

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2306 OF 2007

Klassic Wheels Private Limited
Through it's Managing Director
Shri Ramesh Nemichand Munot,
Age: 59 years, Occu. Business,
Head Office, L-2, MIDC Area,
Ahmednagar – 414 111 (M.S.)

... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary
Department of Urban Development,
Mantralaya, Mumbai -32.
2. The Municipal Corporation,
Ahmednagar, Dist. Ahmednagar.
3. The Commissioner,
Ahmednagar Municipal Corporation,
Ahmednagar.
4. Shri Sai Enterprises,
Through its Manager,
Having of Office at Central Godwn,
Station Road, Wadi Park,
Ahmednagar.

... Respondents.

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Mr. A.K. Gawali, Advocate for the Petitioner.
Mr. P.G. Borade, A.G.P. for State.
Mr. S.P. Shah, Advocate for Respondent Nos. 2 and 3.
Mr. S.B. Bhapkar, Advocate for Respondent No.4.

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**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATED : 28th MARCH, 2018

JUDGMENT (PER : T.V. NALAWADE, J.)

1. This Petition is filed to challenge the Constitutional validity of Condition No.5 of Rule 21 Clause 18 of the Ahmednagar Municipal Corporation Octroi Standing Order and also for setting aside the order of the authority dated 03.03.2007 by which the petitioner is directed to pay octroi as per the aforesaid Rule.

Both sides are heard.

2. The petitioner is a company and it has a processing unit whereby using raw material like polyol and isocyanates, foam is prepared by using machinery. It is the case of the petitioner that it is only doing job work and the material is not owned by it and the same is supplied by another company namely Kaygee Foams Pvt. Ltd. (for short, 'Kaygee Foams') which wants foam to be prepared by using the aforesaid material. It is the case of the petitioner company that in the past, because of paying of octroi @ 3% of total processing fees (bill) which is payable to the petitioner company for doing job work, but by the order dated 06.09.2006, the authority under Corporation Act has demanded

octroi of Rs.3,73,497/- which is octroi on the price of the raw material and not on the amount which the petitioner was to get for doing job work. It is contended that as the raw material is not owned by the petitioner and as the petitioner is not using the same for itself, the aforesaid bill cannot be used against the petitioner. Alternatively, it is contended that the aforesaid provisions cannot sustain in view of the provisions of the Constitution.

3. The submissions made and the record shows that in a chemical process, by using aforesaid two ingredients, the petitioner was manufacturing foam. This Court has carefully gone through the provisions of Section 127 of the Maharashtra Municipal Corporation Act and the definition of 'octroi' given in Section 2(42) in the said Act. Meaning of octroi is given in Section 2(42) of the Act, which is as under:

“2 (42) “octroi” means a cess on the entry of goods into the limits of a city for consumption, use or sale therein but not include a cess as defined in clause 6A or ;Local Body Tax, as defined in Clause 31A.

4. When the petitioner is admitting that the aforesaid raw material was brought within the limits of the Corporation for

manufacture of foam, a new product, it cannot be said that the petitioner was not consuming aforesaid two components used for manufacture of the foam. Thus, there is consumption for manufacture of new article of raw material and as the petitioner is doing it, the octroi can be recovered on the basis of the price of the raw material. If the proposition made by the petitioner is accepted, virtually no manufacture can be made liable to pay the octroi on the raw material which is used in factories in manufacturing process. Thus, on the basis of the provisions of the Act and the Rules, it cannot be said that the petitioner is not liable to pay octroi on the basis of the process on the raw material.

5. So far as the other relief like declaration that the Rule itself is not tenable in view of the provision of the Constitution is concerned, however, it cannot be said that such challenge is not available as under the Corporation Act and provisions of Section 127 that vested in the Corporation to levy and correct octroi. The limits are given by the Government for levy of octroi and the classification for recovering octroi on different basis is done by the Corporation. The aforesaid contention cannot be said to be

unreasonable. Thus, it is not possible to declare that the Provision, Rule, itself is not Constitutional. Learned counsel for the petitioner places reliance on the judgment reported in ***AIR 1963 SC 906 (Burmah Shell Co. Vs. Belgaum Municipality)***. In that case, other activity like sale was involved and the facts were different. However, in that case, the meaning of consumption is given which is as under:

“The work 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 context, 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.”

6. The aforesaid meaning given by the Apex Court shows that in the present matter also, it needs to presume that the petitioner was consuming the raw material for manufacture of a substance. Thus, the activity falls under the aforesaid Rule and the reported case is of no help to the petitioner. In the result the Petition stands dismissed. Rule stands discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE