

THE MUNICIPAL COMMISSIONER, THANE AND ANOTHER

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v.

H. AND R. JOHNSON (INDIA) LTD. AND ANOTHER

AUGUST 6, 1996

[S.P. BHARUCHA AND K.T. THOMAS, JJ.]

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*Municipalities : Maharashtra Municipalities Act, 1965—Section 105—Maharashtra Municipalities (Octroi) Rules, 1968—Entry 45 and 47 of Schedule-I—Clay-import of—Levy of octroi duty on—Held, clay falls under Entry 47 of Schedule I of the Rules—Hence octroi duty at lower rate—Municipal Corporation failed to prove that clay is "stone powder" under Entry 45 attracting higher rate of duty—Plea that refund would erode financial position of the Municipal Corporation not accepted—Refund ordered by the High Court upheld.*

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*Words and Phrases—"Clay"—Meaning of in the context of Maharashtra Municipalities (Octroi) Rules, 1968.*

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The respondent imported clay for manufacturing ceramic tiles. The Municipal Corporation was empowered to levy octroi duty on the goods brought into the territorial limits of Municipal Corporation. Respondents were liable to pay octroi duty at the rate of Re. 1 as "clay" being "earth of any other kind" falls under Entry No. 47 of the Schedule. But the Municipal Corporation insisted on payment of higher octroi duty as "clay" was stone powder under Entry 45 of the Schedule. The Respondents filed a petition in the High Court. The High Court held that "clay" falls within Entry No. 47 and directed the appellant Corporation to refund the excess amount collected. Aggrieved by the order of the High Court, the present appeal is preferred by the Municipal Corporation.

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Dismissing the appeal, this Court

HELD : 1. There is no merit in the contention of the appellant Corporation that the "clay" imported by respondents must be kept outside the ambit of Entry 47 of Schedule I of the Maharashtra Municipalities (Octroi) Rules. The burden was on the appellant Corporation to show that clay imported by the respondent was stone powder when they insist on the application of higher duty. But no material has been produced by the

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A appellant either before the High Court or before this Court in proof of their stand. [304-F; 305-A]

B 2. The plea of the appellant Corporation that refund would badly erode its financial position cannot be accepted. Levy was collected under interim orders of the High Court wherein it was specifically ordered that in case the petitioner succeeds, the Corporation would refund the excess duty. Parties are bound by the order. [305-B-E]

C *State of West Bengal and Others v. Jagdamba Prasad Singh and Others*, AIR (1969) Cal. 281 and *M/s. Amar Singh Modilal v. State of Haryana and Others*, AIR (1972) Punjab and Haryana 356, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2185 of 1993.

D From the Judgment and Order dated 3.2.93 of the Bombay High Court in W.P. No. 6037 of 1991.

A.M. Khanwilkar for the Appellants.

E D.A. Dave, Sanjay Karol and Ms. Meenakshi Arora for the Respondents.

The Judgment of the Court was delivered by

F THOMAS, J. The question to be determined in this appeal has boiled down to a very narrow compass - whether the "clay" imported by the respondents for manufacturing ceramic tiles can be brought within the ambit of the item described as "earth of any other kind", in Entry No. 47 of Class IV of Schedule I of the Maharashtra Municipalities (Octroi) Rules, 1968, (for short 'the Rules'). Respondents contended that the clay imported by them falls within the said category which contention was found favour with the High Court of Bombay in the writ petition filed by G the respondents. The said decision is now being challenged in this appeal.

The question came up through the facts of this case which are summarised as follows :

H Respondents are manufacturing ceramic tiles in their factory situated within the limits of Thane Municipal Corporation (Maharashtra State). The

main ingredient used for the said product is clay which respondents get down from Rajasthan and Andhra Pradesh. Under Section 105 of the Maharashtra Municipalities Act, 1965, the municipal corporation is empowered to levy octroi duty on the goods brought into the territorial limits of the municipal corporation at a rate not exceeding the maximum limit prescribed by the Rules. Goods are classified in Schedule I of the Rules for fixing different rates of octroi duty. In this case, we are only concerned with the goods classified in Entries 45 and 47 of the Schedule.

Entry No. 45 thereof consists of coal tar, asphalt, bitumen, flooring stone, manganese, emery stone or powder, chalk powder, stone chips, *stone powder*, Agra stone, stone for building clinker and coal ash. In respect of those goods Thane Municipal Corporation decided to levy the maximum octroi duty of 4% on the value prescribed by the Rules. Entry 47 consists of yellow earth and *earth of any other kind*, sand, metal, rubble, murum and gravel, for which the Corporation is empowered to levy a maximum of Rs. 2 per metric tonne. However, as for those goods, Thane Municipal Corporation has resolved to levy octroi duty only at the rate of Re. 1 per metric tonne.

