IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 62 OF 2006

Pune Municipal Corporation Applicant
Vs
M/s. Anil Traders .. Respondent

Mr.Abhijit P. Kulkarni, Advocate for Petitioner.
Mr.Nachiket Khaladkar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 09/02/2016

PC:

1. Heard Mr. Abhijit Kulkarni, learned counsel for the petitioner and Mr. Nachiket Khaladkar, learned counsel for the respondent at length.

2. By this Application under Section 115 of Civil Procedure Code, 1908, (for short, “C.PC”), the applicant has challenged the judgment and order dated 12.1.2006 passed by the learned Civil Judge, Jr. Dn., (P.M.C.) Pune on preliminary issue in Regular Civil Suit No.717 of 2005. By that order, the learned trial Judge overruled the preliminary objection raised by the applicant, hereinafter referred to as 'defendant', and held that civil court has jurisdiction to entertain and try the suit.

3. The respondent, hereinafter referred to as 'plaintiff' instituted suit for declaration and perpetual injunction. The plaintiff contended that on 27.4.2005 two trucks carrying the consignment of the Khajuraho Beer arrived at Ramwadi Octroi Naka. Naka Officer charged octroi on the invoice including the

Sales Tax amount. Naka Officer also included the transport charges in the invoice. The plaintiff objected to inclusion of sales tax and transport charges in the invoice value for octroi. Naka officer refused to accept the claim made by the plaintiff and told him that the defendant is collecting octroi as per Value Added Tax (for short, 'VAT') and charges are correctly levied.

4. The plaintiff further contended that the defendant has no authority in law to recover octroi on sales tax paid by the plaintiff. The plaintiff relied upon Rule 2(21) of the Pune City Municipal Corporation Octroi Rules (for short, 'Rules') as also Standing Order 2(22) of Pune Municipal Corporation Octroi Standing Orders (for short, 'Standing Orders') to contend that expression “value of the goods” does not include Sales Tax. The plaintiff further contended that the contention of the Naka Officer that octroi is charged as per provisions of VAT is totally wrong and false as the VAT is charges of sale tax to be recovered at the end of the transaction after deducting the taxes previously paid and the same can not be recovered when the goods are in transit. Moreover, as per the notification relating to VAT, Octroi or Entry Charges are outside the VAT i.e provision of VAT is not applicable to octroi. In short, the plaintiff has challenged the authority of the defendant to recover octroi which includes sales tax/VAT.

5. Mr.Kulkarni submitted that the defendant raised contention that under section 406 of the Maharashtra Municipal Corporation

Act (for short, 'Act'),the plaintiff cannot approach civil court. The learned trial Judge overruled that objection and held that civil court has jurisdiction. Mr. Kulkarni invited my attention to communication dated 23.8.2005 addressed by Desk Officer of Urban Development Department, Government of Maharashtra to contend that with effect from 1.4.2005 the Government has cancelled the sales Tax Act and instead that, has introduced VAT. It is further informed that till such time Rules 2, 21, 35 are suitable amended so as to substitute the words 'Sales Tax” by VAT, the Corporation can recover octroi by including VAT in the “value of the goods” from 1.4.2005. He, therefore, submitted that the Corporation is authorized to include VAT in the “value of the goods” and recovery octroi on that basis.

6. It is not in dispute that trucks were brought into municipal limits on 27.4.2005. The moot question is whether as on that date the expression “Value of the goods” as defined in Rule 2(21) and Standing Order 2(22) included sales tax and/or VAT. Rule 2(21) reads thus:

> “2. In these rules, unless there is anything repugnant in the subject or context-
>
> (21) Value of the goods where the octroi is charged ad valorem shall mean the value of the goods made up of the cost price of the goods as ascertained from the original invoice plus Shipping dues, Insurance, Customs Duty, Excise Duties, Vend Fee, Freight Charges, Carriage Charges and all other incidental charges incurred by the Importer till the arrival of the goods at the Import Naka.

> Note: The words Sales Tax are deleted."

Standing Order no.2 (22) reads thus:

> "2. In these Standing Orders, unless there be something repugnant in the subject or context -
>
> (22) 'Value of the Goods" where the Octroi is charged ad valorem shall mean the value of the goods made up of the cost price of the goods as ascertained from the original invoice plus Shipping dues, Insurance, Customs Duties, Excise Duties, Vend Fee, Freight Charges, Carriage Charges and all other incidental charges incurred by the Importer till the arrival of the goods at the Import Naka."

These definitions are extracted from Commentary on B.P.M.C. Act, 1949, Fourth Edition, 2007 by Sunil Dighe, Advocate High Court, Mumbai.

7. While deciding the preliminary issue, in paragraph 8 the learned trial Judge has observed thus :

> "Considering the facts and nature of the suit of the present matter, I have to see whether plaintiff's case comes under one of the principles laid down by Hon'ble Supreme Court in Dhulabhai's case. As regards to the first principle laid down by Apex Court in Dhulabhai's case that where a statute given finality to the order of the special tribunal, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in the suit. Such provisions however does not exclude those cases where the provision of particular Act have not complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It means that when the special tribunal has a power to give the order, which has finality but not acted within the four corners of the law, the civil court has a jurisdiction. Applying this principle to the present case, admittedly the defendant corporation has recovered the tax on Sales Tax, after implementation of the VAT Act. This fact is not in dispute. In short, the defendant corporation has charged the tax on tax. Hence, the defendant corporation

> has not acted within the provision of the B.P.M.C Act. So, I accept the submission made by the plaintiff's Advocate that there is a jurisdictional error.”

Admittedly, the defendant Corporation has recovered the tax on Sales Tax after implementation of the VAT Act. This fact is not in dispute. In short, the defendant Corporation has charged octroi tax on tax. Hence, the defendant Corporation has not acted within the provisions of B.P.M.C Act, so accept the submission made by the plaintiff's Advocate that there is jurisdictional error.

8. Mr. Kulkarni submitted that the finding recorded in paragraph 8 that the Corporation has recovered tax on sales tax is factually incorrect. The defendant Corporation is not recovering octroi by including sales tax component in the expression “value of the goods”. It is not necessary for me to express any opinion on this aspect for the order which I propose to make.

9. The learned trial Judge should have considered the position of Octroi Rules and Standing Orders as on 27.4.2005. The learned trial Judge ought to have considered the definition of the expression “value of the goods” as contained in Rule 2(21) and Standing Order in 2(22). The learned trial Judge unfortunately has not referred and quoted these provisions in the impugned order. On this Count alone the impugned order is liable to be set aside with direction to the trial Court to decide preliminary issue afresh after considering the definitions of the expression

“value of goods” in Rule 2(21) of the Rules and Standing Order 2(22) of the Standing Orders as were/are in force as on 27.4.2005 and whether the Corporation can levy octroi by including VAT in the expression 'value of the goods”. The learned trial Judge will deal with all contentions in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)