EAGLE FLASK INDUSTRIES LTD. A

v.

TELEGAON DABHADE MUNICIPAL COUNCIL AND ORS.

OCTOBER 6, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.] B

Maharashtra Municipalities (Octroi) Rules, 1968; Entries 14(a), (b), 49, 53(c), 56, 86 and Rule 15(1) and (3):

Levy of octroi on plastic powder, plastic component and glass refills— Payment by assessee under protest—Municipal Council did not refund excess amount of duty paid by the assessee—High Court dismissed the writ petition filed by the assessee—On appeal, Held: Though goods are covered under Entry 56, yet reference to the Entry not made before High Court—Hence, High Court rightly dismissed the petition. C D

Sick Industrial Companies (Special Provisions) Act, 1985; Section 22 & 166:

Section 22—Recovery of octroi—Scope of—Held: Since question of recovery would arise only when Municipal Council could make an assessment and quantification of the octroi duty on the imported raw material in question, provisions of Section 22 could be considered at that stage—Directions issued. E

Respondent No.1-Municipal Council levied octroi on raw-material, namely, plastic powder, plastic component and glass refills imported by Appellant-industry. Appellant had made payment of octroi under protest and filed application before the authorities concerned for determination of correct amount of the duty and for refund of the differential amount. Since the authorities failed to refund the differential amount, a writ petition was filed by the appellant, which was dismissed by the High Court directing the appellant to pay the duty at correct rates applicable with interest thereon for the relevant period. Hence the present appeal. F G

It was contended for the appellant that the headings of the entries are relevant in the matter of levy of octroi; that since appellant was a sick industry, no recovery of the duty could be directed; that it should be left

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A **open to the Municipal Council to decide whether interest could be charged on the amount of duty.**

Respondent No.1 submitted that in view of Entry 56, the levy is in order; that since duty was levied on *ad hoc* basis, the plea relating to recovery under Section 22 of the Sick Industrial Companies (Special
B **Provisions) Act is premature.**

Disposing of the appeal, the Court

HELD: 1. The goods are clearly covered under Entry 56 of Maharashtra Municipalities (Octroi) Rules. However, no reference of the
C **Entry was made before the High Court. The view of the High Court is confirmed, though on a different basis. [141-G]**

2.1. The effect of Section 22 of Sick Industrial Companies (Special Rules) Act has to be considered only when there is a demand for recovery. The question of recovery would arise only when there is a quantified
D **demand on assessment. However that stage has not reached. Therefore, it is open to the Municipal council to make an assessment and quantification of the octroi duty payable, if not already done. Only after the quantification is done and assessment made as provided in law, the question of recovery would arise. At that stage the effect of Section 22 of**
E **the Act could be considered in the background of the decided cases. [142-A, B]**

***Real Value Applicance Ltd.* v. *Canara Bank and Ors.*, [1998] 5 SCC 554 and *Rishabh Agro Industries Ltd.* v. *PNB Capital Services Ltd.*, [2000] 5 SCC 515, relied on.**

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2.2. It is open to the appellant to move the Municipal Council for waiver/remission of octroi duty in terms of Section 166 of the Act. The direction given by the High Court for payment of interest in terms of Section 166 of the Act shall not be the determinative factor to deny the waiver/remission if it is found entitled thereto. However, no opinion is
G **expressed on the appellant's entitlement to such waiver or remission. [142-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1388 of 2004.

From the Judgment and Order dated 16.10.2003 of the Bombay High
H Court in W.P. No. 295 of 1992.

Ashish Dholakia, U.A. Rana, Madhup Singhal for M/s. Gagrat & Co. for the Appellant. A

Subrat Birla and Subhash Chandra Birla for the Respondents.

The Judgment of the Court was delivered

B

ARIJIT PASAYAT, J. The challenge in this appeal is to the judgment rendered by a Division Bench of the Bombay High Court dismissing the writ petition filed by the appellant. Challenge was to the levy of octroi by respondent No. 1 Talegaon Dabhade Municipal Council (hereinafter referred to as "Municipal Council") which was established under the Maharashtra Municipal Council Nagar Panchayat and Industrial Townships Act, 1965 (in C short "the Act"). The respondent No. 1- Municipal Council proposed to levy octroi in terms of the Maharashtra Municipalities (Octroi) Rules, 1968 (in short the "Rules") .

The appellant used to import raw material and components into the D octroi limits of the Municipal Council. The appellant took the stand that the three items i.e. plastic powder, plastic components and glass refills were covered under the Residuary Entry 86 of the Rules. The stand of the appellant was that it had paid octroi on the three items under protest under Rule 15(1) of the Rules. It requested the concerned Superintendent for determination under Rule 15(3) the correct amount of duty payable. It also prayed for a E direction to respondent No. 1- Municipal Council for refund of difference between the octroi levied and the octroi due under Entry 86 of the Rules. As the Municipal Council failed to refund the octroi, a writ petition was filed in the High Court under Article 226 of the Constitution of India, 1950 (in short the "Constitution") by the appellant herein.

F

The High Court held that in view of the decision of this Court in *Municipal Corporation for the City of Thane and Ors.* v. *Asmaco Plastic Industries and Ors.*, [1999] 1 SCC 372, Entry 53(c) applies to plastic goods and plastic powder and the glass refills were covered by Entry 49. Accordingly, the writ petition was dismissed. Direction was given to the appellant to pay G the difference of octroi payable and paid at different rates along with the interest depending on the period in view of what is provided in Section 166 of the Act.

