

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on 06.03.2024

CWP-8533-2002

Pronounced on:09.04.2024

M/S Sewa International Fashions Ltd, New Delhi

...Petitioner

vs.

State of Haryana and others

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. A.K. Chopra, Sr. Advocate with
Mr. Vidul Kapoor, Advocate and
Ms. Gurpreet Kaur Bhatti, Advocate

Ms. Tanisha Pehshawaria, D.A.G, Haryana.

Mr. Arvind Seth, Advocate for respondent No.2.

SUDEEPTI SHARMA, J.

1. Challenge in the instant writ petition is to order dated 05.09.1998 issued by the Commissioner, Municipal Corporation, Faridabad; order dated 07.05.1999 passed by Commissioner, Gurgaon Division and order dated 04.03.2002 passed by Commissioner and Secretary to Government of Haryana Urban Development Department, Chandigarh.

2. Brief facts of the case are that petitioner-company is running the business of manufacturing and exporting garments since 1994. For manufacturing of garments, it required Embroidery Machine and subsequently, the petitioner-company imported "**Electronic Embroidery Machine**" within the Municipal Limits of Faridabad Corporation, without payment of the octroi tax. The Inspecting Team of the department found that

the said “**Electronic Embroidery Machine**” had been brought within the limits of the Corporation in two containers. Since one container was found inside the factory premises of M/s BPL on one gate and other container was lying outside the gate, the Inspecting Team asked the Gate security of M/s BPL to produce the relevant papers and the Octroi receipt of the said consignment but there was no receipt of payment of octroi tax. Therefore, the petitioner-company was also held liable to deposit the assessed amount of Rs.2,49,192/- as actual octroi under Entry 76 (ii) and penalty @ 10 times of the octroi assessable i.e Rs.24,91,920/- totaling Rs.27,41,112/- to the Municipal Corporation Faridabad, as per Section 112 of the Haryana Municipal Act, 1994

3. The petitioner instead of depositing the above payment, filed CWP No. 13801-1998, seeking relief to allow the petitioner to unpack and use the embroidery machine by installing the same in their factory and to charge the octroi tax at the machine under Entry No 100 of the Octroi Schedule instead of Entry No. 76 (ii). This Court, vide order dated 02.09.1998 disposed of the writ petition and the order is reproduced below:-

“This petition has been filed for quashing the action taken by the respondent Municipal Corporation, Faridabad to realise the octroi from the petitioner under item 76 of the octroi schedule and levy of penalty which is equivalent of 10 times the amount of octroi.

Since the respondent Municipal Corporation has entered caveat and the copy of the petition was made available, we asked Shri Girish Agnihotri, Counsel representing respondent no.2 and 3 to produce the record of the petitioner's case before the court.

We have heard Shri I.K. Mehta, Senior Advocate appearing for

petitioner and Shri Girish Agnihotri, Counsel for the respondent nos. 2 and 3 and have gone through the record produced by Shri Agnihotri. It is revealed from the record that the orders of assessment passed by the competent authority for levy of octroi and penalty were not communicated to the petitioner depriving it to avail the statutory remedy of appeal under section 138 of the Haryana Municipal Corporation, Act 1994 (Hereinafter referred to as the Act). Learned Counsel for the respondents could not give any plausible explanation why the authorities of the Municipal Corporation did not communicate the orders of assessment and imposition of penalty to the petitioner. However, keeping in view the fact that statutory remedy of appeal is available to the petitioner, we refrain from exercising our jurisdiction under Article 226 of the Constitution to interfere with the orders of assessment and penalty. Instead, we deem it proper to dispose of the writ petition with the following directions:-

(i) Within two days from today the petitioner shall deposit the amount of octroi i.e. Rs.2,49,192/- in the form of Bank Draft with the Commissioner, Municipal Corporation, Faridabad and also furnish bank guarantee in respect of the amount of penalty.

(ii) Within the period of two days, the Municipal Corporation shall communicate the orders of assessment and penalty to the petitioner.

(iii) Within twelve hours of receipt of bank draft and documents of bank guarantee, the respondent shall release the container belonging to the petitioner.

