

PETITIONER:
LORD KRISHNA SUGAR MILLS

Vs.

RESPONDENT:
MUNICIPAL COMMITTEE, SAHARANPUR

DATE OF JUDGMENT:
08/12/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 1519 1966 SCR (2) 959

ACT:
Saharanpur Municipality Rules for Tolls, 1949, r. 8(a)-
Lorries unloading goods in railway station within municipal
limits--Goods intended for export by rail-Applicability of
rule.

HEADNOTE:

The appellant-mills, was situate outside the municipal limits of Saharanpur and was exporting a large quantity of cloth to various places in India. Its lorries loaded with bales first entered the municipal limits at some place near the appellant's premise; and then proceeded towards the railway station where they were unloaded without any sorting or change of bulk. Before reaching the station the lorries had to pass-out of the municipal barrier near the station, which was meant to serve as an import barrier for goods coming into the municipality from the railway station and as an export barrier for goods going outside the municipality. But the barrier was not placed exactly where the municipal limits and it was some distance inside the municipal limits, which were beyond the railway station. Therefore.. after the bales were unloaded at the railway station, they remained within the municipal limits till they were taken away by rail to destinations for which they were booked.

Under r. 8(a) of the Rules for Tolls as in 1949, which were applicable in the present case, if a person in charge of a lorry laden with taxable goods entering the municipal limits, declared that they were meant for immediate export from the municipal limits without sorting or change of bulk, he was entitled to a transit pass which had to be presented within half an hour at the export barrier and no toll tax would have to be paid. The appellant claimed that it was entitled to get the transit pass under the rule, but the respondent did not agree. The appellant, therefore, paid the toll tax under protest and filed a writ petition in the High Court, but it was dismissed.

In appeal to this Court, the appellant contended that all that the rule required in order to entitle it to a transit

pass and escape the toll tax, was, that is lorries should go out of the export barrier even though the goods may still be within municipal limits.

HELD (Per Chief Justice, Wanchoo., Ramaswami and Satyanarayana Raju, JJ) : The intention of the rule was that lorries, after entering the municipal limits, were to pass out of the same with the least possible delay. Before a person could claim the benefit of the rule, it was necessary to satisfy the condition that the lorry reached the export barrier within the time limited by the rule and with the goods in the same condition in which they were when the lorry entered the municipal area. The half an hour's period provided in the rule was for the purpose of checking at the export barrier that the lorry passed out of the municipal area as soon as possible. Therefore, where was not in dispute that the goods did not go out of the municipal limits even after passing the export barrier, and were unloaded at the railway station which was

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within the municipal limits, they would not be entitled to a transit pass. [964 E-F, H; 965 A-B]

The crucial words in the rule are "meant for immediate export from such limits without sorting and change of bulk." The rule contemplates that the goods must leave the municipal limits as soon as possible without sorting or change of bulk, that is, in the same vehicle and their passing through the export barrier is taken to show that they are going out of the municipal limits. However, as a barrier is not necessarily at the end of the municipal limits, for its placing depends upon convenience, the reasonable interpretation of the rule is that where the municipal limits extend for some distance beyond the export barrier, the goods must go out of the municipal limits after passing the export barrier. If they are to be entitled to a transit pass. But it does not follow from the fact that the goods have arrived at the export barrier within half an hour from the time of the issue of a transit pass and have passed the export barrier, that the goods are "meant for immediate export from municipal limits" if the goods are not sent out of the municipal limits after crossing the export barrier and the unloaded within the municipal limits. [963 G-H; 964 A, B, D-E]

Per Hidayatullah, J. (dissenting) : There was a declaration by the appellant that the goods imported into the municipal limits were meant for immediate export from such limits without sorting and change of bulk and the goods did pass the export barrier without any sorting or change of bulk. They were unloaded on the railway premises and the trucks returned empty. The appellant had thus complied with all the conditions of the rule. No doubt, some time has to pass before the goods are booked and loaded on trains and during that time the goods did lie within the municipal limits; but as the goods have passed the export barrier and could not re-enter without passing through it as an import barrier, they should merit a release from tolls. [967 F-H]

The municipality imposes its taxes only when there is entry into the town from the railway yard. The municipality by its own arrangement, regards the station yard as being outside its export barrier. If the same goods are brought in again they will bear tax at the barrier as an import barrier and no plea will be heard that the goods had paid toll at the other end and that they were within the municipal limits all the time. The intention of the rule is to free from tolls goods in transit, on proof that they have been exported from the municipal limits. The rule must be

applied in a fair and equitable manner and one of the cardinal principles of law is that the law does not expect, nor does it compel, a man to do that which he cannot possibly perform. The word "immediately" must be, in the circumstances, understood as 'allowing a reasonable time for export. [968 A-C; 969 A-B]

Central India Spinning and Weaving and Manufacturing Co. Ltd., The Empress Mills, Nagpur v. The Municipal Committee, Wardha, [1958] S.C.R. 1102, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 753 of 1963. Appeal from the judgment and decree dated September 10, 1960 of the Allahabad High Court in Special Appeal No. 105 of 1957.

G. S. Pathak, B. Datta and Naunit Lal, for the appellant.
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M. C. Setalvad, D. K. Agarwal, M. L. Gupta and R. Ganapathy Iyer, for the respondent.

The Judgment of GAJENDRAGADKAR, C.J., WANCHOO, RAMASWAMI and RAJU, JJ. was delivered by WANCHOO, J., HIDYATULLAH, J. delivered a dissenting Opinion.

Wanchoo, J. The only question raised in this appeal on a certificate granted by the Allahabad High Court is the interpretation of r. 8 (a) of the Rules in force from May 1, 1949, in the municipal area of Saharanpur with respect to tolls payable on entry of goods within the limits of the Saharanpur municipality. We may add that the rules in question were changed from September 7, 1955; but we are not concerned with those rules as the present dispute refers to a period before September 7, 1955. The facts which are relevant in this connection lie in a narrow compass. The appellant, Lord Krishna Sugar Mills, carries on the business of manufacturing sugar and cloth. It is situate outside the limits of the Saharanpur municipality. A large quantity of cloth is exported by the appellant to various places in India. Motor lorries loaded with bales of packed cloth leave the appellant's premises and carry these bales to the railway station where the bales are unloaded and booked by rail to various destinations without any sorting or change of bulk. The railway station of Saharanpur is situate within the municipal limits and therefore the lorries have to enter the municipal limits when they carry bales to the railway station. Further after the bales are unloaded at the railway station they remain within the municipal limits till they are taken away by rail to destinations for which they are booked.

Rule 2 of the Rules on Tolls as in 1949 with which we are concerned provided that "no person shall enter the toll limits of the Saharanpur Municipalities.... with any head-load, bahangi load, laden vehicle or any laden pack animal, on or in respect of which terminal toll is leviable, until the toll due has been paid to such persons and at such places as the Municipal Board may from time to time appoint". Rule 3 provided that "when a laden man, laden vehicle or laden pack animal subject to terminal toll arrives at one of the barriers fixed by the Board, the terminal toll due shall be paid at once by the person in-charge of the head-load, bahangi load, laden vehicle or laden pack animal to the moharrir stationed at the barrier". Rule 8 (a) with which we are particularly concerned reads thus':

"If the person in-charge of any motor lorry

laden with taxable goods declares in writing to the moharrir

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at the import barrier that the goods he is importing into the limits of the Municipality are meant for immediate export from such limits without sorting and change of bulk, the moharrir shall issue a transit pass in Form 61 of the M.A.C. to such person in-charge of the motor lorry, who shall present the same together with the motor lorry carrying the goods covered thereby to the moharrir at the barrier of export within half an hour from the time of issue of the transit pass."

Dispute arose between the appellant and the municipality on the question whether the appellant was entitled to the benefit of r. 8 (a) which would exempt it from the payment of toll tax when it sent its goods to the railway station at Saharanpur for booking to various destinations by rail. It appears that there is a municipal barrier near the railway station and the appellant's lorries carrying goods first entered municipal limits at some place near the appellant's premises and then proceeded towards the railway station. Before reaching the station, the lorries had to pass out of the barrier near the station. This barrier apparently was meant to serve two purposes. It was an import barrier for goods coming into the municipality from the railway station and from that side. It was also an export barrier for goods going outside the municipality. But the barrier was not placed exactly where the municipal limits ended; it was at some distance inside the municipal limits so that the lorries of the appellant going out of the barrier and proceeding to the railway station were still within the municipal limits and the goods when unloaded at the railway station for booking were still within the municipal limits. It is at some distance beyond the railway station that the municipal limits come to an end. It was not in dispute that the lorries of the appellant carrying the goods to the railway station never went out of the municipal limits and the goods were unloaded at the railway station and remained within the municipal limits. The municipality claims that it was entitled to charge the toll tax as the goods never left the municipal limits and that r. 8 (a) only applied to those cases where the goods actually left the municipal limits within half an hour of entry. The appellant on the other hand contended on an interpretation of r. 8 (a) that it was entitled to the transit pass as the railway station was beyond the municipal barrier on that side and the lorries passed that barrier and in the circumstances if the lorries passed that barrier within half an hour of their entry into the municipal limits, r. 8 (a) was complied with and the appellant was entitled to a transit pass which

