

SUPREME COURT OF INDIA

Mafatlal Industries Ltd.

Vs.

Nadiad Nagar Palika

C.A. No. 143 of 1992

(S. P. Bharucha, S. N. Phukan and Ruma Pal JJ.)

01.03.2000

JUDGMENT

S.N. PHUKAN, J.

1. This appeal by special leave is against the judgment of the Gujarat High Court holding that the appellant is liable to pay octroi duty under Section 99 of Gujarat Municipal Act, 1963 (for short the Act).
2. The appellant, a textile manufacturing company, brought cloth pieces of 100 meters length within the octroi limits of Nadiad town. To meet the requirement of relevant excise rules and also demands in the market, cloth pieces were cut into smaller pieces of different sizes and thereafter sent outside the octroi limits of the said town.
3. On the above facts, the High Court held that in the process of cutting, the cloth pieces are used as well as consumed, there fore, the cloth pieces brought into the octroi limits for this purpose, would attract octroi duty.

4. The Act is relatable to entry 52 of List II (State List) of the 7th Schedule to the Constitution and the said entry runs as follows:

taxes on the entry of goods into a local area for consumption, use or sale therein.

5. Clause (16) of Section 2 of the Act defines octroi and it is stated as follows:

'Octroi' means a tax on the entry of goods into the limits of a municipal borough for consumption, use or sale therein.

6. Clause (iv) of Sub-section (1) of Section 99 of the Act is quoted below:

99. Taxes which may be imposed.- (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) to (iii)...

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

7. In view of the above legal provisions, octroi duty can be levied when goods are brought into the octroi area for consumption, use or sale - mere physical entry of the goods into the octroi area would not attract the levy of octroi.

8. The only question that falls for consideration in this appeal is whether cloth pieces of 100 meters length brought into octroi area and cutting into smaller pieces within that area and then exported

would be liable to levy of octroi.

9. In *Anwarkhan Mahboob Co. v. State of Bombay*: [1961]1SCR709 , this Court considered the term consumption will reference to explanation to sub Clause (a) of Clause (1) to Article 286 of the Constitution, which was omitted by the Constitution (6th Amendment Act), 1956. The said explanation is extracted below:

Explanation. For the purposes of Sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

10. The facts of that case were that tobacco was purchased and in the State of Bombay the stem and dust from tobacco were removed. It was contended that removing of stem and dust from tobacco did not amount to consumption of tobacco. This Court held that when tobacco was delivered in the State of Bombay for the purpose of changing it into commercially different articles, namely bidi patti, the delivery was for the purpose of consumption, as conversion of a commodity into a different commercial commodity by subjecting it to some processing is consumption within the meaning of explanation of Article 286. This Court gave the example of the process through which cotton is put before ultimately the final product of wearing apparel is consumed. The Court observed (para 9 of AIR):

But before cotton has become a wearing apparel, it passes, through the hands of different producers, each of whom adds some utility to the commodity received by him. Their is first the act of ginning; ginned cotton is spun into yarn by the spinner, the spun yarn is woven into cloth by the weaver, the woven cloth is made into wearing apparel by the tailor.

At each of these stages distinct utilities are produced and what is produced is at the next stage consumed and, therefore, it is usual, and correct to speak of raw cotton being consumed.

11. The Court also referred to an earlier decision in *State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory*: [1954]1SCR53 and quoted the following observation of Das, J.:

The raw cashew-nuts, after they reach the respondents, are put through a process and new articles of commerce, namely cashew-nut oil and edible cashew-nut kernels, are obtained. It follows,

therefore, that the raw cashew-nut is consumed by the respondents....

12. The above observation was also made while considering the explanation to Article 286(1)(a) of the Constitution.

13. This Court in *Kathiawar Industries Ltd. v. Jaffrabad Municipality* [1980]1SCR243 considered the question whether the salt manufactured by the appellant outside the octroi limits and brought within those limits for the purpose of being crushed into powder in the appellant's factory situated within those limits and then exported was liable to octroi. Applying test laid down by this Court in *Anwarkhan Mahboob Co.*: [1961]1SCR709 (supra) and *State of Travancore-Cochin*: [1954]1SCR53 (supra) it was held that when uncrushed salt was crushed in the factory and a commercially different article was produced, the uncrushed salt must be held to have been consumed.

14. Situated thus, we hold that mere physical entry of goods into the octroi limits would not attract levy of octroi unless goods are brought in for use or consumption or sale. Use and consumption would involve conversion of the commodity into a different commercial commodity by subjecting it to some processing.

15. In this appeal, cloth pieces of 100 meters length were brought within the octroi limits and those cloth pieces were cut into smaller pieces of different sizes. By doing so, no different commercial commodity is shown to have been produced, so it cannot be said that there was use or consumption of the cloth within the octroi limits. Therefore, we hold that no octroi is leviable on the cloth pieces of 100 meters length brought by the appellant within the octroi limits of Nadiad town.

16. In *Anwarkhan Mahboob Co.*: [1961]1SCR709 (supra) while giving the above illustration of use of cotton, this Court noted that after each state some utility to the commodity was put in. Relying on the said observation, the High Court took the view that when the cloth pieces of 100 meters length were cut to smaller pieces, some utility was added as cutting was done to meet the requirement of excise rules and demands of consumers. We hold that the High Court erred in coming to the above conclusion inasmuch as it ignored the fact that due to above cutting of the cloth, no different commercial commodity was shown to have been produced.

17. We may refer to decision in *HMM Limited v. Administrator, I Bangalore City Corporation*: 1997(91)ELT27(SC) . The facts were that "Horlicks" milk food powder was brought into the octroi limits in bulk containers (large steel drums) and packed at the packing station in unit containers (glass bottles) and thereafter exported outside those limits. On the above facts, this Court held that in the process of putting powder from drums to the bottles for the purpose of exporting or taking out of the municipal limits, the Horlicks powder was neither used nor consumed and, therefore, octroi

could not be levied or collected. While applying the above ratio to the facts of the present appeal, the High Court took the view that by putting Horlicks powder into bottles of different sizes no utility was added to the commodity but in the case in hand by cutting of the cloth pieces some utility was added to the cloth. In our opinion, the High Court erred in coming to the above conclusion as by cutting of cloth into smaller pieces no commercially different article can be assumed to have been produced.

18. For the reasons stated above we hold that in the case in hand cutting of cloth pieces into smaller sizes would not amount to consumption or use of the cloth of 100 meters length and, therefore, octroi is not leviable.

19. In the result the appeal is allowed. Considering the facts and circumstances of the case, parties to bear their own costs.