BOMBAY HIGH COURT

Maganlal Bhagwandas

Vs

Ahmedabad Municipality

(N Wadia, C.J. Rajadhyaksha, J.)

20.03.1944

JUDGMENT

Rajadhyaksha, J.

1. The appellant in this case was the plaintiff in the trial Court, and he brought a suit against the defendant-respondent, the Municipal Borough of Ahmedabad, to recover Rs. 347 which he had paid by way of terminal tax and to obtain an injunction restraining the defendant from levying any such tax on the plaintiff's goods. The plaintiff had a brick-kiln within the Municipal limits of Ahmedabad in a survey number which abuts on the limits of the Municipal area. As there is no direct access from this survey number to the Naroda Road he had to carry the bricks manufactured by him in his survey number to some distance outside the Municipal limits in order to join the Naroda Road in the process of taking the bricks from the factory to his place of business. When the bricks were being brought into the Municipal limits after having been taken out of those limits, the Municipal servants at the municipal toll naka levied a tax of Rs. 347 on those bricks. The plaintiff, thereupon, filed the suit on September 21, 1939, to obtain a refund of the amount and for a perpetual injunction restraining the Municipality from collecting the terminal tax from him in future. The contention of the defendant Municipality was that the plaintiff's goods were liable for the payment of the terminal tax inasmuch as they were brought within the Municipal limits from outside those limits and that it made no difference whether the goods in question were, in fact, manufactured within those limits. The learned trial Judge was of opinion that if goods were prepared and stored within Municipal limits and if they were to be conveyed from that place within municipal limits to any other place within municipal limits, there could not be any imparting of goods, if in the act of conveying the goods it was found necessary to go for some distance outside the municipal limits for want of a direct passage from the place where the goods were stored, within Municipal limits to the Municipal road.

2. He accordingly decreed the plaintiff's suit with costs except as regards the prayer for injunction. Against that order the defendant Municipality filed an appeal in the District Court of

Ahmedabad. The learned Assistant Judge who heard the appeal was of opinion that the word "import" must be given its natural meaning, and the moment the goods were brought inside the Municipal limits from abroad, the goods became imported within the meaning of Rule 380 of the Ahmedabad Municipal Code. He thought that the circumstance that the starting point as well as the point of finish fell within Municipal limits was no excuse for avoiding payment of the tax. In coming to this conclusion, the learned Judge referred to the case of In re *Rahimu Bhanji*[1] and the unreported decision of Mr. Justice Broomfield in *C.Prabhudas & Co. v. Ahmedabad Municipality*[2] He, therefore, allowed the appeal, set aside the decree of the trial Court and dismissed the plaintiff's suit with costs throughout. Against that order the plaintiff has filed this second appeal.

3.The only point that has been argued before us is as to the correct meaning of the word "import" as used in Rule 380 of the Ahmedabad Municipal Code. Mr. J.C. Shah argued that as the goods were manufactured within the Municipal limits and were taken out of those limits in the course of transit, they could not be said to be "imported" when they were brought in again within Municipal limits. The word has not been defined either in the Municipal Boroughs Act or in the Municipal Taxation Rules. It must, therefore, be given its ordinary meaning. According to the Oxford Dictionary, the primary meaning of the word "import" is "to bring in". According to the Chamber's Twentieth Century Dictionary, the word "import" means "to bring from abroad". The Concise Oxford Dictionary gives the meaning of the word "import" as "to bring, introduce (a thing, especially goods from foreign country)". The primary meaning, therefore, of the words "importing into an area" is "bringing in something from outside that area". It is immaterial for this purpose as to whether the goods were, in fact, manufactured within that area and whether, after being imported, they were going to be consumed in that area. For certain purposes, such as Import Duties Acts, the word "import" may connote that the manufacture must be also outside the area, the import into which is subject to the imposition of duties. But the ordinary meaning of the word "import" has no reference to and is not qualified by any consideration of the place of manufacture or the place of consumption. It is true that in the present case the goods were merely being carried from one place within the Municipal limits to another place within the Municipal limits, and that it was necessary for doing so to go for some distance outside the Municipal limits; and it may appear somewhat harsh to call upon the plaintiff to pay terminal tax when he actually took the goods within the Municipal limits. But the remedy for this is not to place a strained construction on the meaning of the word "import" but for the Municipality to frame a suitable rule permitting a refund of import duties in such cases or exempting such goods from this levy of the terminal tax. We see even greater difficulties in the way of the practical application of the rule, in giving to the word "import" the meaning which the learned Counsel for the appellant has asked us to give. The learned Counsel has conceded that if the goods manufactured within the Municipal limits were sold to a merchant outside those limits and were

