the High Court, while rejecting the challenge of the petitioner to the validity of Rule 7 of the Octroi Rules framed by the Nagar Palika, has accepted the challenge to the validity of Bye-law 14 and has held that the said bye-law being inconsistent with clause (l) of Sub-section (1) of Section 275 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") is void. The High Court has, however, rejected the claim of the petitioner that it was not liable to pay octroi on the excise duty paid on the paper imported by it.

4. Civil Appeal No. 3047 of 1981 has been filed by the Nagar Palika against the judgment of the High Court insofar as it declares Bye-law 14 as void, while Civil Appeal No. 3059 of 1981 has been filed by the petitioner against the judgment of the High Court insofar as it holds that octroi was payable on excise duty paid on the paper imported by the petitioner within the municipal limits. Civil Appeal No. 3047 of 1981

5. We will first take up Civil Appeal No. 3047 of 1981 filed by the Nagar Palika which relates to the validity of Bye-law 14. The said bye-law reads as under:

"14, Change in form.--No refund shall be granted on the export of goods which have since their import changed their form by any process of manufacture or otherwise or has changed form."

In order to appreciate the reasoning of the High Court, it is necessary to refer to the relevant provisions of the Act. The expression "octroi" is defined in Section 2(16) of the Act in these terms:

"2. (16) 'octroi' means a tax on the entry of goods into the limits of a municipal borough for consumption, use or sale therein;"

Section 99 of the Act makes a provision for the taxes which may be imposed by a municipality. In Clause (iv) of Sub-section (1) of Section 99 it is provided as follows:

"99. (1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely--

(i)-(iii) * * *

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

Section 275 confers the power on the municipality to make bye-laws. Clause (1) of Sub-section (1) of Section 275 provides as under:

"275. Power to make bye-laws.--(1) A municipality may from time to time make, alter or rescind by (sic bye) laws not inconsistent with this Act--

(a)-(k) * * *

(l) Octroi.--fixing octroi limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system, under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody of animals or goods declared not to be intended for consumption, use or sale within the municipal borough; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the

minimum for which any claim to refund may be made."

From the perusal of Section 99(1)(iv) read with Section 2(16), it is evident that under the Act a municipality has the power to impose octroi on animals or goods or on both, brought within the octroi limits for consumption, use or sale therein. Under Section 275, power has been conferred on the municipality to make bye-laws and under Clause (1) of Sub-section (1) of Section 275 the said bye-laws with regard to imposition of octroi may provide for (i) fixing of octroi limits and stations, (ii) providing for the exhibition of tables of octroi, (iii) regulating, subject to any general or special orders which the State Government may make in this behalf, the system under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported and the custody of animals or goods declared not to be intended for consumption, use or sale within the municipal borough, and (iv) prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum for which any claim to refund may be made.

6. Before the High Court, a contention was urged on behalf of the Nagar Palika that it was not obligatory on the part of the Nagar Palika to make a bye-law providing for refund of octroi duty. The said contention was rejected by the High Court on the view that if a municipality decides to impose octroi then it is obligatory for it to make bye-laws under Section 275(1)(l). We are unable to appreciate why such an argument was made on behalf of the Nagar Palika because the bye-laws of 1951 relating to imposition of octroi as well as refund of octroi duty made under the Bombay District Municipal Act, 1901 have been continued by virtue of Section 279(2)(vi) of the Act. In the bye-laws, provision has been made for payment of octroi on import of goods to the Import Naka Karkun [Bye-law 4(3)], submission of declaration of intention to export goods or of goods in transit on the basis of which the importer can claim refund at the time of export of the goods imported (Bye-law 8), refund when the goods are imported for repairs and are to be exported to the same station from which they were imported within 30 days subject to making of a declaration at the time of import (Bye-law 10), issue of transit pass for goods in transit (Bye-law 12), refund of octroi duty paid on imported goods if the importer has made a declaration at the time of import of goods under bye-law and for the goods to be exported and produces an export certificate relating to such goods subject to the condition that the amount of refund would be a sum not less than eight annas (Bye-law 13), circumstance in which refund shall not be granted on export of goods (Bye-law 14), the period of limitation and conditions governing making of an application for refund of octroi duty already paid and the manner in which the said application is to be dealt with (Bye-law 21), and appeal against an order rejecting the claim for refund (Bye-law 22). This would show that the Nagar Palika has made bye-laws regulating the system under which refunds are to be made, the period of limitation after which no claim for refund of octroi shall be entertained and the minimum for which any claim to refund may be made.