Respondents pleaded that the clay imported by them shall be counted as "earth of any other kind". But the Municipal Corporation insisted that the respondents should pay higher octroi duty as the clay is "stone powder" mentioned in Entry No. 45.

Respondents filed the writ petition in the High Court contending that the stand of the municipal corporation is erroneous and hence they may be inhibited from collecting octroi duty at the higher rate. The High Court found in the impugned Judgment that this clay would fall within Entry No. 47 and as such respondents are liable to pay octroi duty only at the lesser rate of Re.1 per metric tonne. On the strength of the said finding the High Court directed the Corporation to refund the excess amount collected from the respondents on and after the date of writ petition.

Learned counsel for the appellant - Corporation assailed the conclusion of the High Court contending that the expression "clay" as understood in common parlance is contradistinct from the meaning attached to the word "earth". Counsel also contended that the raw material used by the respondents being a special quality of china clay, the same could only have been classified as "stone powder" mentioned in Entry 45 of the

- A Schedule. Alternatively, it was contended that High Court should not have ordered refund of the amount already collected.

- B In support of the first contention a reference was made to the observation contained in the decision of a Division Bench of the Calcutta High Court in *State of West Bengal and Ors. v. Jagdamba Prasad Singh and Ors.*, AIR (1969) Calcutta 281 that "ordinary earth is not ordinary clay and cannot be called a minor mineral and the word 'clay' is not identical with earth". Counsel brought to our notice that the aforesaid observation was approved by the Full Bench of the Punjab and Haryana High Court in *M/s. Amar Singh Modi Lal v. State of Haryana and Ors.*, AIR 1972 Punjab & C Haryana 356. After going through the relevant passages in the decisions cited before us, we do not think that any such passing observation would be of help to decide this dispute. That part, the Calcutta High Court was not inclined to extricate clay from earth for all purposes by pointing out in the decision that there are some kind of earth which may be clay. The Full D Bench in *Amar Singh's* case (supra) has in fact skipped that issue by observing that the said aspect does not have even a remote connection with the question involved in the case before them.

- E Among the goods catalogued in Entry No. 45 of the Schedule only one item need be considered in this context and that is "stone powder" because no other item mentioned in the said entry has even a semblance with the clay involved in this case. Nor did the appellant make any attempt to show that clay is anything other than stone powder.

- F We must point out in this context that the burden is on the appellant to show that clay imported by the respondents is stone powder when they insist on the application of a higher duty chargeable entry. But no material, whatsoever, has been produced by the appellant either before the High Court or here in proof of their stand.

- G The meaning or definition provided in standard dictionaries to the word "clay" would not help the appellant who made an endeavour to trace out some support from such lexicons. In the Websters Dictionary "clay" is shown as "a natural earthy material... used chiefly for making bricks; used in earth or mud". In the Concise Oxford Dictionary "clay" is given the meaning as "stiff tenacious earth." In Chambers (Twentieth Century) Diction H aryana 356. After going through the relevant passages in the decisions cited before us, we do not think that any such passing observation would be of help to decide this dispute. That part, the Calcutta High Court was not inclined to extricate clay from earth for all purposes by pointing out in the decision that there are some kind of earth which may be clay. The Full Bench in *Amar Singh's* case (supra) has in fact skipped that issue by observing that the said aspect does not have even a remote connection with the question involved in the case before them.
- H aryana 356. After going through the relevant passages in the decisions cited before us, we do not think that any such passing observation would be of help to decide this dispute. That part, the Calcutta High Court was not inclined to extricate clay from earth for all purposes by pointing out in the decision that there are some kind of earth which may be clay. The Full Bench in *Amar Singh's* case (supra) has in fact skipped that issue by observing that the said aspect does not have even a remote connection with the question involved in the case before them.

Therefore, we find no merit in the contention of the appellant - Corporation that the clay imported by the respondents must be kept outside the ambit of Entry 47 of schedule I of the Rules. A

The alternative contention regarding refund of the amount (as ordered by the High Court) was advanced before us on the premises that it would badly erode the financial position of the Corporation - at any rate, the appellant may be denied of the higher duty only from the date when the controversy is set at rest, and all that is done or collected till then need not be reimbursed. B

We may point out that when respondent moved for an interim order before the High Court of Bombay for stay of collection of octroi duty at the higher rate the following order was passed on the application on 13th March, 1992. C

"Heard counsel, Interim relief refused. The payment of Octroi duty cannot be stayed. In case petitioner succeeds the respondents will refund the excess duty." D

Parties are bound by the said order and it is too late in the day for the appellant to make a plea on the strength of financial burden etc. Refund has rightly been ordered by the High Court and it calls for no intervention by us. E

We dismissed this appeal without any order as to costs.

S.V.K.I.

Appeal dismissed.