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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1005 OF 2018

Kalyan Dombivli Municipal Corporation … Petitioner

V/s.

Balkrishna Industries Pvt. Ltd., & Ors. … Respondents

Mr. A. S. Rao for the petitioner.

Mr. Atul Damle, Senior Advocate with Mr. Sushant Arora, Ms. Payal Vardhan, Ms. Vaishnavi Adhav i/by L. R. & Associates for respondent No.1.

Mr. Pradeep Jetly, Senior Advocate with Mr. Jitendra Mishra, Mr. Rupesh Dubey for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. By this petition under Article 227 of the Constitution of India, the petitioner is challenging the legality and validity of the order dated 18 February 2015 passed by the Additional District Judge-II, Kalyan, dismissing Civil Appeal No.43 of 2012 filed by the petitioner confirming order dated 15 February 2012 passed by the Civil Judge Senior Division, Kalyan in Municipal Appeal No.12 of 2002 filed under section 406 of the Bombay Provincial Municipal Corporations Act, 1949 (hereafter, “BPMC Act”, for short) challenging levy of octroi under Item No.79(c) of Schedule-I of the Kalyan Dombivli Municipal Corporation Octroi Rules, 1995 (hereafter, “KDMC Octroi Rules, 1995”, for short).

3. Respondent No. 1 company is engaged in manufacturing craft paper; therefore, it imports raw material, which, according to respondent No.1, is "waste paper" brought within the limits of the petitioner-municipal corporation. According to respondent No.1, raw material "waste paper" falls under Item 86 of the KDMC Octroi Rules, 1995. However, the petitioner wrongly classified “waste paper” under Item-79(c) of Schedule-I of the KDMC Octroi Rules, 1995.

4. On 11 July 2000, the petitioner informed respondent No.1 that “waste paper” falls under Item No.79(c) and not under residuary Item No.86 of Schedule-I of the KDMC Octroi Rules, 1995. Therefore, respondent No.1 was required to octroi @ 4% instead of 1.5% under Item No.86.

5. Respondent No. 1 initially filed Regular Civil Suit No.446 of 2000 challenging the levy of octroi under Item No.79(c). However, on 17 August 2001, the Appellate Court, in an appeal arising from an interim order, held that the Civil Court had no jurisdiction and proper forum or appeal under section 406 of the BPMC Act. Respondent No.1, therefore, filed Miscellaneous Appeal No.12 of 2002 under section 406 of the BPMC Act.

6. The petitioner filed its reply, including an issue of bar of limitation. However, the Joint Civil Judge Senior Division, Kalyan, allowed respondent No.1's appeal, holding that the raw material imported by respondent No.1, "waste paper," needs to be classified as Item No.86 of Schedule-I of the KDMC Octroi Rules, 1995 instead of Item No.79 of Schedule-I of the KDMC Octroi Rules, 1995.

7. The petitioner, aggrieved by an order dated 15 February 2012, filed Municipal Appeal No.43 of 2012 before the District Judge, Kalyan. The District Judge-II, Kalyan, by order dated 18 February 2015, dismissed the petitioner's appeal, confirming the order passed by the Civil Judge Senior Division, Kalyan. Hence, the petitioner filed the present writ petition.

8. Mr. A. S. Rao, learned advocate for the petitioner inviting my attention to Item Nos.86 and 79(c) of Schedule-I of the KDMC Octroi Rules, 1995, strenuously contented that "waste paper" imported by respondent No.1 for the manufacture of craft paper fall under Item No.79(c) and not under Item No.86(c). He submitted that without a specific application for condonation of delay, the Appellate Court, under section 406 of the BPMC Act, could not have condoned delay in filing the appeal. He submitted that all kinds of paper, regardless of composition and thickness, are covered under Item No.79(c); therefore, residual Item No.86 is applicable.

