

# **BOMBAY HIGH COURT**

Burmah-Shell Oil Storage and Distributing Co

Vs.

Manmad Municipality

Special Civil Appln. No. 671 of 1957

(Tendolkar and Kotval, JJ.)

25.03.1957

## **JUDGMENT**

### **Tendolkar, J.**

1. This is a petition by the Burmah Shell Oil Storage and Distributing Company of India Ltd., against the Manmad Municipality and the Administrator of the Municipality challenging an attempt of the Municipality to levy octroi duty on goods imported for sale within the area of the Municipality.

2. Only a few facts are material for the determination of this petition. The Manmad Municipality is governed by the provisions of the Bombay District Municipal Act, 1901, and derives its authority to levy taxes from Section 59 of that Act. Several heads of taxation, from amongst which the Municipality may choose one or many, are enumerated in this section, and the head with which we are concerned is (iv) "an octroi on animals or goods, or both, brought within the octroi limits for consumption, use or sale therein". This is how the item stands since 11th of May 1954 when, by Section 9 of Act 35 of 1954, the words "use or sale" were substituted for the words "or use". Therefore, prior to the amending Act of 1954, octroi could be levied on animals or goods, or both brought within the octroi limits for consumption or use only, and not on animals or goods brought into those limits for sale. Now, the petitioners have, within the limits of the Manmad Municipality, a depot which caters to the requirements, not only of the residents within the municipal limits, but also of the neighboring markets. Petroleum products are brought to this depot and naturally they are brought within the octroi limits which are the limits of the Municipality; but these petroleum products are partly for consumption and use within the octroi limits and partly for sale for consumption and use outside those limits. The petitioners were being subjected to octroi duty in respect of the first category of goods and were not being subjected to any octroi duty in respect of the second category of goods until the Administrator of the Municipality, by his letter D/- 17th of March 1956, intimated to the Superintendent of the

Burmah-Shell Company at Manmad that the petitioners were liable to pay octroi duty on petroleum products sold within the octroi limits and supplied to stations outside the octroi limits. The amount involved in this claim for octroi duty is a very large one and Mr. Rege, appearing for the petitioners, urged upon us the iniquity of asking the petitioners to pay octroi duty retrospectively, assuming it was livable, in that they would not now be able to pass on this duty which they would have been entitled to pass on to their purchasers. But, of course, in matters of taxation there cannot be anything in the nature of estoppel, and whatever the iniquity may be, if the tax is properly leviable, since there is no time-limit within which the tax must be collected, the Manmad Municipality would be quite competent to collect it.

3. Now, it is necessary, in the first instance, to consider the relevant provisions of the Bombay District Municipal Act, for levying a tax. Section 59, Sub-Section (1), to the extent to which it is relevant, enacts :

"(1) Subject to any general or special orders which the State Government may make in this behalf, any Municipality

(a) after observing the preliminary procedure required by Section 60 and

(b) with the sanction of the State Government in the case of City Municipalities, and in other cases of the Commissioner, and subject to such modifications or conditions as under Section 61 the State Government or the Commissioner, respectively, in according such sanction, deems fit, may impose, for the purposes of this Act, any of the following taxes, that is to say:" and amongst the taxes, tax No. (iv) is an octroi which I have already set out above. Now, the words in this section, namely "the Director of Local Authorities" were substituted in this section for the word "the Commissioner" by Act 26 of 1953 after the office of Commissioners was abolished in the State; and therefore, before that date it was the Commissioner, and not the Director of Local Authorities, who had to accord the necessary sanction. Now with regard to the preliminary procedure referred to in sub-Clause (a) of this section, that is set out in Section 60, which is in these terms :

"Every Municipality before imposing a tax shall observe the following preliminary procedure :

(a) They shall, by resolution passed at a general meeting;

(i) select for the purpose one or other of the taxes specified in Section 59;

(ii) prepare rules for the purposes of Clause (i) of Section 46 prescribing the tax selected;

and shall by such resolution and in such rules specify,

(iii) the class or classes of persons or of property, or of both, which the Municipality desire to make liable, and any exemptions which they desire to make;

(iv) the amount for which, or the rate at which, it is desired to make such classes liable;

(v) all other matters, which the State Government may so require to be specified."

