RANBAXY LABORATORIES LTD.

v.

MUNICIPAL COUNCIL, ROPAR

NOVEMBER 2, 2006

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Punjab Municipal Committee Act: Schedule, Entries 40(a) and 40(e)—Commercial Heavy Chemicals—Octroi duty—Levy of—Assessee paying octroi duty under Entry 40(a) for 13 continuous years—Revenue seeking classification under Entry 40(e)—High Court holding in favour of revenue—Correctness of—Held: Not correct as burden to prove that a product falls under a particular tariff item is on revenue which it failed to discharge—Matter remitted to High Court for fresh consideration.

The appellant had been paying octroi duty on Commercial Heavy Chemicals brought by it to its factory continuously for 13 years under Entry 40(a) of the Schedule of the Punjab Municipal Committee Act. The respondent sought to change the classification of the said product to Entry 40(e) without change of circumstance and without discharging the burden of proof cast on it to show that the product falls in that entry. The High Court allowed the claim of respondent. Hence the present appeal.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: 1. The High Court has not properly interpreted the Entries, which is contrary to the settled principles of interpretation. The burden of proof to show that a product falls within a particular tariff item is always on the revenue. The respondent, Municipal Council has failed to establish and justify the burden of proof, the taxability ingredient of the appellant's goods under Entry 40, sub-clause (e). The High Court has failed to appreciate that it is the respondent-Revenue Authority which is cast with the duty of assessing octroi to be imposed on the appellant and that the said respondent, Municipal Council has for 13 continuous years assessed the goods in question under Entry 40(a) of the Schedule as heavy commercial chemicals. [363-G, H; 364-A-B]

2. The High Court, in cases like this, ought to have ordered notice to the respondent and disposed of the matter after hearing both the parties and after ascertaining as to which rate of duty Entry is applicable and payable for the product in question. The interest of justice would require that another opportunity should be given to both the parties to argue the appeal afresh and on merits. The appellant is directed to pay a ½% duty for the product till the disposal of the Second Appeal. The Respondent - Municipal Council is directed to receive the same without prejudice to the rights and contentions in the Second Appeal and the final outcome of the Second Appeal. [364-B, D, F, G] A B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4657 of 2006. C

From the Final Judgment and Order dated 18.2.2005 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 704/2005.

Arun Jaitley, Soli J. Sorabjee, H.S. Mathew, Rupinder Singh Suri, Vinay K. Shailendra and Ajay Dahiya for the Appellant. D

A.P. Bhandari and S.C. Patel for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. E

The above appeal is directed against the final judgment/order dated 18.2.2005 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. no.704 of 2005. The unsuccessful plaintiff is the appellant in this appeal. The respondent is the Municipal Council, SAS Nagar, Mohali.

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We have perused pleadings and the judgments of all the three courts and heard the arguments of Mr. Arun Jaitley, learned Senior Counsel for the appellant and Mr. A.P. Bhandari, learned counsel for the respondent.

The issue which arises for consideration in the present appeal is whether an entry in a tariff schedule which after specifying the subject matter of the entry and illustrating it with examples by using the word '*like*' can be construed as being limited to only the items listed by way of illustration or includes all such products as answer the classification of the entry and further whether the revenue can change the classification of the product from the specific enumerated entry, which was accepted for 13 years to the residuary clause G H without any change of circumstance and without discharging the burden of proof cast on the revenue to show that the particular product falls in the residuary tariff item and not in the specific enumerated entry.

In the plaint, in paragraph 4, it has been mentioned that the description of Annexure-'A' itself shows that the quantity of the Heavy Commercial Chemicals is brought to the factory premises in bulk, for example, in a period of nine months from April to December 29, 1995 the receipts of Commercial Heavy Chemicals like Ascetic Acid Glacial - 3,06,415 kg; Caustic Lye - 6,82,205 kg; Ethyl Acetate - 3,65,270 kg. Hemane - 3,45,094 kg., Hydrochloric Acid - 39,22,195 kg., Methylene Chloride - 7,82,203 kg.; Penicillin G-4,32,812 Bous, Pen V Acid-1,75,027 kg. The quantities as highlighted above would show that the Heavy Commercial Chemicals are being brought to the factory premises by the appellant/Plaintiff is bulk.

The case of the appellant, according to the learned Senior Counsel, is covered for the purposes of payment of octroi duty only under clause (a) of Entry 40 as mentioned in the heading of the plaint which reads as under and the appellant is liable to pay octroi duty @ ½% only on Heavy Commercial Chemicals.

> "Heavy commercial chemicals like Sulphur, refined soda, caustic soda, acids, bleaching power, carbonates excluding sodium carbonate, bicarbonates of ammonia, calcium, zinc and sodium, etc. magnesium chloride and soda silicate."