9. Mr. Pradeep Jetly, Senior Advocate for respondent No.3, supported the petitioner by relying on judgments in **State of Karnataka vs. Kasturi & Sons Ltd.** reported in (2000) 120 STC 564 and **Commissioner of Sales Tax, Maharashtra State, Bombay vs. C. Abhaykumar & Co.** reported in 1995 (98) STC 212. He submitted that the words in the entry need to be construed in the popular sense, which, completely conversant with the subject matter with which the statute is dealing, would attribute to it. He submitted that all kinds of paper in entry 79(c) need to be considered in the context of its ordinary use.

10. Per contra, Mr. Atul Damle, learned Senior Advocate for respondent No.1, submitted that the Courts below have rightly concluded raw material in the form of "waste paper" falls under Item No.86 and not Item No.79(c) of the KDMC Octroi Rules, 1956. According to him, respondent No.1 manufactures craft paper by preparing pulp from various raw materials/waste materials such as raw waste paper, old newspapers, and old cuttings. This raw material/waste material is brought from various locations to the factory of respondent No.1, which is within the jurisdiction of the petitioner-municipal corporation. Respondent No.1 has been carrying on aforesaid business for the last several decades till the year 2000; the petitioner was assessing said raw material under Item No.86. He submitted that waste paper must be given meaning, which is understood in common parlance. He submitted that the facts of filing a civil suit and its pendency were the facts within the petitioner's knowledge. These facts are pleaded in the memo of writ petition. Respondent No.1 has stated in its appeal memo all relevant facts that constitute sufficient cause; therefore, the Appellate Court has rightly condoned the delay in filing the appeal.

11. It is against the backdrop of the aforesaid factual matrix and submissions raised by the parties, and a short question that arises for consideration is whether "waste paper" could be included in "all kinds of paper whatsoever composition and thickness" and would come within Item No.79 of Schedule-I of the KDMC Octroi Rules, 1995.

12. Before the contentions are appreciated, it will be appropriate to set out relevant entries, which are as follows:

> *"86. The goods not included in any of the above items and not specifically exempted in schedule-I.*
>
> *"79. Paper*
>
> *(a) News print.*
>
> *(b) Card board, straw board, grey boards and mill boards.*
>
> *(c) All kinds of paper whatsoever composition and thickness."*

13. In the instant case, there is no dispute about the fact that "waste paper" is also a kind of paper. The description of paper in Item No.79(c) of Schedule-I of the KDMC Octroi Rules, 1995 includes paper as per Clause (c) are all kinds of paper. The item refers to paper all kinds. The expression "all kinds" differs from "in all forms". The conceptual difference between the expression "all kinds" and "in all forms" is that formal expression includes multiple items of the same kind. In contrast, later expression means the same commodity in different forms.

14. It is well-settled law that while interpreting the entry for the purpose of taxation, recourse should not be made to the scientific meaning of the terms of expression "used" but to their popular meaning, that is to say, the meaning attached to them by those dealing in them.

15. In **Commissioner of Sales Tax, Maharashtra State, Bombay vs. C. Abhaykumar & Co.** reported in 1995 (98) STC 212, this Court interpreted the expression "paper of all kinds" in entry 24(2) of Schedule-C to the Bombay Sales Tax Act, 1959. The Division Bench of this Court held that the expression "paper of all kinds" is wide enough to include every kind of paper within its ambit, whether used for printing, writing, or any other purpose. It is further held that the user of the goods is not material or relevant for determining whether it falls within item (2) of entry 24 or not, particularly having regard to the fact that entry relating to the paper of "all kinds" included sandpaper, strawboard, cardboard etc., which were not used for writing, printing or packing.

16. The Apex Court in **State of Karnataka vs. Kasturi & Sons Ltd.** reported in (2000) 120 STC 564, had occasion to consider a question as to whether waste paper sold by the assessee would be "paper" falling under entry 3 of Part-P of the Second Schedule to the Karnataka Sales Tax Act, 1957. During the relevant year, entry 3 of Part-P of the Second Schedule of the said Act read as follows:

> “Paper (all kinds) including carbon paper, blotting paper, waterproof paper, PVC coated paper, ferro paper, ammonia paper, stencil paper, but excluding photographic paper, pulp boards, art boards, duplex boards, triplex boards, card boards, corrugated boards and the like; cellophane.”