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would then exempt it from toll tax. The Municipal Board did not accept this interpretation of r. 8 (a). The appellant therefore had to pay the toll tax and did so under protest. It however filed a writ petition in the High Court inter alia contending that its interpretation of r. 8 (a) was correct and it was entitled to get transit passes for its lorries. There were other grounds also on which r. 8 (a) was assailed, but we are not concerned in the present appeal with those grounds.

The learned Single Judge rejected all the contentions of the appellant. He also rejected the interpretation placed on r.

8 (a) on behalf of the appellant. He held that what r. 8 (a) contemplated was that the goods should leave the municipality; as the appellant's lorries did not leave the municipal limits but were unloaded at the railway station which was admittedly within the municipal limits the appellant was not entitled to transit passes for its lorries.

The appellant then went in appeal to a Division Bench, and the Division Bench upheld the interpretation put on r. 8 (a) by the learned Single Judge. In consequence the appeal was dismissed. Thereupon the appellant applied for a certificate which was granted by the High Court; and that is how the matter has come up before us.

The whole dispute in the present case has arisen on account of the fact that the municipal barrier on the side of the railway station is not near the municipal limits; it has been placed at some distance within the municipal limits. Beyond the barrier is the railway station which is within municipal limits and beyond that also for some distance the municipal limits continue. The appellant therefore contends that all that r. 8 (a) requires is that after its lorries had entered the municipal limits, they would be entitled to transit passes if they go out of the municipal barrier at the other end and even though thereafter they might still remain within the municipal limits. In other words the appellant's contention is that all that r. 8 (a) requires in order to entitle it to a transit pass and thus escape the toll tax is that its lorries should go out of the municipal barrier at the other end of the city even though they may still be within municipal limits.

We are of opinion that this is neither the intention nor the meaning of r. 8 (a). The crucial words in the rule are "meant for immediate export from such limits without sorting and change of bulk". A person would thus be entitled to a transit pass under r. 8 (a) if the goods he is bringing into the municipal limits are

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meant for immediate export from the municipal limits without sorting or change of bulk. The latter part of r. 8 (a) is meant to lay down a procedure to check this. Reading the two parts together, immediate export means that within half an hour from the time of issue of transit pass the goods must arrive at the barrier of export which may be on the other side of the city and after checking by the moharrir at the barrier pass out of the municipal limits which will take a few minutes more. But it does not follow from the fact that the goods have arrived at the barrier of export within half an hour from the time of issue of transit pass and have passed the export barrier that the goods are "meant for immediate export from municipal limits" if the goods are not sent out of the municipal limits after crossing the barrier of export and are unloaded within municipal limits. The transit pass is only to be granted if the goods are "meant for immediate export from such limits". That means that the goods must go out of municipal limits as soon as possible, and half an hour's period provided for their arrival at the export barrier after the issue of transit passes is meant merely to check this fact. The rule clearly contemplates that the goods must leave the municipal limits as soon as possible without sorting or change of bulk, i.e., in the same vehicle and their passing through the export barrier is taken to show that they are going out of the municipal limits. However, as a barrier is not necessarily at the end of the municipal limits for its placing depends upon convenience, the reasonable interpretation of the rule is

that where the municipal limits extend for some distance beyond the export barrier the goods must go out of the municipal limits after passing the export barrier if they are to be entitled to transit pass. But where, as in the present case, it is not in dispute that the goods do not go out of the municipal limits even after passing the export barrier and are unloaded at the railway station which is within municipal limits they would not be entitled to a transit pass. The drafting of r. 8 (a) is not very happy and the difficulty has arisen because the export barrier in the present case is well within municipal limits. But it seems to us clear that what r. 8 (a) intends, when it says that on a declaration that the goods are meant "for immediate export from such limits without sorting and change of bulk", a transit pass would be granted is that the goods would be taken out of municipal limits as soon as possible after entry. What the latter part provides is the method of checking that the goods are taken out immediately from municipal limits. When however the goods are not taken out immediately from municipal limits and may lie at the railway station which is within the muni-

