PURI MUNICIPAL COUNSEL AND ORS. A

v.

INDIAN TOBACCO CO. LTD.

NOVEMBER 8, 1995

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.] B

Orissa Municipal Act, 1950/Puri Octroi Bye-laws, 1971 :

Ss.131(1) (KK), 388(3)/Bye-law11(2)—Octroi tax—Levy of on marine fish and prawns at entry points—Evasion of tax—Municipality levying tax on C *non-fishermen found in possession of fish and prawns within municipal area—Held, a person merely in possession of such items within municipal area cannot be presumed to be an evader because he may not have caused the entry and hence be not an evader.*

Words and Phrases : D

Word 'evasion' occurring in Bye-law 11(2) of Puri Octroi Bye-Laws 1971—Meaning of—Explained.

The appellant, Puri Municipality, imposed Octroi tax on marine fish E **and prawns found in possession of non-fisherman and brought within the municipal limit without payment of Octroi tax thereon at the entry point. The respondent-company, challenged the action of the Municipality by filing a writ petition before the High Court. The Municipality contended that under bye-law 11(2) of the Puri Octroi Bye-laws, 1971, it could proceed against the possessors of fish or prawns, including exporters of the items,** F **on the premise of non-payment of Octroi tax. The High Court rejected the plea of the Municipality and allowed the writ petition. Aggrieved, the Municipality filed the appeal by special leave.**

On the question : Whether the taxing provisions of the Orissa G **Municipal Act, 1950 and the Puri Octroi Bye-laws, 1971 permitted the Puri Municipal Council to charge Octroi tax on a non- fisherman merely found in possession of fish and prawns within the municipal area or while taking them out through exit points or Octroi posts.**

Dismissing the appeal, this Court H

A **HELD : 1.1. The word 'evasion' when seen married to the expression 'octroi tax', is conceivably a wrong committed by the person bringing goods within municipal limits, since it is an entry tax. The person bringing the goods without payment of Octroi is the evader and can certainly be brought within the grip of Bye-law 11(2) of the Puri Octroi Bye-laws, 1971. A person** B **merely in possession of such goods within a municipal area cannot be brought within the ambit of bye-law 11(2) raising a presumption that he is an evader because he may not have caused the entry and hence be not an evader. [833-E]**

1.2. If the Municipality was not in a position to put up Octroi posts C **at every conceivable point alongside the sea shore, it is the concern of the municipality and this aspect does not relate to the subject. On such pleas, the tax cannot be allowed to assume the character of a possessory tax or an exit tax. That would be against the text and content of the taxing provisions and their culpable part. [833-G, F]**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 199 of 1979.

From the Judgment and Order dated 21.7.78 of the Orissa High Court in O.J.C. No. 801 of 1977.

E Ms. Uma Mehta Jain, (Ms. Mana Chakraborty) for M/s. Bagga Associates Advs. for the Appellants.

Rajan Narain for JBD & Co., Raj Kr. Mehta, Vinoo Bhagat, (NP) for the Respondents.

F The following Order of the Court was delivered :

The famous city of Puri in the State of Orissa, is a municipality under the Orissa Municipal Act, 1950. It's limits extends upto the sea waters, on the side of the Bay of Bengal. Fish and prawn caught by fishermen from the sea have all along been brought within the municipal limit, sometimes G through the nearest Octroi checkpost on payment of Octroi and more often without adopting that course. The fish and prawn are then taken to the market by fishermen where they are sold and bought by non-fishermen for local consumption or for export to other destinations. In the latter course, the goods inevitably are transported and have to pass out through Octroi checkposts. The dispute between the parties i.e. the Puri Municipal Coun- H cil and its officers on the one side and the Indian Tobacco Company Ltd.

on the other, as projected before the High Court in writ proceedings centered around the question whether the taxing provisions of the Orissa Municipal Act and the bye-laws made thereunder, permitted the Puri Municipal Council to charge octroi tax on a non-fishermen merely found in possession of fish and prawn within the municipal area, or while taking them out through exist points, or Octroi posts. On challenge made by the respondent company to the steps taken by the Municipal Council, the Division Bench of Orissa High Court has taken the view that the invoked Bye-law 11(2) the Municipal Council speaks of 'evasion' authorising the municipality to effect recovery of octroi tax on detection of that happening but that word was considered by the Bench to be distinct from 'non-payment of octroi duty' the doubt abut which could arise when the commodity is found in the municipal area in the possession of someone. The straight case of the municipality was that it can, under the said Bye-law, proceed against the possessors of fish or prawns including exporters of these on the premise of non-payment of octroi tax. That plea has been negatived by the High Court by a well-reasoned judgment.

A B C

The word 'evasion' when seen married to the expression 'octroi tax', is concievably a wrong committed by the person bringing goods within municipal limits, since it is an entry tax. The person bringing the goods without payment of octroi is the evader and can certainly be brought within the grip of Bye-law 11(2). A person merely in possession of such goods within a municipal area cannot be brought within the ambit of Bye-law 11(2) raising a presumtion that he is an evader because he may not have caused the entry and hence be not an evader. On the plea of the Municipality, the tax cannot be allowed to assume the character of a possessory tax or an exit tax. That would be against the text and content of the taxing provisions and their culpable part. The High Court in this fact situation properly saw through the matter and, in our view, afforded appropriate relief to the respondent, throwing out the specious plea of the appellant-municipality based on the fact that it was not in a position to put up octroi posts at every conceivable point alongside the sea shore. That aspect is the concern of the municipality and not that of the subject. If the words in the taxing statute fail, the tax must fail, without sentiment playing any role.

D E F G

For the afore reasons, the appeal fails and is hereby dismissed. There shall be no order as to costs.

R.P. Appeal dismissed.