later on again brought within the Municipal limits, they would be liable to the payment of terminal tax irrespective of the fact that they were originally manufactured within the Municipal limits. If that is so, it would cause considerable difficulty at the toll naka to find out whether they were, in fact, sold to some person outside the Municipal limits and then brought within the Municipal limits or whether they were being directly taken from the place of the manufacture within the Municipal limits to the place of business only after going some distance outside those limits. Moreover, according to the contention advanced on behalf of the appellant the Municipal authorities at the toll naka would have to hold an elaborate inquiry as to whether the goods were, in fact, manufactured within the Municipal limits and also to ascertain whether they, in fact, belong to the plaintiff. It is quite conceivable that if the interpretation urged by the learned Counsel were to be accepted, the goods manufactured outside the limits either by the plaintiff or by some friend of his and which are admittedly liable to the payment of import duties could be easily smuggled in by putting forward the contention that they were manufactured by the plaintiff within the Municipal limits and were merely in the process of transit. The Municipal authorities would also have to consider as to how long they were outside the Municipal limits in the course of transit and will have to lay down a time limit beyond which the goods, even though manufactured within the limits, would be liable to the payment of terminal tax: when they are being imported within the Municipal limits. It is obviously impossible for all this elaborate: inquiry being conducted at the time when the goods are brought within the Municipal limits. It is undoubtedly true that these administrative difficulties would be irrelevant in the matter of the construction of the word "import", and the Municipality would have to devise ways and means of getting over those difficulties if we are satisfied that the word "import" really means that no terminal tax was to be levied on goods at the time of their import within the Municipal limits if they are-merely in the process of transit from the place of manufacture within the Municipal limits. As we have said, there is no such limitation on the meaning of the word "import" which must be given its ordinary meaning, and if the existence of difficulties in the matter of construction of the word "import" is at all any relevant consideration, we see even greater difficulties in interpreting the rule in the way which the learned Counsel for the appellant has asked us to interpret. The case such as that of the appellant must be very rare and can easily be met by the framing of a suitable rule permitting a refund after payment of the terminal tax on the plaintiff's satisfying the Municipal authorities1 that he was bona fide carrying the goods from the place of manufacture to his place of business.

4. Our view gains support from the case of In re Rahimu Bhanji (1897) I.L.R. 22 Bom. 843(Suupra). In that case, a rule of the Thana Municipality provided for the levy of octroi duty on certain articles when imported within the Thana Municipal limits. Certain articles apparently manufactured outside the Thana Municipal limits were merely passing through those limits in the course of transit to Bombay, and it was held that "the word 'imported' should be given its