Learned counsel for the appellant submitted that the view of the High Court is clearly untenable as the decision in *Asmaco's* case (supra) is H

A distinguishable. In that case, taking into account the type of articles involved, this Court held that the heading of an Entry was really of no consequence. But if one looks at the concerned Entry 49 in the background of the concerned items, the heading becomes important. Reference was also made to Entry 14(a), 14(b) to contend that it cannot be laid down as a rule of universal application that in matters of levy of octroi, the headings of Entries are not B relevant. It was also submitted that the appellant has become a sick industry and the proceedings are pending before the Board for Industrial and Financial Reconstruction (in short the "BIFR"). It was, therefore, submitted that no recovery in respect of concerned amount can be directed . Finally, it was submitted that there is a power for remission of interest and the direction of C the High Court to pay interest has to be varied leaving the matter open to Municipal Council to consider whether interest is chargeable. In any event, the amendment to Entry 49 shows that prior to the amendment residual Entry was applicable. The High Court proceeded on the basis that amendment to Entry 49 was really of no consequence as the unamended Entry also covered the articles.

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In reply learned counsel for respondent No. 1- Municipal Council submitted that with reference to Entry 56 that even if for the sake of argument it is conceded and not accepted that Entry 49 does not cover glass articles, Entry 56 clearly takes care of those articles. Entry 56 excludes "articles used E for building construction" to which reference is made in Entry 49. Therefore, in any event, in view of Entry 56, the levy is in order. So far as the recovery is concerned, it is submitted that only on *adhoc* basis duty was levied, but no final assessment, as contemplated under the Rules, has been made. Therefore, the plea relating to recovery under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short "SICA") is premature. It is also F submitted that until the duty is quantified, the question of recovery does not arise and the question of recovery shall be considered by the Municipal Council in its proper perspective.

Entry 49 and Entry 56 read as follows:-

G 49. Glass, glassware, chinaware enamelware, all kinds of crockery used for construction or decoration of buildings and sanitary fittings, metal valves, coppwercocks and their fittings Thermos shells glass shells require for Thermos).

56. Glass and glassware including bangles, bottles, articles of china H and porcelain wares and earthern wares (excluding articles used for

construction or decoration of buildings) A

The High Court placed reliance on *Asmaco's* case (supra). In paragraph 6, it was observed by this Court as follows:-

> "We may firstly refer to the scheme of bringing several commodities to tax, i.e. the several goods under the Octroi Schedules. B In either Rules, several classes of goods are mentioned in various headings like articles of goods, animals, articles used for fuel, lighting, washing and industrial use, articles used in the construction of building, roads and other structures and articles made of wood or cane, perfumes, toilet requisites, colours and household goods, tobacco requisites and so on. Under each heading, several goods are mentioned, but we C cannot discern any scientific basis in bringing these goods under one heading or the other. For example in Class III articles used for fuel, lighting, washing and industrial use, it is not clear whether charcoal, which is at Item 14, when brought into a local area which is to be used to industrial use could be subjected to octroi duty. Similarly, D when soap of all kinds is used in Item 17, boot and metal polish are lugged in. While detailing the rates of duty, what is stated is 2 per cent ad valorem for washing soap and bath soap costing not more than Rs. 1.25 per cake. It obviously would indicate that these goods need not necessarily be used for industrial purpose or as fuel for lighting or washing. While soap is used as a washing material, boot E and metal polish cannot be stated to be a washing materials. Again, various detergents used in washing clothes, floor and utensils are referred to in Item 18. It is not clear whether it is related only to such goods which are meant for the purpose of industrial use. Viewed from this angle, we do not think the classification of goods made in F these entries is on any scientific basis and heading as such in any one group does not by itself control the meaning to be attached to each of such goods."

We find substance in the plea of the learned counsel for respondent No. 1 Municipal Council that the goods are clearly covered under Entry 56. G Unfortunately it appears that reference was not made to Entry 56 before the High Court. We confirm the High Court's view though on a different basis i.e. with reference to Entry 56.

The effect of Section 22 of "SICA" has been considered by this Court in *Real Value Applicance Ltd.* v. *Canara Bank and Ors.*, [1998[5 SCC 554 H

A and *Rishabh Agro Industries Ltd.* v. *PNB Capital Services Ltd.*, [2000] 5 SCC 515. It has rightly been contended by the learned counsel for respondent No. 1 Municipal Council that the effect of Section 22 is to be considered only when there is a demand for recovery. The question of recovery would arise only when there is a quantified demand on assessment. Admittedly that stage has not reached. Therefore, it is open to the Municipal Council to make an B assessment and quantification of the octroi duty payable, if not already done. Only after the quantification is done and assessment made as provided in law, the question of recovery would arise. At that stage the effect of Section 22 can be considered in the back ground of what has been stated in *Real Value* and *Rishabh Agro* (supra).

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So far as the question of interest is concerned, it is open to the appellant to move the Municipal Council for waiver/remission of octroi duty in terms of Section 166 of the Act. It goes without saying that the direction given by the High Court for payment of interest in terms of Section 166 of the Act shall not be the determinative factor to deny the waiver/remission if it is D found entitled thereto. However we make it clear that we have not expressed any opinion on the appellant's entitlement to such waiver or remission. The appeal is disposed of accordingly. No costs.

S.K.S. Appeal disposed of.