

SUPREME COURT OF INDIA

Municipal Corporation of City of Thane

Vs.

Vidyut Metallics Ltd.

Crl.A.No.647-650 of 2002

(C.K. Thakker and Tarun Chatterjee JJ.)

14.09.2007

JUDGMENT

C.K. THAKKER, J.

1. All these criminal appeals are filed by Municipal Corporation of City of Thane ('Corporation' for short) against M/s Vidyut Metallics Ltd.- respondent No.

1 aggrieved by the order dated June 14, 2001 passed by a Single Judge of the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 593, 594, 595 &

596 of 1996. By the said order, the learned Single Judge dismissed the writ petitions filed by the Corporation and confirmed the order passed by the VIth Additional District & Sessions Judge, Thane holding that the respondent No. 1 herein was not liable to pay octroi at the rate of 1&percent;, but only at the rate of 0.5&percent;.

2. Short facts giving rise to the present appeals are that the respondent No.1 is a Company registered under the Indian Companies Act, 1913 having its registered office and factory at Bombay-Agra Road, Wagle Estate, Thane. The Company is engaged in the process of manufacturing safety razor blades of various qualities and types. For the said purpose, the Company was importing stainless steel strips and bringing them to its factory within the octroi limits of the Corporation.

According to the Corporation, since 1968, the Company had been importing stainless steel strips to its factory and it was paying octroi at the rate of 1&percent; under Item No.

77 of the Schedule to the Maharashtra Municipalities (Octroi) Rules, 1974 (hereinafter referred to as 'the Rules'). The Company was also maintaining a current account with the Corporation under Section 142 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as 'the Act').

3. It is the case of the Corporation that in the year 1974, a sudden turn was taken by the Company. It obtained a copy of the Rules and found that it was paying octroi at an enhanced rate of 1&percent; though it was liable to pay such octroi at the rate of 0.5&percent; only. It, therefore, stopped paying octroi at the rate of 1&percent; as provided in Item 77 of the Schedule and started to pay at the rate of 0.5&percent; as provided under Item 71 of the Schedule.

According to the Corporation, the said action was totally illegal, unlawful and inconsistent with the provisions of the Rules. From October 1, 1974 to March 31, 1979, the Company paid octroi at the

rate of 0.5%; instead of 1%;

The Corporation, hence, wrote a letter on May 10, 1978 to the respondent-Company stating therein that the Company was liable to pay octroi at the rate of 1% under Item 77 and not at the rate of 0.5% under Item 71 of the Schedule. The Company was also called upon to pay the remaining amount within a period of 15 days or to show cause as to why the Company should not be made liable to pay the amount in accordance with law and in accordance with provisions of Section 169 of the Act. The respondent-Company replied to the said letter contending that the Company was liable to pay only at the rate of 0.5% under Item 71 and had been correctly paying octroi and no action could be taken against it.

4. Since the appellant-Corporation was not satisfied with the explanation submitted by the respondent-Company, it issued additional bills which the respondent-Company was liable to pay. Being aggrieved by the claim of the Corporation, the Company preferred appeals in the Court of IIIrd Joint Civil Judge, Senior Division, Thane which were registered as Municipal Appeal Nos. 3 to 6 of 1979. The learned Judge, by an order dated January 29, 1988 dismissed the appeals filed by the Company holding that Item No. 77 expressly referred to 'stainless steel' which was applicable and Item No. 71 could not be attracted to the goods brought by the appellant-Company within the Municipal limits and the Company was liable to pay octroi at the rate of 1%;

5. The Company challenged the order passed by the learned IIIrd Joint Civil Judge, Senior Division by filing revision petitions. The VIth Addl. District &

Sessions Judge, Thane allowed those revisions, set aside the order passed by the trial Court and held on merits that the contention raised by the Company was well founded. It also held that at an earlier occasion, a similar question had arisen and a competent Court of the Chief Judicial Magistrate, Thane held that the Company could be charged only under Item 71 and not under Item 77 of the Schedule. The said order was confirmed by the Revisional Court and also by the High Court of Bombay vide its order dated July 16, 1990, in Writ Petition No.

2987 of 1990. It was, therefore, held that the point was finally concluded and the Company had paid proper octroi and it was not liable to pay octroi under Item No.

77. The revision petitions were, therefore, allowed and the order passed by the learned Judge was set aside.

The High Court also dismissed writ petitions. The said order is challenged by Thane Municipal Corporation in this Court.

6. On January 9, 2002, notice was issued by this Court. On July 8, 2002, leave was granted and the matters have been placed before us for final hearing.