Then sub-Clause (b) provides for publication of the proposed rules with a notice in the form prescribed in Schedule A. Sub-clause (c) provides that any inhabitant of the municipal district may send his objection in writing to the Municipality within the time prescribed. The Municipality thereupon has to consider the objection, and unless they uphold the objection, they have to submit the same with their opinion thereon together with the notice and draft rules to the State Government or, at the relevant time, to the Commissioner. Stopping here for a moment, the requirement of a resolution at a meeting of the Municipality is not only in respect of selecting a tax out of the many mentioned in Section 59, but also for the purpose of making rules prescribing the tax. Moreover, the Municipality has to apply its mind in passing the resolution both to the class or classes of property which it desires to make liable and also to any exemptions which it desires to make. It has in addition to apply its mind to the rate at which the tax is to be levied. After having applied its mind and come to a decision, there is provision for publication, for inviting objections and dealing with them.

4. This brings us to the next stage and that is the power of the sanctioning authority, which is the State Government in the case of a City Municipality and was the Commissioner at the relevant time in respect of a District Municipality; and Section 61 gives the widest possible power to the sanctioning authority. It "may either refuse to sanction the rules submitted, or may return them to the Municipality for further consideration; or if no objection, or no objection which is in its or his opinion sufficient, was made to the proposed tax within one month from the publication of the said notice, may sanction the said rules either (a) without modification, or (b) subject (i) to such modifications not involving an increase of the amount to be imposed, or (ii) to such conditions as to the application within the municipal district to any purpose or purposes of this Act specified in such conditions, of the whole or any part of the proceeds of such tax, as it or he deems fit." Two aspects of the power of the sanctioning authority under this section may be noted. The first is that the sanctioning authority has to apply its mind to the proposed tax and to any objections made thereto by an inhabitant of the municipal district which have not been upheld by the Municipality; and, secondly, the sanctioning authority has the right, if it sees fit, to direct that the whole or any part of proceeds of such tax shall be used for a specified purpose or purposes. After the rules are sanctioned, Section 62 provides for publication of the rules, and that section, in addition, enacts that after such publication "the tax as prescribed by the rules so published shall -- --be imposed accordingly" with the result that the final stage of imposition of a tax is only reached after the publication of the sanctioned rules. Thus it is clear that before a tax can be validly levied under the provisions of the Bombay, District Municipal Act, three different entities have got to apply their minds to it; first, the Municipality which must consider the entire scheme under Section 60 and must further consider any objections that may be received from an inhabitant of the Municipal district; secondly, the inhabitants of the municipal district who, upon publication of the proposals, have a right to object to any aspect thereof; and, thirdly, the sanctioning authority, who have to apply their minds to the proposals and to the objections, if any, which have not been upheld by the Municipality, and further to consider whether they wish to direct that the proceeds of the tax or any part thereof shall be utilized for a specified purpose or

purposes.

