

CASE NO.:
Appeal (civil) 5341 of 1996

PETITIONER:
Maharashtra Distilleries Ltd.

RESPONDENT:
Municipal Corporation of Aurangabad & Anr.

DATE OF JUDGMENT: 17/12/2004

BENCH:
N. Santosh Hegde, B.P. Singh & S.B. Sinha

JUDGMENT:
J U D G M E N T

INTERLOCUTORY APPLICATION NO.2
IN

CIVIL APPEAL NO.5341 OF 1996

SANTOSH HEGDE, J.

In CA 5341/1996 a dispute had arisen between the applicant herein and Municipal Corporation, Aurangabad in regard to the rate of octroi that could be charged on rectified spirit imported into the municipal limits by the applicant-appellant for its distillery to manufacture potable alcohol. A 3-Judge Bench of this Court in the said appeal held that the rectified spirit fell under residuary Entry 86 of Clause IX of the Schedule attracting octroi duty at 2% and not at the rate at which it was being levied and collected from the applicant-appellant. In the said appeal the court gave the following direction :

"Given the facts and reasons stated above, we allow this appeal, set aside the impugned judgment and order and hold that the appellant was liable to pay octroi duty at 2% on the rectified spirit imported. The respondent (sic) is entitled to recover the difference of octroi duty. No costs."

The use of the word 'respondent' therein is a typographical error and there is dispute that the entitlement to recover the differential duty is that of the applicant-appellant herein.

In the present application seeking clarification the applicant has complained that inspite of the aforesaid directions the respondent Municipality is not repaying the excess amount collected by it as directed by this Court. Therefore it has sought for the following reliefs :

- (a) clarify the order dated 17.4.2002 and direct the Respondent to refund the excess octroi of Rs.3,51,94,471/- along with interest @ 12% ; and/or
- (b) alternatively direct the Respondent to set off the above amount against Appellant's future liabilities of Octroi; and
- (c) pass such other further order(s) which this Hon'ble Court may deem fit and proper in the interest of justice.

In reply to the same the respondent-Municipality has contended that the applicant is not entitled to claim refund in view

of the fact that the applicant has passed on the excess octroi collected by the Municipality to the ultimate users of the potable alcohol therefore demand for refund of the excess octroi claimed by the applicant would amount to unjust enrichment and relying on the judgment of this Court in the case of M/s. McDowell & Co. Ltd. v. Commercial Tax Officer (1985 3 SCC 230) the Municipality has pleaded that the burden of proof that such an octroi has not been passed on to the purchaser of its product rests on the applicant which burden it has not discharged therefore the applicant is not entitled to the refund.

Noticing the above objection of the respondent on 5.4.2004 this Court directed the applicant to produce materials to show that during the relevant period i.e. from 1983 to 1986 it did not pass on the additional octroi to the consumers.

Pursuant to the said directions issued by this Court, the applicant has filed a detailed statement supported by the auditor's report and certificate of the chartered accountant which the Municipality has not controverted by any counter affidavit or other material in spite of the opportunity granted to it. The material produced by the applicant clearly shows that the applicant has not passed on the additional octroi collected from it to its consumers. Even that apart as stated hereinabove in the 3-Judge judgment from which this application has arisen it is in very clear terms stated that the applicant is entitled to recover the difference of octroi duty and from the material on record it is clear that there is no dispute that excess duty was in fact collected by the Municipality; the argument of unjust enrichment is being raised for the first time before this Court in opposition to this application and we find no merit in the same.

For the reasons stated above we allow this application and direct the respondent Municipal Corporation of Aurangabad to refund the excess octroi amount which has been computed at Rs. 3,51,94,471/- with interest at 6%. Since the principal amount and the interest comes to a substantial sum and in view of the fact that the respondent Municipality has pleaded that the amount collected by them has been used for public benefit we think it appropriate that the said sum should be refunded to the applicant in 24 equal monthly instalments ; first of which to be paid on or before 1.2.2005. The application is allowed.