

PETITIONER:
KATHIAWAR INDUSTRIES LTD.

Vs.

RESPONDENT:
JAFFRABAD MUNICIPALITY

DATE OF JUDGMENT 08/08/1979

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
GUPTA, A.C.

CITATION:
1979 AIR 1721 1980 SCR (1) 243
1979 SCC (4) 56

ACT:

Octroi-Terminal tax a kind of octroi-Levy of octroi on uncrushed salt-Uncrushed salt crushed in factory-Whether conversion into another commercially different article-If amounts to consumption-"Consumption", "Use"-Meaning of.

Saurashtra Terminal octroi ordinance, 1949, Ss. 2(2) & 3; & Saurashtra octroi and Terminal Tax Rules 1949, Rule 3 Schedule I Item No. 23.

HEADNOTE:

In 1948 on the formation of Saurashtra State, Jaffrabad came within its territorial limits and the Bombay District Municipal Act, 1901 as adapted and applied to the said State became applicable to Jaffrabad. Jaffrabad Municipality the predecessor of the respondent was constituted under the Bombay District Municipal Act, 1901.

The State of Saurashtra, within the territorial limits of which the said Municipality was situate, promulgated ordinance No. 47 of 1949 on 31-X-49 called the Saurashtra Terminal octroi ordinance, 1949. Section 2 cl. (2) of the said ordinance defines "octroi" as including a terminal tax. Section 3 empowered the Government to impose terminal tax and octroi duty, and provided that octroi may be imposed on "animals or goods, or both, within the octroi limits brought for consumption or use therein." Section 4 empowered the Government to make rules in exercise of which the State Government made the Saurashtra octroi and Terminal Tax Rules on 8th December, 1949. Rule 3, the charging rule provided that octroi is payable in respect of goods set out in Schedule I of the Rules and prescribed that it shall be payable at the nakas at rates set out therein. Item No. 23 is "Salt for Factory". Schedule II enumerated a list of items which are exempt from octroi duty and contained in Item No. 6, a sub-item in Gujarat which means "salt".

The appellant was running a salt manufacturing works at Jaffrabad. The company had constructed salt works, grinding mills, trolly-tracks and a jetty at the port site. The major portion of the salt works is situated out of the municipal limits. The salt is manufactured outside the municipal limits. The grinding mills and the part of the trolly-track leading to jetty came within the municipal limits of the respondent Jaffrabad Municipality.

The salt is prepared in the salt pans outside the octroi limit and the salt which is crushed is taken to the crushing factory and the salt which is not to be crushed is taken in uncrushed form. directly to the jetty over the trolley track part of which passes through the octroi limits of the municipality. The salt that is crushed in the crushing factory is also after crushing taken by trolley to the jetty. From the jetty the salt whether crushed or uncrushed, as the case may be is exported by steamers.

244

The Municipality demanded from the appellant octroi in respect of salt manufactured by it. The appellant paid under protest and filed a suit against the respondent for declaration that the salt manufactured by the appellant at its salt works at Jaffrabad and exported uncrushed and/or crushed was not liable to octroi duty and the goods passing through municipal limits from the salt works are not liable to octroi duty and for an injunction restraining the respondent from recovering the amount claimed as octroi. Another suit claiming refund of the octroi paid was also filed.

The two suits were decreed, the court declaring that the salt manufactured by the appellant company is not liable to octroi duty. The Municipality being aggrieved preferred appeals and the appellate court while dismissing the appeals and confirming the decrees of the trial court held that the perpetual injunction granted by the trial court would not apply to the salt entering the octroi limits for consumption or use for the factory situated within the octroi limits of the Municipality.

The Municipality preferred second appeals to the High Court, which allowed them except to the extent of confirming the declaration that uncrushed salt of the appellant company which is directly sent from the stacking ground to the jetty is not liable to octroi provided the plaintiff company followed the prescribed rules and formalities. The other claims in the suits were however dismissed.

On the question whether the salt manufactured by the appellant outside the octroi limits of the respondent and brought within those limits for the purpose of being crushed into powder in the appellant's factory situated within those limits and then exported is liable to octroi.

^

HELD: 1. Octroi is leviable on the uncrushed salt which is brought to the octroi area and crushed as the activity would amount to both consumption and use of the uncrushed salt. [249 F]

Burmah Shell oil Storage Distributing Co. India Ltd. v. The Belgaum Borough Municipality [1963] Supp. 2 SCR 216; M/s. Anwar Khan Mahboob Co. v. The State of Bombay (now Maharashtra) [161] 1 SCR 709, State of Travancore Cochin & Ors. v. Shanmugha Vilas Cashew Nut Factory & Ors. [1954] SCR 53, referred to.

2. In the Constitution of India, Entry 52 in List II in Seventh Schedule a right to impose tax "on entry of goods into the local area for consumption, use or sale" is conferred. The precise meaning to be given to the words "consumption" and "use" will depend upon the context in which they are used. These words are of wide import, the word "use" being of wider import than "consumption". [248A. 247H, 249E].