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cipal limits for a length of time, the benefit of transit pass under r. 8 (a) cannot be allowed. We agree with the High Court that the intention of the rule is that motor lorries to which the rule applies after entering municipal limits are to pass out of the same with the least possible delay, and before a person can claim the benefit of the rule it is necessary to satisfy the condition that the lorry reached the export barrier within the time limited by the rule. The intention of the rule obviously is that a lorry which enters the municipal limit at one end and gets a transit pass should go out of the municipal area as soon as possible with the goods in the same condition in which they were when the lorry entered the municipal area, and half an hour's period provided in the latter part of the rule is merely for the purpose of checking at the export barrier that this is actually done. Where, as in the present case,,, lorries were never meant to proceed beyond the railway station, and the railway station was within the municipal area, there could be no question of grant of transit passes to such lorries. As we have said already the crucial words in r. 8 (a) are "for the immediate export from such limits without sorting and change of bulk" and these mean that the goods must go out of the municipal limits as soon as possible on the lorry on which they have entered and unless that is done the lorry would not be entitled to a transit pass. The latter part of the rule is merely a method for checking that this has happened. The appeal therefore fails and is hereby dismissed with costs.

Hidayatullah, J. The railway station at Saharanpur is admittedly situated within the municipal limits. Anyone going from the railway yard to the town must pass a municipal gate which serves as the toll barrier for persons, vehicles and goods entering the municipal area from the station side. Anyone entering the railway yard must also pass the same gate which serves as an export barrier and a checking post for persons, vehicles and goods passing out of the municipal area. This toll barrier is not placed at the boundary of the Municipality but somewhat within it and it separates the yard from the municipality proper. There is no barrier beyond the railway territory.

The appellant, Lord Krishna Sugar Mills, manufactures sugar and cloth. The mills are situated outside Saharanpur

Municipality but their goods, which are carried in trucks, have to pass the export barrier to enter the station yard from where they are booked without any sorting or change of bulk to destinations out-

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side Saharanpur Municipality. It is not denied that if these goods are brought back they must pass the barrier again.

The Municipality levies tolls under its rules on goods entering the Municipality and no person with a head-load, bahangiload, laden vehicle or laden pack animal can enter the municipal limit until toll is paid at one of the toll barriers fixed by the Municipal Board. There is, however, a concession in respect of goods carried on a motor lorry which are in transit across the municipal territory. This concession is given by rule 8 (a) and the concession is the subject of the dispute between the Mills and the Municipality in this appeal. Rule 8 reads

"8. (a) If the person incharge of any motor lorry laden with taxable goods declares in writing to the moharrir at the import barrier that the goods he is importing into the limits of the Municipality are meant for immediate export from such limits without sorting and change of bulk, the moharrir shall issue a transit pass in Form 61 of the M.A.C. to such person incharge of the motor lorry, who shall present the same together with the motor lorry carrying the goods covered thereby to the moharrir at the barrier of export within half an hour from the time of issue of the transit pass.

(b) The moharrir shall retain the transit pass and after he has verified the lorry and the goods therein with the entries in the transit pass allow such lorry with the goods to pass out of the barrier and shall sign a certificate to this effect on the transit pass.

(c) In case of pass being presented after the expiry of the time allowed for transit or there being a discrepancy in the description of the lorry presented or the goods carried thereby, the moharrir shall make a note to this effect on the transit pass and shall submit the same to the Tax Inspector or Superintendent. The fee for transit pass shall be Rs. 2 per lorry."

The Municipal Committee insists on keeping the amount of toll paid by the Mills and refuses the pass even though the goods are carried to the railway yard and are taken out of the export barrier at the railway station, on the ground that the goods do not pass out of the municipal limits immediately but remain within those limits even after passing the export barrier. This is because the yard is within the municipal limits and the goods have to be

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booked and before booking lie in the yard for some time, and, even after booking are not carried away immediately. The Mills feeling aggrieved filed a petition under Art. 226 of the Constitution in the High Court of Allahabad for a writ to restrain the Municipality from withholding the refund. The petition was dismissed by Mr. Justice Mehrotra on February 12, 1957 and a special appeal under the Letters Patent was also dismissed by Mootham C.J. and A. P.