It is the further case of the appellant that the appellant has been paying octroi duty on Commercial Heavy Chemicals brought by it to its factory under clause 40(a) right from the beginning when octroi duty was imposed, without any difficulty. Some of the receipts of last five years wherein octroi duty has been charged under clause 40(a) were attached with the plaint. Thus, it is submitted that keeping in view the nature of the Commercial Heavy Chemicals brought by the appellant to the factory premises which is situated within the municipal limits of the respondent's Committee, the appellant is liable to pay octori duty only at ½% and not more than that. It is the further case of the appellant that there has been no trouble in payment of octroi duty as per the schedule during the last six years as it was being charged rightly so much so that the appellant was extended O-4A facility for making the payment. But of late the respondent had started claiming that the appellant is liable to pay octroi duty not under clause 40(a) but under clause

40(e) which is altogether illegal and has even threatened to withdraw O-4A facility. It is further submitted that the respondent is bound to charge and levy only octroi duty as per the schedule mentioned above and is under obligation not to make any illegal false claim thus the appellant cannot be made liable to pay something for which the appellant is not liable at all. Thus, it is submitted by the learned Senior Counsel that the appellant is entitled to the injunction as prayed for in the plaint.

Mr. A.P. Bhandari, learned counsel appearing for the Municipal Council submitted that the appellant is using different types of chemicals; some of them are heavy commercial chemicals and some of them are fine chemicals and that the chemicals which are heavy chemicals are having more weight and they are in crude form and for those chemicals, the octroi will be charged at a ½% whereas the fine chemicals are those chemicals which are mainly produced in comparatively small quantities but are costlier and for those chemicals, the octroi is being charged @ 1%. It is further submitted that the Taxing Authority or a Taxing Statute does not debar to rectify the wrong which has already been done. And that the appellant prayed to charge 1% octroi for taking the goods in its factory and was submitting the Form-O(4A) which means that they were sending themselves *suo motu* the octroi of ½% which naturally escaped from the Taxing Authority of the respondent, because at that time, the tax was being paid by the appellant on his own so the wrong could not be detected earlier. It was however submitted that if the wrong done, this does not mean that the same cannot be set right, and as in this case, it has escaped in the initially from the respondent and as and when it came to the notice, they rectified its wrong. The learned counsel further submitted that the High Court has correctly appreciated the distinction between two entries i.e. 40(a) and 40(e) and that, therefore, it does not require for this Court any interference.

We have perused the judgment of the High Court and considered the rival claims. The High Court has not discussed many important issues raised by the appellant-plaintiff and also by the respondent-defendant. The High Court has not decided as to whether the onus or burden of proof to show that a product falls within a particular item is on the department or the assessee. The High Court has also not properly interpreted the Entries which is contrary to the settled principles of interpretation. It is settled by catena of decisions of this Court that the burden of proof to show that a product falls within a particular tarrif item is always on the revenue. In our view, the respondent, Municipal Council has failed to establish and justify the burden of proof, the taxability ingredient of the appellant's goods under Entry 40, sub-clause (e). As rightly pointed out by the learned counsel for the appellant, the High Court has failed to appreciate that it is the respondent-Revenue Authority which is cast with the duty of assessing octroi to be imposed on the appellant and that the said respondent, Municipal Council has for 13 continuous years assessed the goods in question under Entry 40(a) of the Schedule as heavy commercial chemicals.

Since the High Court disposed of the Second Appeal at the admission stage and without notice to the respondent, we feel that the interest of justice would require that another opportunity should be given to both the parties to argue the appeal afresh and on merits.

The High Court, in cases like this, ought to have ordered notice to the respondent and disposed of the matter after hearing both the parties and after ascertaining as to which rate of duty Entry is applicable and payable for the product in question.

We, therefore, have no other option except to set aside the judgment dated 18.02.2005 and remand the matter to the High Court for fresh disposal of the Second Appeal in accordance with law and after affording opportunity to both parties.

Now, the Second Appeal is remitted to the High Court for fresh disposal, the High Court is requested to frame the substantial questions of law in accordance with the Section 100 C.P.C. and decide the matter on merits.

It is stated by learned counsel for the appellant that the appellant had the benefit of stay during the pendency of the proceedings before the Trial Court and also the Appellate Court. We, therefore, direct the appellant to pay a ½% duty for the product till the disposal of the Second Appeal. The Respondent - Municipal Council is directed to receive the same without prejudice to the rights and contentions in the Second Appeal and the final outcome of the Second Appeal.

In the result, the judgment passed by the High Court in R.S.A. No. 704 of 2005 is set aside and the High Court is requested to dispose of the Second Appeal as expeditiously as possible.

The Civil Appeal is disposed of accordingly. No costs.

D.G. Appeal disposed of.