

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

M/S S. M. RAM LAL AND COMPANY,—*Petitioner*

versus

THE SECRETARY TO GOVERNMENT, PUNJAB, LOCAL
GOVERNMENT DEPARTMENT AND OTHERS—*Respondents.*

Civil Writ No. 1914 of 1964.

1964

November, 26th

*Punjab Municipal Act (III of 1911)—S. 61—Octroi duty—
Whether can be levied on wool imported for dyeing only.*

Held, that the octroi duty is chargeable on all the goods that are imported within municipal limits for use, consumption or sale. The octroi duty is payable on the wool which is imported for the purpose of dyeing only and is exported after dyeing as the wool is "used" when being dyed. The word "use" is a very comprehensive term. It means "to put to or employ for some purpose." In other words, the goods which are being imported must be put to or employed for some purpose and it is only then that it could be said that they were brought in for "use". In the present case, the wool was being imported for some specific purpose, that is for dyeing. There is thus no escape from the conclusion that it was being brought in for "use", when the object for importing the same was dyeing. After undergoing the process of dyeing, its colour is changed and it becomes a different commodity from commercial point of view and fetches more price in the market.

Petition under Article 226/227 of the Constitution of India praying that an appropriate Writ, Direction or Order be issued to the respondents directing them to stop charging the levy of octroi from the petitioner.

DALIP CHAND GUPTA WITH M. R. AGNIHOTRI, ADVOCATE, for the Petitioner.

A. M. SURI, ADVOCATE, FOR ADVOCATE-GENERAL AND NARINDER SINGH AND R. S. MONGIA, ADVOCATE, for the Respondents.

ORDER

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Messrs. S. M. Ram Lal and Pandit, J.

Co., 48, Industrial Area, Faridabad in district Gurgaon, M/s. S. M. Ram Lal & Co. challenging the levy of octroi duty on them by the Notified Area Committee of the Industrial Township, Faridabad, respondent No. 3.

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According to the allegations of the petitioner-firm, it had its Head Office at Delhi and its Dyeing Factory at Faridabad Township. It carried on the business of collecting knitting wool from customers for the purpose of dyeing and then delivering the same back to them after it was dyed in their Factory at Faridabad. This firm used to collect the wool at Delhi and then send the same to the factory. Respondent No. 3 demanded an octroi duty on the wool, when it was brought within the area of Faridabad Township. Ever since the factory had been set up, no octroi duty had been charged by any authority from them but after the coming into existence of the said Committee, it started claiming duty on the ground that it was chargeable on all the goods that were being imported in Faridabad for use, consumption or sale. On the receipt of this demand, the petitioner on 28th May, 1962, represented to the Committee that they were not liable to pay this octroi, because apart from the process of dyeing the wool, the factory at Faridabad had no interest in the same and since octroi duty was already being paid by them initially on the entry of the wool in Delhi, the levy of this octroi for the second time at the time of its import in Faridabad was unwarranted under the law. On the receipt of this representation, the respondent-Committee referred the matter to the Assistant Examiner, Local Fund Account, Punjab, who by his order, dated 17th July, 1962, informed the Committee that the octroi was chargeable on the knitting wool in the case under reference. Thereafter, the petitioner preferred an appeal to the Commissioner, Ambala Division, respondent No. 2, under section 84(1) of the Punjab Municipal Act, 1911. The learned Additional Commissioner, who heard and decided this appeal on 16th July, 1963, dismissed the same and held that even the process of deying amounted to "use" of the wool imported within the limits of Faridabad Township. He, however, observed, that so far as the question of double taxation was concerned, the petitioner-firm could approach the State Government under section 237 of the Punjab Municipal Act and if they consider that the levy of duty in such cases would

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give a set back to the industrial development of the Township, the Government could exempt such processes under section 71 of the Punjab Municipal Act. Thereupon, the petitioner filed a revision petition before the State Government and it was also dismissed by the Secretary to Government, Punjab, Local Government Department respondent No. 1,—*vide* his order, dated 4th April, 1964. He held that the Government found no ground to revise the order of the Additional Commissioner and further they did not find any justification for the grant of exemption under section 71 of the Municipal Act. This led to the filing of the present writ petition on 7th September, 1964.

In the return filed by respondent No. 1, it was admitted that the petitioner-firm had its Head Office at Delhi and its dyeing factory in Faridabad Township. This respondent was, however, not aware of the customers and of the process of collecting wool from them by the petitioner-firm. It was also not known how and to whom the imported wool for dyeing was delivered.