(iv) The petitioner shall be liable to pay the penalty along with interest @ 18% incase the appeal, which it may file under section 138 of the Act, fails and no other order is passed by any

other competent authority or the court staying the recovery of the amount of penalty.”

4. In compliance of the above mentioned order, the petitioner deposited Bank draft for Rs.2,49,192/- and the Bank Guarantee on 05.09.1998 and the respondents conveyed the order to the petitioner. Consequently, one of the containers along with machine was released by the respondent on 11.09.1998. The petitioner then filed an appeal before the Commissioner, Gurgaon Division, Gurgaon against the order dated 05.09.1998 of the respondent-Corporation on 28.09.1998, who vide order dated 07.05.1999 observed that the assessment order passed by the Commissioner, Municipal Commissioner, Faridabad was well founded and there was no ground for interfering with the same. It was further observed that ends of justice will be served in case the penalty is restricted only to the amount equal to octroi fee instead of being ten times of the same. The petitioner then filed the revision petition against order dated 07.05.1999, which was also dismissed, vide order dated 04.03.2002. The relevant portion of the order is reproduced as under:-

“From the above narration of facts, one major point at issue in the case emerges i.e., under which entry the machinery imported by the petitioner Company should fall. The contention of the Respondent Corporation is that the imported machinery falls under category 76 (ii) of the Octroi Schedule and accordingly assessed the octroi to be Rs. 2,49,192/- whereas the petitioner Company takes the plea that it should be assessed as machinery and subjected to an octroi fee assessed @ Rs.0.70 per 100 kg. In fact, the machinery imported by the petitioner company is not an ordinary machine as commonly understood. The entry 100 appears to be intended for the machines like a Fodder Cutting Machine, Sugarcane crushing machine, Oil

expeller, wheat grinding machine and such like simple unsophisticated machines of common use. This entry is not intended for very costly sophisticated computer/electronic machines used for controlling industrial processes. Thus, the imported machine certainly falls under the category of sophisticated machinery and Respondent Corporation has rightly assessed it as an item covered by the entry 76 (ii) of the octroi schedule.

The other main point for consideration is whether the petitioner, company tried to evade the octroi or not. This is an established fact that the petitioner company had not produced the consignment of machinery at the octroi post and had taken the consignment to one of their sister concern namely M/S BPL at Mathura Road, Faridabad. The petitioner Company appeared with the excuse that the octroi Moharir had not levied any octroi when they presented it, and secondly one of their representatives had taken ill and the Police had forced them to take the trucks away etc. All these excuses are after thoughts and had been advanced by way of mitigating circumstances for covering up the evasion of octroi fee. Keeping in view all these facts and circumstances it appears that the petitioner company tried to attempt to evade octroi tax.

However, many rulings have been cited by the Ld. Counsel of the petitioner in order to emphasis that it is a well settled laws that proper rule of construction applicable to items and entries occurring in octroi schedule should be construed not in scientific or technical sense, but in the sense as understood by persons dealing with them. It is not possible to include all the machines that are being evolved all over the world in the octroi schedule. Only categories can be provided in the octroi schedule and it is the duty of the Municipal Corporation to categorize each such machine in a particular category given in the entries of the octroi schedule. Entry 100 relates to all kinds of machinery and include agricultural industrial spare parts. Entry 76 relates to scientific mathematical, optical surgery, dentistry instruments and measuring machine and telegraphic equipments, computer, electronic goods, industrial

process control instruments and parts thereof. Thus, the machine of the kind imported by the petitioner Company which combines most sophisticated machatronic technology system integration and other leading technologies would certainly be covered under entry 76 (ii) of the octroi schedule. Thus, considering the documents produced before me and the facts of the case, I am of the view that the imported machinery cannot be classified under entry 100 of the octroi schedule and the same is covered under entry 76 (ii) of the schedule. I, therefore, dismiss the revision petition and uphold the order dated 7.5.1999 passed by the Ld. Commissioner, Gurgaon Division with a modification/amendment to the extent that amount of penalty shall be charged ten times of the actual tax as assessed by the Respondent Corporation and not equal to the octroi fee as observed by the Divisional Commissioner. I order accordingly.”

