

# ALLAHABAD HIGH COURT

Raman Lal

Vs.

Municipal Board

Writ Appln. No. 307 of 1950

(Mootham and Sapru, JJ.)

12.09.1951

## JUDGMENT

### **Mootham, J.**

1. This is an application for a writ or direction under Article 226 of the Constitution.
2. The applicant carries on a small manufacturing business in Allahabad and for purposes of this business he purchases scrap iron from persons outside Allahabad. In September 1950, he purchased a quantity of scrap iron from a firm in Amritsar at a cost of Rs. 527/4/9. The scrap iron was sent to Allahabad by goods train and the relevant railway receipt and invoice were sent to the applicant by post. On 16-9-1950, the applicant sent the railway receipt and the invoice to the Superintendent of the Octroi Department of the Allahabad Municipal Board with a request that these documents be stamped by the Octroi authorities in accordance with the prescribed rules and then be returned to him in order that he may obtain delivery of the goods from the railway company and avoid payment of demurrage. The Octroi Superintendent refused, however, to stamp the railway receipt and invoice unless the applicant first paid the amount due by way of octroi on the scrap iron which was assessed by the Octroi authorities for the payment of duty at the value of Rs. 1,506/8/-.
3. The applicant claims that under the rules the Octroi authorities are bound to stamp and return the railway receipt and invoice to him and are not entitled to make such stamping conditional upon payment of the octroi. The applicant further contends that the basis of assessment adopted by the Octroi authorities is wrong. It is, however, not now in dispute that an importer who is not satisfied with an assessment has a right of appeal to the Board, and as the applicant has made no attempt to avail himself of this remedy, and as it is not shown that such remedy would not be equally beneficial, convenient and effective, it is clear that no relief under Article 226 can be given to the applicant on this part of his claim, which indeed has not been pressed before us.

4. The rules relating to the assessment and collection of octroi are to be found in the collection of rules made under the Municipalities Act, 1916, entitled the "Municipal Account Code". Rules 157 to 165 relate to goods imported by railway and the Rules which are important for the present purpose are Rules 159 and 161. These Rules provide as follows :

"159 - "When an importer receives the railway receipt of goods consigned to him by railway, he shall take or send it with the invoice, or in the absence of the latter, with a written declaration of the details of the consignment to the head octroi office, where, if the goods are found to be liable to the payment of octroi, the receipt and the invoice or declaration shall be abstracted into a railway receipt and invoice register, to be kept up in form 52. The railway receipt and the invoice shall be stamped with a municipal stamp, and returned to the importer to enable him to obtain his goods from the railway. The declaration shall be stamped and filed in the head octroi office."

161 - "The registration of the consignment having been completed as laid down in R.159, the octroi superintendent shall determine the octroi leviable and note it on a memorandum which he shall send to the central barrier. The importer shall pay the octroi at the central barrier, the muharrir checking the calculations of the memorandum. On receipt of the octroi the muharrir shall grant a pass to the importer in form 53, leaving the coupon and the third foil blank....."

5. Under Rule 159, the importer is required to take or send the railway receipt and invoice to the head octroi office where, assuming that the goods are liable to payment of octroi, prescribed particulars of the consignment are to be abstracted from the receipt and invoice and entered in a register in Form 52. The railway receipt and invoice shall then be stamped with a municipal stamp and returned to the importer. Under Rule 161, the Octroi Superintendent is to prepare a note of the amount of octroi to be paid and to send it to the central barrier, which is at the head octroi office itself. The importer is then required to pay the octroi at the central barrier, and on payment being made he will receive a pass which will enable him to clear his goods at the railway barrier. 'Prima facie' Rules 159 and 161 would appear to support the contention of the applicant, namely, that he is entitled to have his railway receipt and invoice stamped with the municipal stamp and returned to him before payment of octroi. It is, however, argued on behalf of the Octroi authorities that on a proper construction of the two Rules the second provision of R.159, namely, that

"The railway receipt and the invoice shall be stamped with a municipal stamp, and returned to the importer, to enable him to obtain his goods from the railway."

is a provision which comes into operation only after the provisions of R.161 have been complied with. In other words, the Rules must be construed as though the provision of R.159 which we have just quoted forms the concluding part of R.161.

6. In support of this argument our attention has been drawn to the form of the "Railway Receipt and Invoice Register", No.52; and it is said, and correctly said, that certain columns in that register namely column 2 - "Number of Pass", and column 14 - "Octroi actually charged", cannot be completed until after the octroi has been paid. That may be so. But all that is required under Rule 159 is that there should be entered in the register only such particulars as can be abstracted from the railway receipt and invoice. Clearly, particulars of the pass and the octroi actually charged cannot be obtained from that source and must be entered in the register subsequently.

7. Our attention has also been drawn to Form 53 which is a form of pass which is issued on payment of octroi, and it is said that two of the items in this pass, namely, "Description of goods" and "Weight, number or value", can be entered by the Octroi authorities only if they have the railway receipt and invoice before them and that, therefore, it is not the intention that these documents should be returned to the importer until after the pass has been prepared. There is no evidence before us as to the procedure which is actually followed by the Octroi authorities in preparing the pass. But we can see no reason, and indeed it appears to us to be the more probable course, that these particulars are obtained from the "Railway Receipt and Invoice Register". Indeed, another item in Form 53, namely, "Number of item in railway receipt register", makes it reasonably clear that the pass is prepared with reference to that register.

8. Forms Nos.52 and 53 do not, therefore, in our opinion, provide sufficient reason for departing from the normal canons of construction in construing Rules 159 and 161. If it had been the intention that the railway receipt and invoice should be returned duly stamped to the importer only after he has paid octroi and received his pass, we should have expected that that would have been made clear in R.161. In our opinion R.159 makes it clear that after the requisite particulars have been abstracted from the railway receipt and invoice, these documents are to be stamped with the municipal stamp and returned to the importer for the express purpose, as the Rule itself says, to enable him to obtain his goods from the railway. We are unable to construe the two rules in the manner contended for by the Octroi authorities whose procedure, in this case, is, in our opinion, contrary to the provisions of the Municipal Account Code.

9. We are, therefore, of opinion that a direction should issue to the Superintendent, Octroi Department, Allahabad Municipality, requiring him, on presentation of the railway receipt and invoice in question, to stamp and return the same to the applicant after the particulars prescribed by Rule 151 (sic) have been abstracted

10. As the applicant has succeeded on one contention and failed on the other we make no order as to costs.

Order accordingly.