This respondent only knew that consignments of wool were being imported by the petitioner-firm within the limits of the Notified Area Committee, Faridabad, for the purpose of dyeing. It was also not known that the wool was collected at Delhi only. According to this respondent, it was wrong that the wool imported by the petitioner into Faridabad Township was not put to "use". The dyed wool was different to look at and was more costly than the white wool. The form and the quality of the wool was changed by the process of dyeing. Thus, the goods entered the Notified Area for use, consumption or sale and, as such, were liable to octroi duty.

The only contention raised by the learned counsel for the petitioner was that octroi duty was leviable on the entry of goods into the Notified Area for consumption, use or sale. The petitioner-firm imported this wool merely for the purpose of dyeing and after that process was gone through, the same was exported to Delhi. Under these circumstances, it could not be said that these goods were brought into this Township for the purpose

of consumption, use or sale. The respondents, according to the learned counsel, had erred in law in holding that the dyeing of this wool meant the "use" of the same as contemplated in the octroi schedule and thus liable to octroi duty.

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The sole question for decision is whether the wool, which had been brought into this Township for the purpose of dyeing and which later on had been proved to have been exported to Delhi, was liable to octroi duty or not. In other words, could it be said that this wool was "used" within the meaning of this word occurring in the octroi schedule, which stated that the octroi duty had to be paid on the wool, if the same was brought in the Notified Area for consumption, use or sale? It is common ground that in the present case the wool was not being brought to Faridabad Township either for consumption or sale. The dispute is whether this wool was being imported for "use". The petitioner-firm, admittedly, dyes this wool and then sends it back to Delhi, Undoubtedly, dyeing charges are recovered by them from the customers. Can it be said that the wool is brought for "use" when the same was only dyed and then exported? The word "use" is a very comprehensive term. It means 'to put to or employ for some purpose.' In other words, the goods which are being imported must be put to or employed for some purpose and it is only then that it could be said that they were brought in for "use". In the present case, the wool was being imported for some specific purpose, that is for dyeing. There is thus no escape from the conclusion that it was being brought in for "use", when the object for importing the same was dyeing. After undergoing the process of dyeing, its colour is changed and it becomes a different commodity from commercial point of view and fetches more price in the market. Under these circumstances, the wool, in my opinion, is being put to some purpose, that is, dyeing, when it is brought inside the Notified Area of Faridabad Township. It means that the same is being imported for "use" within the meaning of this word occurring in the octroi schedule. That being so, the petitioner-firm was liable to pay the duty on the wool, which was being imported by them in Faridabad Township.

Learned counsel for the petitioner submitted that during the process of dyeing, it was not the wool, but

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Lai & Co. this contention. Both the wool and the dye-stuff are
"used" in the course of dyeing the former.

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It may be mentioned that two decisions were cited before us during the course of arguments by the learned counsel for the respondents, namely, *Punjab Flour and General Mills Co. Ltd., Lahore v. Chief Officer, Corporation of City of Lahore and Province of the Punjab* (1) and *Hira Lal Jitmal v. Commissioner of Sales Tax* (2). In the former, it was held that when wheat was being imported by the Mills and was converted into flour by grinding, it is said to have been "used" within the limits of the Municipal Committee and was liable to octroi duty. In the latter, it was observed that when textile was printed and dyed, it became a different commodity from commercial point of view and thus was liable to sales tax. Both these authorities support the contention of the respondents. Learned counsel for the petitioner, on the other hand, placed reliance on *Burmah Shell Oil Storage and Distributing Co. of India Ltd., Belgaum v. Belgaum Borough Municipality, Belgaum* (3). This decision has no application to the facts of the present case. There, the Burmah Shell Company used to import petrol into the Municipal Area of Belgaum and some of it was merely stored for re-exporting to other places, while the rest was consumed in that very area. It was held that no octroi was payable in respect of the petrol which was merely imported for being re-exported, while the Company was liable to pay duty on the petrol which was consumed in the Municipal limits. In that case, the petrol was only stored by the Company for exporting it and nothing else was done to it during that interval and that is why the same was not held to be liable to octroi tax.

The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

S. S. DULAT, J.—I agree.

B.R.T.

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- (1) A.I.R. 1947, F.C. 14.
(2) (1957) 8, S.T.C. 325.
(3) A.I.R. 1963, S.C. 906,