5. Now, following this procedure, it appears that octroi rules and bye-laws were sanctioned for Manmad on 16th of April 1943 by the Commissioner. Rule 4 of these rules provides for the levying of a tax on all animals and goods "on the import thereof". Of course, octroi, in its accepted connotation, is a duty on goods brought into an area and this connotation is carried out by the rule by providing that octroi shall be payable on animals or goods which are imported within the municipal area. These rules continue to be in force and the rival contentions of the two parties before us are these. The petitioners say that these rules do not, and cannot, entitle the Municipality to levy an octroi on goods imported within the octroi limits for sale, and that, if the Municipality wished to levy such tax, it must follow over again the entire procedure enacted in Sections 60, 61 and 62. On the other hand, Mr. Patwardhan for the Manmad Municipality says that the word "import" in R. 4 of these rules is wide enough to include animals or goods imported for the purpose of sale and, therefore, an octroi tax on animals or goods imported for sale is validly levied and it is not necessary, for the purpose of levying any such tax, either to amend the rules or to follow the procedure prescribed in Sections 60, 61 and 62 over again. Now, there is no doubt that the word "import" used in R. 4 is general, and if the rules stood by themselves, it would undoubtedly include animals or goods imported for the purpose of sale; but one must not forget that these are statutory rules made under the provisions of the Bombay District Municipal Act, 1901, and they must be read in conjunction with the relevant provisions of the Act itself. The relevant provisions of the Act qua an octroi duty were to be found, at the date when the rules were made, in Section 59(1) sub-Clause (iv), and they were, as I have pointed out, that an octroi on animals or goods or both brought within the octroi limits for consumption or use therein may be imposed, and they did not then include within its scope animals or goods brought within the octroi limits for sale. Therefore, reading the rules in conjunction with the Act, the only result that the rules could achieve would be to provide for an octroi duty on animals or goods brought within the octroi limits for consumption or use. Indeed, were it suggested that the rules purported to levy an octroi tax on animals or goods brought within the octroi limits for sale, the rules would be ultra vires, because they would be in excess of the authority conferred by the Act to levy an octroi tax; and it is a well-recognized canon of construction that where a literal construction of statutory rules would render them ultra vires of the rule-making authority, they must be so construed as to be intra vires and held valid rather than be construed ultra vires and initially void. Therefore, on a correct interpretation of the rules as sanctioned on the 16th of April 1943, in our opinion, the rules provided for an octroi tax only on animals or goods brought within the octroi limits for consumption or use, and certainly not for sale, although the case of sale may well be covered by the general word 'import' used in R. 4.

6. But then Mr. Patwardhan urges that though the rules undoubtedly had this meaning before the Act was amended by providing for an octroi duty on animals or goods brought within the octroi limits for sale, they have a new meaning after the amendment of the Act. It appears to us to be difficult to conceive how the rules, which had a particular meaning when they were sanctioned

by the sanctioning authority, can change their meaning subsequently. But what is more important is that if by some magic these rules have acquired a new meaning after the amendment, can it possibly be suggested that any one of the three bodies that were concerned in the making of the rules at any time applied their minds to the so-called new meaning? Going back over the stages which were preliminary to the rules becoming effective, when the Municipality at a general meeting passed a resolution selecting the octroi tax, did it have in its mind a tax on animals or goods brought within the octroi limits for the purpose of sale? The obvious answer is that it could not possibly have had such a tax in mind, because it was not then competent to the Municipality to impose such a tax. Assuming for a moment that the Act had stood then as it stands now after the amendment, it would still have been open to the Municipality, in determining whether to levy an octroi duty, to levy it only on animals or goods which are brought within the octroi limits for consumption or use only and not to levy such a duty on animals or goods brought in for the purpose of sale; and, therefore, it cannot possibly be suggested that the Municipality at any time considered the advisability or otherwise of imposing a tax on animals or goods brought within the octroi limits for purposes of sale. Similarly, the Municipality had the right to consider any exemptions they wished to make. If they did not consider the imposition of a tax on animals or goods brought in for sale, they could not have possibly considered any exemptions they wished to make in that regard. Then they had to consider the rate, and I presume that in fixing a rate the Municipality would have regard to the total amount of a tax that is likely to be collected by reason of the rate suggested. If the tax was to be on all imports within the octroi limits, it might well have been at a lesser rate than if it were on such of the imports as were for consumption or use only excluding the imports for the purposes of sale.

7. Coming next to the stage where any inhabitant of the municipal limits is entitled to object, could an inhabitant - and every inhabitant in this respect is supposed to know the law - have properly objected to the proposed tax on the ground that R. 4 was wide enough to include a tax on imports for the purpose of sale? The answer obviously must again be that he could not, for the simple reason that, as we have already pointed out, the rules must be read along with the relevant provisions of the Act; and so read, the rules did not provide for a levy of octroi on imports for the purpose of sale. Similarly, when we come to the stage where the sanctioning authority has to apply its mind to the rules, just as in the case of the Municipality, so in the case of the sanctioning authority, it could not have possibly applied its mind to a tax on imports for the purposes of sale; and moreover, if the sanctioning authority wished to direct that the tax or any portion thereof may be earmarked for a specified purpose, it would undoubtedly have regard to the estimated proceeds of such tax which the sanctioning authority making the estimate in 1943 could not have possibly taken to include a tax on imports for sale. It appears to us to be clear, therefore, that at no stage was a tax on imports for purposes of sale considered by any of the authorities who were required by law to consider it; and in the absence of such consideration, the tax cannot possibly be lawfully levied.