17. While interpreting the said entry, it is observed that "paper" does not cease to be a paper merely because it is printed or is of a similar size to what could be used for printing a newspaper. So long as any paper, even waste paper, can be used for any purpose for which paper is normally used, it will continue to be paper. It is held that entry 3 of Part-P of the Second Schedule to the Act includes "waste paper" even if it is not capable of being used for writing, printing or packing.

18. The Apex Court in **Collector of Central Excise, Kanpur vs. Krishna Carbon Paper Co.** reported in (1989) 1 SCC 150, was considering a question of whether carbon papers could be included in "all kinds of paper including the paper which even subjected to coating", would come within Sub-item (2) of the Item 17 or shall fall in residuary Item 68 of the Central Excise Tariff. Relevant Item 17(2) read as under:

Position in 1976

Item No.		Description of goods	Rate of Duty
17.		Paper and paper board, all sorts (including paste board, millboard, strawboard and cardboard and corrugated board), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power—	
	(1)	……..	……..
	(2)	Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such	30 per cent ad volorem

as coating, impregnating, corrugation, creping and design printing), not elsewhere specified.

19. The Apex Court observed that it was construing not paper as such but a particular brand of paper with a meaning attributed to it. Sub-item (2) of Item 17 referred to all kinds of paper, including paper or paper boards, which have been subjected to various treatments, such as coating and impregnating. Therefore, if all kinds of paper, including coated paper, are goods, the meaning attributed to those goods in the trade of those kinds of paper where the transactions occur shall be attributed to such entry. It is observed that if there is a market meaning or trade meaning of that kind of paper, that should be adhered to. It is held that all kinds of paper, including papers with coating and impregnating, would include carbon papers.

20. On consideration of Item No.79(c) in the light of position of law laid down by this Court and Apex Court, I am of the opinion that “waste paper” is “paper” falling under Item No.79(c) of the KDMC Octroi Rules, 1995.

21. Mr. A. S. Rao, learned advocate for the petitioner, submitted that in the absence of an application for condonation of delay, the Court, exercising power under section 406, could not have condoned the delay. Ordinarily, the application for condonation of delay must accompany a memo of appeal, particularly when provisions of the Civil Procedure Code are made applicable to proceedings under section 406 of the BPMC Act. However, the petitioner, in the memo of the writ petition itself, stated that immediately after communication by the petitioner calling upon respondent No.1 to pay octroi @ 4% as per Item No.79(c), respondent No.1 instituted Civil Suit No.446 of 2000 wherein the Civil Court granted an ex-parte injunction against the petitioner to collect octroi @ 1.5%. Only when the Appellate Court in Civil Appeal No.6 of 2001, on 17 August 2001, held that the Civil Court had no jurisdiction to entertain the suit did respondent No.1 file an appeal on 14 March 2002. Respondent No.2, in his appeal memo, has given a detailed explanation regarding the service of the communication dated 11 July 2000. In paragraphs Nos.5 to 11 of the appeal memo, respondent No.1 explained the period spent prosecuting a civil suit challenging the levy of octroi @ 4%. There is no serious dispute about the filing of the suit, and the Appellate Court is holding such a suit as not maintainable. Therefore, in the facts of the case, no fault can be found with the exercise of power by the Appellate Court condoning the delay. Even otherwise, the Apex Court in **Sesh Nath Singh and Anr. vs. Baidyabati Sheoraphuli Co-operative Bank Limited and Anr.** reported in (2021) 7 SCC 313, in paragraph 61 observed as under:

> "**61.** Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general

practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application."

22. The observations quoted above are applicable in the facts of the present case as there is no serious dispute about the filing of a civil suit and the date of its disposal.

23. In view of the conclusions recorded above, the orders of the Courts below holding 'waste paper' would fall in residual Item No.86 and not in Item No.79(c) deserves to be quashed and set aside.

24. Hence, rule is made absolute in terms of prayer clause (a).

(AMIT BORKAR, J.)