5. Learned senior counsel for the petitioner contends that the proceedings dated 13/14.08.1998 were made without granting any opportunity of hearing to the petitioner. Further that no show cause notice was issued before passing of the order dated 05.09.1998.

6. Learned senior counsel for the petitioner further argues that the Machine imported by the petitioner falls under Entry No. 100 of the Octroi Schedule instead of Entry No. 76 (ii). The impugned order has wrongly been passed by taking the machine imported by the petitioner Under Entry No. 76 (ii).

7. Per contra, learned counsel for the respondents contends that opportunity of hearing was given to the petitioner while passing impugned orders. The machine imported by the petitioner was rightly held to be falling under Item No. 76 (ii) of the Octroi Schedule.

8. We have heard learned counsel for the parties at length and have gone through the records of the case.

9. The short question for consideration that arises before this Court is:- *“Whether the **“Electronic Embroidery Machine”** imported by the petitioner falls under Item No. 100 or Item No. 76 (ii) of the Octroi Schedule?”*

10. Reference at this stage can be made to Entry No. 76 (ii) and Entry No. 100 of the Octroi Schedule, which is reproduced below:-

***“Entry No. 76 (ii):-** All kinds of scientific, mathematical, optical, surgical and dentistry instruments and spare parts thereof; weighing and measuring machines and equipments, telephonic, telegraphic equipments, computers, electronic goods, industrial process control instruments and parts thereof.*

***Entry No. 100:-** All kinds of machinery including agriculture industrial spare parts.”*

11. The argument of learned senior counsel for the petitioner that the petitioner-company was not heard while passing impugned order, cannot be accepted, as a perusal of order dated 02.09.1998 passed by this Court in CWP No. 13801-1998 shows that the petitioner was duly heard. Further the orders dated 07.05.1999 and 04.03.2002 were also passed after hearing the petitioner at length.

12. So far as other contention of learned senior counsel for the petitioner that the ***“Electronic Embroidery Machine”*** imported by the petitioner falls under Item No. 100 and not under Item No. 76 (ii) is concerned, the same is also liable to be rejected for the reasons mentioned below:-

(i) That the ***“Electronic Embroidery Machine”*** is basically a computerised embroidery machine. The design/pattern needs to be fed/uploaded into the software of the machine, which then prints what is fed

into it. That means it has storage/memory, which produce output in a computerised way, therefore, it comes under “computer based/computerised” machine.

(ii) Further the Electronic goods contain devices like computers-based machines/devices with memory/storage based action.

(iii) The petitioner-Company is running the business of manufacturing and exporting garments, for which the **“Electronic Embroidery Machine”** was ordered by the petitioner. The garment making is something commercial/industrial. Hence, it is computer-controlled electronic machine in which pre-determined design is fed/uploaded into the machine software.

(iv) When a specific entry 76 (ii) under which a machine is classified exists in the octroi schedule, the general Entry No. 100 with regard to all kinds of machinery would then give way to the specific entry available under Entry No. 76 (ii).

(v) The **“Electronic Embroidery Machine”** imported by the petitioner falls under Item No. 76 (ii) and not under Item No. 100, as discussed above.

13. It is not in dispute that the petitioner failed to make payment of the legal liability of octroi tax. Therefore, it was liable to pay actual octroi tax plus ten times composition fee/penalty as per provisions of Section 112 of the Haryana Municipal Act, 1994 which reads as under:-

“112. Penalty for evasion of Octroi:- If animals or articles passing the limits of the Corporation are liable to the payment of octroi, then every person who causes or abets the introduction of, or himself introduces or attempts to introduce within said limits any such animals or articles upon which payment of the octroi is

due on such introduction, has neither been made nor tendered, shall be punishable with fine which may extend either to ten times the value of such octroi or to one thousand rupees, whichever is greater.”

14. In view of the discussion made above, this Court is of the view that the petitioner-Company was rightly held liable to deposit the assessed amount of Rs.2,49,192/- as actual octroi and penalty @10 times of the octroi assessable. Accordingly, the impugned orders dated 05.09.1998, 07.05.1999 and 04.03.2002 do not require any interference by this Court. Hence, the present writ petition is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

09.04.2024

G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No