Srivastava J. on September 10, 1960. This appeal is filed by the Mills on a certificate granted by the High Court. My learned brother Wanchoo has affirmed the decisions in the High Court. In my opinion, and I say it respectfully, the contention of the Mills is well-founded. The intention of the rule undoubtedly is to free goods in transit from tolls on proof that they have been exported from the municipal limits as, required by rule 8(a). The question is: what does rule 8(a) require a person to do and what can the Mills do in the present circumstances? Rule 8(a) analysed shows that the person incharge of a truck laden with taxable goods has to declare in writing to the moharrir at the import barrier that the goods which are being imported are meant for immediate export from such limits without sorting and change, of bulk. This declaration is made by the persons incharge of the trucks belonging to the Mills. The moharrir to whom such declaration is made, then issues a transit pass in Form 61 of the M.A.C. and the person to whom it is issued has to present it together with the truck carrying the goods covered by the transit pass to the moharrir at the barrier of export within half an hour from the time of issue of the transit pass. This is also complied with by the person incharge of the trucks belonging to the Mills. The goods then pass the export barrier and without sorting and change of bulk. The goods are next unloaded on the railway premises and the trucks return empty. No doubt some time passes before the goods are booked and some more time passes before they are loaded on trains and they do lie within the municipal limits, but as the goods which have passed the export barrier and which cannot enter the municipal limits again without passing through an import barrier, they should merit a release from tolls. This is the result of the fact that the Municipality has established its barrier convenient to itself so as to segregate the railway yard from the town proper. It is to be remembered that persons coming to the railway station and passing through without entering the municipal barrier are not required to pay toll even though they technically enter the

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municipal limits. This is because the railway yard is not considered as the area where the Municipality chooses to impose its taxes. The Municipality imposes its taxes only when there is entry into the town from the railway yard. The same thing obtains when goods are exported through the export barrier and enter the railway yard. In so far as the Municipality is concerned it satisfies itself that the goods have passed out of the municipal area and are not likely to reenter without paying toll. The rule must be applied in a fair and equitable manner and one of the cardinal principles of law is that law does not expect, nor does it compel, a man to do that which he cannot possibly perform. The goods may not be for "immediate" export but they are meant for export and are in fact exported. The word "immediately" must be, in the circumstances, understood as allowing a reasonable time for export. See Maxwell on the Interpretation of Statutes (Eleventh Edition) p. 341, where the following passage occurs

"When a statute requires that something shall be done "forthwith", or "immediately" or even "instantly," it would probably be understood as allowing a reasonable time for doing it....."

The Mills cannot take the goods out of the municipal area on their own when they have passed through an export barrier

into the railway yard. Having done everything that can possibly be done the law does not compel them to do more. I may mention here that in the Central India Spinning and Weaving and Manufacturing Co. Ltd., The Empress Mills, Nagpur v. The Municipal committee, Wardha(1), this Court allowed refund in respect of goods entering a municipal barrier but passing out of the municipal limits in the same trucks, even though there was no provision for a declaration or a transit pass or an export barrier. It was pointed out what the words 'import' and 'export' meant in such a context. The word 'import', it was held, was not merely bringing into but something more, i.e., incorporating and mixing up of the goods imported with the mass of the property and 'export', it was also held, had reference to taking out of goods which had become part and parcel of the mass of the property in the local area. Goods in transit were, therefore, held to be neither imported nor exported. It was on this ground that goods which are on trains in municipal area were held neither to be imported nor exported. The present case is even stronger.
[1958] S.C.R. 1102.

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In my judgment, the Municipality by its own arrangement, regards the station yard as being outside its export barrier. If the same goods are brought in again the next day or the day after, they will bear the tax at the import barrier. No plea, I am sure, will be heard that these goods had paid the toll at the other end of Saharanpur Municipality and were within the municipal limits all the time. The import barrier will be treated a toll barrier even for these goods.

In this view of the matter I am of opinion that the appeal must be allowed with costs and I would order accordingly.

ORDER

In accordance with the opinion of the majority the appeal is dismissed with costs.

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