ordinary meaning, and that as soon, therefore, as the goods passed within the limits of the Municipality, they were imported, i.e. brought within those limits from a place without its boundary." In a sense that case is converse of the case we are dealing with. In that case, it was thought that the fact that the goods were not intended for consumption within the Municipal limits made no difference and that they were liable for the payment of octroi duties as soon as they were brought within the Municipal limits from a place without its boundary. In the present case, in the view we take, it is immaterial whether the goods were, in fact, manufactured within the Municipal limits so long as they went out of those limits and were again brought within those limits. We adopt in this case the same test which the Court laid down in In re Rahimu Bhanji, viz. whether they were brought within the Municipal limits from a place outside its boundaries. In the case which Mr. Justice Broomfield had to consider in C. Prabhudas & Co. v. Ahmedabad Municipality the goods had already paid the terminal tax when they were once brought within the Municipal limits. Thereafter they were sent to a factory outside the Municipal limits; but as the goods were not approved they were brought back again within the Municipal limits. It was then contended that the goods were not liable to the payment of the terminal tax a second time. Mr. Justice Broomfield held that they were liable to the payment of the terminal tax even though they were, as in the present case, taken out of the Municipal limits and then brought back again within those limits. The test which Mr., Justice Broomfield appears to have applied was whether they were, in fact, brought from a place outside the Municipal limits into the Municipal limits irrespective of the fact that they had, in the first instance, been taken from a place within the Municipal limits to a place without its boundaries. In principle, it appears to us to make very little difference whether they were outside the Municipal limits for a few hours or for a few days.

5. The learned Counsel for the appellant invited our attention to a decision of the Allahabad High Court in the case of Emperor v. Sheikh Ajmeri (1933) I.L.R. 56 All. 241. In that case, the Municipal area consisted of two detached territories, and according to the Municipalities Act, octroi was payable in respect of goods and animals introduced within the octroi limits or brought within the Municipal limits. A question arose whether the animals brought from one detached area of the Municipal limits into the other Municipal area were subject to the payment of the octroi. The learned Judges held that in their opinion the significance of the words "introducing" and "brought in" was that they must be imported from outside the Municipal limits altogether, and that they were not meant to cover a case of transit where the goods were transferred from one part of the Municipality to another part within its limits. The learned Judges were not there interpreting the word "import" as we have to in the present case and were, no doubt, influenced very largely by the fact that the Municipal limits in that case also included a detached area of Jharnanala separated by a distance of three miles from the old Municipal limits of Agra. In that case, it was physically impossible for a person within one part of the Municipal area to go into the other part of the Municipal area without going outside that area for a distance of three miles.

The practical difficulties in the way of adopting any other construction were so great that the learned Judges thought that the words "introducing" and "brought in" were not intended to cover a case of transit from one part of the Municipality to another part within its limits. Even so, the learned Judges realized that the interpretation they were putting on those words was bound to create practical difficulties. At page 246 they observe:The Municipal Board would not know wherefrom the animals were being imported and they are entitled to demand octroi duty as soon as they enter the municipal limits of Jharnanala. But if the accused were to establish that these animals were within the municipal limits of Agra and the identical animals have been brought from there into the limits of Jharnanala, then no octroi duty would be leviable, because in our opinion this would not be a case of importing goods or animals from outside the municipal limits.

6. It is not clear how such an inquiry was to be made at the time when the goods crossed into the limits of Jharnanala. The word "import" has been construed by the same Court in Hardwarimal Harnathdas v. Municipal Board, Dehra Dun [1940] All. 4 as meaning "bringing into" and not necessarily containing any element of pause or repose. In the case before us the practical difficulties in the way of adopting the view we take are not so great as in the case before the Allahabad Court. It is not physically impossible for the plaintiff to take the goods from the place of manufacture to the place of business without going outside the Municipal area. As we have said, the case such as that of the plaintiff must be a rare exception, and, the hardship can easily be met by a rule granting exemption or a refund. As we have pointed out, there are far greater difficulties in the way of adopting the construction which the learned Counsel for the appellant has asked us to adopt; but even these difficulties in the way of the practical working of the rule on that interpretation would not have deterred us in accepting that interpretation if we were satisfied that that interpretation is the only reasonable one to be put on the word "import." We are of opinion that the word "import" in Rule 380 of the Ahmedabad Municipal Code must be given its ordinary meaning, and that is "to bring something within the Municipal limits from a place without its boundaries," irrespective of the consideration as to whether the goods were manufactured within the Municipal limits, how long they were outside those limits and for what purpose.

7. In our opinion, the view taken by the learned Assistant Judge is correct. The appeal must, therefore, be dismissed with costs.

Cases Referred.

1(1897) I.L.R. 22 Bom. 843
2(1934) C.R.A. No. 239 of 1934