3. While terminal tax is a kind of octroi which is concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods brought into the area for

consumption, use or sale. They are leviable in respect of the goods put to some use or the other in the area but only if they were meant for such use. [248B]

4. The word "consumption" in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contents the word

245
"consumption" has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up. [248C-D]

In the instant case the uncrushed salt is crushed in the factory which is commercially a different article and the uncrushed salt must be held to have been consumed. The uncrushed salt has been used and by the use a new product crushed salt has come into existence. [249E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2330-2331 of 1969.

Appeals by Special Leave from the Judgment and order dated 17/ 18-1-69 of the Gujarat High Court in Second Appeal No. 187 and 857/61.

H. S. Parihar and I. N. Shroff for the Appellant.

K. J. John for the Respondent.

The Judgment of the Court was delivered by

KAILASAM, J.-These two Civil Appeals are by the Kathiawar Industries Ltd. by special leave against the judgment of the Gujarat High Court holding that the appellants are liable to pay octroi duty on uncrushed salt which is brought by the appellant to the factory situate within the octroi limits and crushed there.

The appellant is running a salt manufacturing works at Jaffrabad called "Nawabsidi Mohmad Khan Salt Works". The company had constructed salt works, grinding mills, trolley-tracks and a jetty at the port site. The major portion of the salt works is situate out of the Municipal limits. The salt is manufactured outside the municipal limits. The grinding mills and the part of the trolley-track leading to jetty come within the municipal limits of the respondent Jaffrabad Municipality. The Municipality by a notice dated 3-1-1955 demanded from the appellant Rs. 7289-6-0 as arrears of octroi. The appellant paid under protest and filed the suit out of which this appeal arises before the Civil Judge Gohilwad, District Bhavnagar, against the respondent for a declaration that the salt manufactured by the appellant at its salt works at Jaffrabad and exported uncrushed and/or crushed was not liable to octroi duty and that the goods passing through municipal limits from the salt works are not liable to octroi duty, and for an injunction restraining the respondent from recovering an amount of Rs. 7289-6-0 and for a further injunction restraining the Municipality from hindering or obstructing the free passage of salt and goods and for the refund of Rs. 250. The appellant also filed another suit for the refund of Rs. 1271-14-0 paid under protest. These two suits were decreed, the court declaring that the salt manufactured by

246
the appellant company is not liable to octroi duty. The court also granted an injunction as prayed for. The Municipality preferred appeals. The appellate court while dismissing the appeals and confirming the decree of the trial court observed that the perpetual injunction granted

by the trial court would not apply to the salt entering the octroi limits for consumption or use for the factory situated within the octroi limits of the municipality. The Municipality preferred two Second Appeals to the High Court of Gujarat at Ahmedabad. A Bench of the High Court allowed the appeals except to the extent of confirming the declaration that uncrushed salt of the appellant company which is directly sent from the stacking ground to the jetty is not liable to octroi provided the plaintiff company followed the prescribed rules and formalities. The other claims in the suits were dismissed. Against the judgment of the High Court the plaintiff company has preferred these two appeals.

The only question that falls for consideration in these civil appeals is whether the salt manufactured by the appellant outside the octroi limits of the respondent and brought by the appellant within those limits for the purpose of being crushed into powder in the appellant's factory situate within those limits and then exported is liable to octroi. The facts as found by the High Court and which cannot be questioned are that the salt works consists of (i) salt pans; (ii) stacking ground for the salt collected from the pans; (iii) trolly track for carrying salt from stacking ground to the factory within the octroi limits of the Municipality and to the jetty which is outside the octroi limits; (iv) jetty; (v) Power house; (vi) store-room; (vii) workshop and (viii) grinding mill which is referred to in the evidence as the crushing factory. (f these, the crushing factory and part of the trolly track (about 1400 feet) are within the octroi limits of the Municipality and the rest outside those limits. Thus it is not in dispute that only the crushing factory and part of the trolly track are within the octroi limits. Th. salt is prepared in the salt pans outside the octroi limit and the salt which is to be crushed is taken to the crushing factory and the salt which is not to be crushed is taken in uncrushed form directly to the jetty over the trolly track part of which passes through the octroi limits of the Municipality. The salt that is crushed in the crushing factory is also after crushing taken by the trolly to the Jetty. From the jetty the salt whether crushed or uncrushed, as the case may be, is exported by steamers. The High Court has found that the salt which is taken to the crushing factory within the octroi limits for the purpose of crushing and is crushed and later taken to the jetty is liable to octroi. The question is whether this levy is sustainable in law.

247

In 1948, on the formation of Saurashtra State, Jaffrabad came within the territorial limits of the Saurashtra State and the Bombay District Municipal Act, 1901, as adapted and applied to Saurashtra State became applicable to Jaffrabad. The Jaffrabad Municipality, the predecessor of the respondent, was constituted under the Bombay District Municipal Act, 1901.