7. We have heard learned counsel for the parties.

8. Learned counsel for the appellant-Corporation contended that the Revisional Court as well as the High Court had committed an error of law in holding that Item No. 71 of the Schedule to the Octroi Rules would apply and not Item No. 77. It was submitted that Item No. 77 was clear and unambiguous and the Courts ought to have decided the case on that basis. It was also submitted that even the respondent-Company was satisfied that it was liable to pay octroi at the rate of 1% under Item No. 77 and accordingly for about seven years (1968 to 1974), the Company paid octroi

at the rate of 1&percent;. It was only from 1974 that it contended that it was liable to pay only 0.5&percent; octroi under Item No. 71 of the Schedule which was illegal. The counsel also submitted that in such matters, a decision taken in earlier assessment year cannot be said to be final and conclusive operating res judicata or estoppel and since the items are different and the goods brought by the Company is covered by Item No. 77, the Company is bound to pay octroi duty at the rate of 1&percent;. It was, therefore, prayed that the trial Court was right in invoking Item No. 77 and in dismissing appeals filed by the Company and the said order deserves to be restored by setting aside the order passed by the Revisional Court as well as by the High Court.

9. The learned counsel for the respondent- Company, on the other hand, submitted that the order passed by the trial Court was totally wrong and hence the Revisional Court and the High Court set it aside by upholding the contention raised by the Company. It was stated that though the Company was paying octroi under Item No. 77 initially, it was convinced that the correct item would be Item No. 71 and it was liable to pay octroi at the rate of 0.5&percent; thereunder. The Company, therefore, corrected its mistake and started paying octroi at the rate of 0.5&percent; under Item No.71. The counsel also submitted that the same question came up for consideration before a competent Court of Law and the matter was decided in earlier litigation in favour of the Company. In Writ Petition No. 2987 of 1990, the High Court, vide its order dated July 16, 1990, held that the correct item which would apply to the goods brought by the respondent- Company was Item No. 71. Obviously, therefore, the Revisional Court as well as the High Court in the present proceedings were right in relying on that decision and no interference is called for. It was also submitted that even on merits in the present proceedings, the Revisional Court decided the issue in favour of the Company.

10. Having considered the rival contentions of the parties, we are of the opinion that the view taken by the Revisional Court as also by the High Court cannot be faulted. The counsel for the parties drew our attention to both the items i.e. Item No. 71 and Item No. 77 of the Schedule to the Octroi Rules. Those Items read thus:

Item No.71 : Iron and Steel (i) to (xxx) (xxxi) Hoops and strips;

(xxxii) Item No. 77 Non-ferrous metals, that is to say brass, copper, tin, aluminum, lead zinc, German Silver, stainless steel their alloys, wires, wares, sheets ingots and circles.

11. At an earlier occasion also, the Corporation sought to levy octroi by considering the goods in question under Item No. 77. It is no doubt true that between 1968 and 1974, the Company itself treated the goods imported by it under Item No. 77 and paid octroi at the rate of 1&percent;.

On going through the Octroi Rules, however, it realized that the correct Item was 71 and not 77 and started paying octroi at the rate of 0.5&percent; from April, 1974. The Corporation also accepted the amount paid by the Company. Only in 1979, additional bill was issued and demand was raised. The Company, therefore, filed an appeal against the additional demand and Chief Judicial Magistrate, Thane by an order dated November 20, 1986, allowed the appeal and set aside the additional demand.

In that case, the Court observed that Item No. 77 related to Non-ferrous matters whereas Item No. 71 applied to Ferrous matters. One R.B. Deb who was the Quality Control Manager of the appellant-Company having Master degree and sufficient knowledge in Physics, Chemistry and Mathematics was examined as a witness by the Company. He stated that he was familiar with chemistry of metals. According to the Court, therefore, he was an 'expert'. Mr. Deb deposed that the

Company was manufacturing 'Safety Razor Blades' from stainless steel strips of certain specification. He also stated that stainless steel strip was steel having chromium content of more than 12% and steel was a ferrous metal and its chemical symbol was "Fe". According to him, ferrous metals were rich in iron, i.e. the principal constituent was iron whereas non-ferrous metals were those without content of iron. He asserted that Company was importing ferrous material in stainless strips. According to him, stainless strip was a species from the larger group called Iron and Steel which was a genus. If the Item was covered under category of ferrous metal, octroi duty chargeable would be as per Item No. 71 and not 77.

The Court, relying on his evidence, held that the Company was right in treating the goods under Item 71 of the Schedule to the Octroi Rules and octroi duty payable by it was proper. As already referred to above, Revisional Court confirmed the order passed by the Trial Court and even Writ Petition was dismissed by the High Court.

12. In our opinion, the IIIrd Joint Civil Judge, Senior Division, Thane was not right in passing the order in the present proceedings and in observing that the order passed by the Chief Judicial Magistrate, Thane in earlier litigation had no binding effect and he could decide the appeal independent of that decision. The Revisional Court as well as the High Court were, therefore, right in setting aside the said order.

13. Before the High Court as well as before us, it was contended by the learned counsel for the Corporation that in earlier proceedings, Criminal Writ Petition was dismissed by the High Court in limine without recording reasons and hence, the said decision would not operate as res judicata nor it would debar the Corporation from raising a point of law which arises in the present proceedings. It was also submitted that in matters relating to recovery of taxes, revenue, octroi, etc. each year is an independent unit and a decision in one year does not deprive the Revenue from claiming the requisite amount of octroi from the assessee in other years, if such demand is otherwise legal and lawful.