8. This view of ours derives great support from a provision in the Bombay District Municipal

Act, 1901, Section 47. That section deals with the power to suspend, reduce or abolish any existing tax; and Sub-Section (2) thereof enacts:-

"The provisions of Ch. VII relating to the imposition of taxes shall, so far as may be, apply to the suspension, reduction or abolition of any tax and to the suspension, alteration or rescission of any rule prescribing a tax."

Therefore, the Legislature in terms provides that any alteration or modification of the tax structure can only be carried out in the manner provided by Ch. VII; and if the procedure in Ch. VII, which includes Sections 60, 61 and 62, is to be followed for the slightest alteration or modification of the rules prescribing a tax, obviously, when what is sought to be achieved is in substance to impose a fresh tax, it could not be that such procedure need not be followed. Support is also derived to this view from a decision of a Division Bench of this Court in *Kalu Karim v. Municipality of Broach*<sup>1</sup>. This was a case of the imposition of terminal tax. The original proposal for a tax which was submitted by the District Municipality of Broach for the sanction of Government contained in the schedule of articles which were to be subjected to tax item No. 20 'Miscellaneous articles'. These inter alia included fruits. Government, while sanctioning the rules, deleted item No. 20; but at a

<sup>1</sup> ILR 51 Bom 764

later date Government accorded sanction to adding item No. 20 in the list. When the item was so added, the procedure prescribed in the District Municipal Act, Sections 60, 61 and 62, was not followed over again. Sir Amberson Marten, Chief Justice, in delivering the judgment, held that the addition of item No. 20 amounted to the imposition of a new tax, and that, therefore, the imposition was void inasmuch as the procedure laid down for imposing a new tax had not been followed. The learned Chief Justice, in his judgment, inter alia points out that the fruit merchants who were affected by the inclusion of item No. 20 in the schedule had no opportunity of making any representation to Government on that point. Indeed, on facts the case that the learned Chief Justice was dealing with was a stronger case in favor of the Municipality than the present one, because as item No. 20 had originally been included by the Municipality in the schedule and, therefore, included in the resolution of the Municipality which was published and to which any inhabitant of the municipal area could have objected, the fruit merchants could have objected to the item then; but the learned Chief Justice points out that once the item had been deleted by Government and sanction had been accorded under Section 61 and the sanctioned rules published under Section 62, even the addition of item No. 20 to the list, on which public opinion had been elicited or on which in any event there was opportunity for the public to file objections on a prior occasion, could not be included without going through the entire procedure over again. In the case before us, the case is a much stronger one in favor of the petitioners, because the petitioners certainly have had no opportunity of objecting to the levy of an octroi on goods brought into the octroi limits for the purpose of sale only.

9. In our opinion, therefore, the present octroi rules do not empower the Manmad Municipality to

levy an octroi on animals or goods imported within the octroi limits for purposes of sale.

10. A point has been made in the petition that the petitioners and two other dealers in petroleum products are the only three parties singled out for the imposition of an octroi on goods imported for the purpose of sale and that this action is discriminatory and offends against Article 14 of the Constitution. In this regard, the Administrator of the Municipality, in his affidavit, has pointed out that this statement is not correct and that the Municipality has been levying octroi on imports of goods by every one for the purpose of sale. We must accept that statement as true and, therefore, no question of determining whether there has been any discrimination arises.

11. The result, therefore, is that the petition succeeds and a writ of mandamus will issue restraining the respondents, their servants and agents from levying, collecting or recovering octroi in respect of goods brought within the octroi limits for the purpose of sale only. Respondents to pay the petitioners' costs.

Petition allowed.