The State of Saurashtra, within the territorial limits of which the said Municipality was situate, published an ordinance on 31-8-1949 being ordinance, - No. 47 of 1949 called the Saurashtra Terminal Tax and octroi ordinance, 1949. The ordinance extended to the whole of The State of Saurashtra and came into force from 31-8-1949. Section 2 clause (2) of the ordinance defines 'octroi' as including a terminal tax. Section 3 empowers the Government to impose terminal tax and octroi duty. It provided that octroi may be imposed on "animals or goods, or both, within the octroi limits brought for consumption or use therein". Under

section 4 Government is empowered to make rules. In exercise of the powers under the ordinance the State Government made rules relating to octroi known as the Saurashtra octroi and Terminal Tax Rules on 8th December, 1949 which was published in the Saurashtra Gazette on 15th December, 1949. Rule 3 is the charging rule which provides that octroi is payable in respect of goods set out in the Schedule I attached to the Rules and prescribed that octroi shall be payable at the nakas at rates set out therein. Item No. 23 is "Salt for Factory". Schedule II which gives a list of items which are exempt from octroi duty contains in item No. 6, a sub-item in Gujarat which means "Salt". Thus under item 23 "Salt for Factory" is liable to octroi duty. The octroi duty may be imposed under section 3 on "animals or goods, or both, within the octroi limits brought for consumption or use therein". On the facts found, namely that uncrushed salt was brought into the factory situate within the octroi limits and crushed salt taken away for export from the octroi limits can it be said that the salt thus brought are goods for consumption or use therein. It is the common case that the uncrushed salt as brought into the octroi limits is crushed and in the crushed form sent to the jetty for export. The finding of the High Court is that the crushing of the uncrushed salt and sending the crushed salt to the jetty within the octroi limits will be used therein as required under section 3.

In this appeal it is necessary for us to consider the scope of the words "consumption" and "use". The precise meaning to be given to the words "consumption" and "use will depend upon the context in 17-475 SCI/79 248

which they are used. These words are of wide import. In the Constitution of India, Entry 52 in List II in Seventh Schedule a right to impose tax "on entry of goods into the local area for consumption, use or sale" is conferred. In *Burmah Shell oil Storage & Distributing Co. India Ltd. v. The Belgaum Borough Municipality* this Court after tracing the history of octroi and terminal tax observed that while terminal tax is a kind of octroi which is concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods brought into the area for consumption, use or sale. They were leviable in respect of the goods put to some use or the other in the area but only if they were meant for such user.

In considering the meaning of the words "consumption" and "use" this Court observed in *Burmah Shell* case (supra) that the word consumption; its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word "consumption" has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up. In *M/s. Anwarakat Mahboob Co. v. The State of Bombay* (now Maharashtra) and others, the question that arose was whether conversion of one commodity into another commercially different article would amount to consumption. The facts of the case were that tobacco was purchased and in the Bombay State the stem and dust from the tobacco was removed. It was contended that removing the stem and dust from the tobacco did not amount to consumption of tobacco or had the effect of converting tobacco into an article commercially different. The Court held that when the tobacco was delivered in the State of Bombay for the purchase of changing it into a commercially different article, viz.,

biddipatti the delivery was for the purpose of consumption. This Court followed the decision in State of Travancore Cochin and ors. v Sanmugha Vilas Cashew Nut Factory and Ors. wherein it was held that the raw cashew nuts were put through a process and new articles of commerce, namely cashew nut oil and edible cashew nut kernels were obtained. The Court expressed the view that the raw cashew nut is consumed in the process. On the facts the High Court found after referring to the different processes of baking or roasting. Shelling pressing, peeling etc. that although most of the process is done by hand, part of it is also done mechanically by drums. Oil is extracted out of the outer shells as a result of roasting.. After roast-

249

ing the outer shells are broken and the nuts are obtained. The i J poison is eliminated by peeling oil the inner skin. By this process of manufacture. the respondents really consume the raw cashew and produce new commodities. This Court accepted this finding and observed at p. 113 that the raw cashew nuts, after they reach the respondents, are put through a process and new articles of commerce, namely, cashew-nut oil and edible cashew nut kernels, are obtained. In Anwar Khan Mahboob Co. (supra) this Court gave the example of the process through which cotton is put through before ultimately the final product the wearing apparel is consumed by men, women and children. The Court observed: "But before cotton has become a wearing apparel, it passes, through the hands of different producers, each of whom adds some utility to the commodity received by him. There is first the act of ginning; ginned Cotton is spun into yarn by the spinner; the spun yarn is woven into cloth by the weaver; the woven cloth is made into wearing apparel by the tailor." At each of these stages distinct utilities are produced and what is produced is at the next stage consumed. It is usual, and correct to speak of raw cotton being consumed in ginning.

Applying this test the conclusion is irresistible that when uncrushed salt is crushed in the factory it is commercially a different article and the uncrushed salt must be held to have been consumed. The word "use" is of wider import than "consumption". It cannot be denied that the uncrushed salt has been used and by the user a new product crushed salt has come into existence.

On a consideration of the facts and circumstances of the case we are satisfied that octroi is leviable on the uncrushed salt which is brought-to the octroi area and crushed as the activity would amount to both consumption and use of the uncrushed salt. In the result the appeals fail and are dismissed with costs.

N.V.K.

Appeals dismissed.

250