7. The High Court has construed Clause (l) of Sub-section (1) of Section 275 as a substantive provision imposing an obligation on the Nagar Palika to refund the octroi duty in every case where the goods which have been imported are used for the purpose of manufacture of other goods and the goods so manufactured are exported out of the municipal limits. We find it difficult to accept the said construction which has been placed by the High Court on Clause (l) of Sub-section (1) of Section 275 of the Act. In our view, the said provision is a provision which empowers a municipality to make bye-laws in regard to matters mentioned therein. The said provision cannot be construed as a substantive provision limiting the power conferred on the municipality to impose octroi under Section 99(1)(iv) of the Act. If the construction placed by the High Court is accepted, Section 275(1)(l) will have to be read as a proviso to the power conferred on the municipality to impose octroi under Section 99(1)(iv) of the Act. The power to make bye-laws conferred under Section 275(1)(l) cannot be construed in such a manner. In our opinion, Section 275(1)(l) empowers a municipality to make bye-laws prescribing the system under which refund of octroi duty has to be made and, while making the bye-laws in exercise of the said power, the municipality can prescribe the circumstances in which refund of octroi duty would be permissible and lay down the conditions to be fulfilled for claiming the refund and the procedure to be followed in that regard. It is for the municipality to decide in which circumstances the octroi recovered on goods which have been imported and used wholly or partly in the manufacture of goods and the goods manufactured are exported is to be refunded and, if so, whether it is to be refunded wholly or proportionately. While making the bye-laws the municipality may decide that refund would be permissible only when, as a result of the processing there is no change in the form of the goods that were imported

and the goods are being exported in the same form and it may prescribe that refund of the octroi would not be permissible where as a result of the manufacturing process there has been brought about a change in the form of the goods that were imported and the goods that are being exported are not in the form in which they were imported. Bye-law 14 of the Nagar Palika seeks to provide that refund of octroi duty will not be granted if as a result of any process of manufacture or otherwise the goods which were imported have changed their form. We, therefore, do not find any infirmity in the said bye-law. In our opinion, Bye-law 14 must be read as being in consonance with the power to make bye-laws conferred under Section 275(1)(1) of the Act. Civil Appeal No. 3047 of 1981 filed by the Nagar Palika must, therefore, be allowed and the impugned judgment of the High Court insofar as it holds that Bye-law 14 as void as being inconsistent with Clause (1) of Sub-section (1) of Section 275 has to be set aside, Civil Appeal No. 3059 of 1981

8. Civil Appeal No. 3059 of 1981 filed by the petitioner relates to levy of octroi duty on the excise duty paid on paper imported by the petitioner. The High Court has taken the view that excise duty that was paid on paper that was imported was a part of the price of such paper at the time of import and merely because the said paper was used for the purpose of making laminated sheets and, while assessing the excise duty payable on the laminated sheets manufactured by the petitioner from such paper, the amount of excise duty paid on paper has to be adjusted against the excise duty payable on the laminated sheets that are manufactured would not mean that correspondingly the price of the paper which was imported by the petitioner should be reduced by deducting the amount of excise duty paid on paper for the purpose of levy of octroi duty. We are in agreement with the said view of the High Court and, therefore, we do not find any merit in the appeal.

9. In the result, Civil Appeal No. 3047 of 1981 filed by the Nagar Palika is allowed and the impugned judgment of the High Court, insofar as it holds that Bye-law 14 made by the Nagar Palika is void being inconsistent with the power conferred on the municipality under Section 275(1)(1) of the Act, is set aside and it is held that Bye-law 14 made by the Nagar Palika is in consonance with the power conferred under Section 275(1)(1) of the Act. Civil Appeal No. 3059 of 1981 filed by the petitioner is dismissed. But in the circumstances, there is no order as to costs.