

THE STATE OF PUNJAB AND ORS.
v.
NARANJAN DASS DOOMRA RICE AND
GEN. MILLS AND ORS. ETC.

NOVEMBER 25, 1997

[S.P. BHARUCHA AND S.C. SEN, JJ.]

Punjab Municipal Act, 1911 : Sections 62-A(1), (3), 62(12) and 71(1)—President's order dated 30th Nov./3rd December 1990—Kapas, Narma and Oilseeds—Exemption from payment of octroi—Direction to Municipal Committee to impose Urban Development Cess—Levy and collection of Cess—Held, in the absence of imposition of cess by Municipal Committees or State Govt., levy and collection of cess was without any authority of law—Refund allowed.

During the President's Rule in the State of Punjab, the President of India by an order dated 30th Nov./3rd Dec.1990 exempted Kapas (raw cotton), Narma and Oilseeds from the payment of octroi. On the very day, the President directed all the Municipal Committees in the State of Punjab to impose Urban Development Cess on the sales/purchases of the above mentioned items. Pursuant thereto, a memo was issued by the appellants to Municipal Corporations, Municipal Committees and Notified Area Committees, giving directions in regard to the manner in which the Cess was to be collected. Accordingly, the Cess was levied and collected. It was challenged before the High Court which directed the appellants to refund the Cess collected with interest. Hence the present appeal.

The contention of the appellants was that the Cess had been imposed in lieu of octroi and that by virtue of Section 62(12) of Punjab Municipal Act, 1911 the notification of the imposition of the Cess was conclusive evidence that the Cess had been imposed in accordance with the provisions of the said Act.

Dismissing the appeal, this Court

HELD : 1. The order dt. 30th November/3rd December, 1990 does not impose the Cess. It directs the Municipal Committees to impose the Cess. This is in accord with the terms of Section 62A(1) of the Punjab Municipal

- A** Act, 1911 under which the order is issued. That there is no imposition of a tax by reason of an order issued under the provisions of sub-section(1) of Section 62A of the Act is clear from the provisions of sub-section(3) thereof, Sub-section(3) states that if the Municipal Committee has failed to carry out an order that has been passed under sub-section(1), the State Government may itself notify the imposition of the tax; such imposition operates as if it were a resolution duly passed by a Municipal Committee under the provisions of Section 62 of the Act. Section 62(12) of the Act comes into operation when a Municipal Committee has imposed a tax after following the procedure laid down in section 62 of the Act. It is then that the notification of the tax is conclusive evidence that it has been imposed. Alternatively, if the Municipal
- B** Committee has failed to act as required by an order under sub-section(1) of Section 62A of the Act and the State Government has imposed the tax under sub-section(3) thereof, the provisions of Section 62(12) of the Act would then operate because an order passed by the State Government under Section 62A(3) of the Act operates as if it were a resolution duly passed by a
- C** Municipal Committee. [456-G-H; 457-A-B]

D

Atlas Cycle Industries Ltd. v. State of Haryana & Anr., [1972] 1 SCR 127, held inapplicable.

Shri Krishan Kumar Sanam and Ors. v. The Punjab State and Anr., 74 P.L.R. (1972) 149, disapproved.

E

2. The appellant shall refund to the respondents the amount collected from them as and by way of cess with interest at the rate of 12 per cent per annum from the dates of collection till the dates of payment. [458-B]

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4451-68 of 1991 Etc.

From the Judgment and Order dated 19.8.91 of the Punjab & Haryana High Court in C.W.P. Nos. 838-40, 713-15, 901-04, 983,986, 1081, 2578, 3456, 2981/91 and 16924 and 16764 of 1990.

G

M.R. Sharma, (Ms. Puja Anand) and G.K. Bansal for the Appellant for the State of Punjab.

Jayant Dass and B.P. Singh for the Appellant.

H

M.S.Ganesh and Yogeshwar Prasad, Mrs.Urmila Sirur, P.N.Puri (M.K.Dua) (NP) and Mrs.Sheela Goel for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J. On 30th November/3rd December, 1990, when the State of Punjab (the appellant) was under President's Rule, an order was issued under the provisions of section 71(1) of the Punjab Municipal Act, 1911, by the President of India exempting kapas (raw cotton), narma and oil seeds from the payment of octroi with immediate effect. On the same day, in exercise of powers conferred by Section 62-A of the said Act, the President was "pleased to direct all the Municipal Committees in the State of Punjab to impose Urban Development Cess on the sales/purchase of kapas (raw cotton), Narma and oil seeds made within the respective Municipal Areas at the rate of 0.25 per cent ad valorem with immediate effect". Pursuant thereto, a Memo was issued on 5th December, 1990 by the appellant to Municipal Corporations, Municipal Committees and Notified Area Committees. It noted that the appellant had issued the notification for imposition of the Cess on sales and purchases of kapas, narma and oil seeds to compensate for the loss likely to be suffered on account of the abolition of octroi. The Memo gave directions in regard to the manner in which the Cess was to be collected. It appears that, without more, the Cess was sought to be levied and recovered. Writ petitions were, therefore, filed in the High Court of Punjab & Haryana challenging the levy and collection. By the judgment and orders under appeal, the writ petitions were allowed and the appellant was directed to refund the Cess that had been collected by it with interest at the rate of 12 per cent per annum. These appeals by special leave arise out of the judgment and orders. At the stage at which special leave was granted, the judgment and orders under appeal were stayed subject to the condition that, in the event of it being held that the respondents were entitled to refund, the amounts collected from them would be refunded with interest at the rate of 12 per cent per annum.

Section 62A(1) and (3) of the said Act are relevant, and read thus :

"62-A. *Power of Government in taxation.* (1) The State Government may, by special or general order notified in the official Gazette, require a Committee to impose any tax mentioned in section 61 not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

xxx

xxx

xxx

(3) If the Committee fails to carry out any order passed under sub-

A section (1) or (2) the State Government may by a suitable order notified in the official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee as if the proposal was sanctioned in accordance with the procedure contained in section 62.”

B Section 62, sub-sections (1), (10) and (12) read thus :

“62. *Procedure to impose taxes.* -(1) A Committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61.

C xxx x x x xxx

(10) (a) When a copy of order under sub-section (6) and (7) has been received, or

D (b) When a proposal has been sanctioned under sub-section (8) the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force.

E xxx x x x xxx

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.”

F Learned counsel for the appellant submitted that the Cess had been imposed in lieu of octroi and that, by virtue of Section 62(12), the notification of the imposition of the Cess was conclusive evidence that the Cess had been imposed in accordance with the provisions of the said Act.

G The argument proceeds upon a misconception. In the first place, the order dated 30th November/3rd December, 1990 does not impose the Cess. Its language is clear : it directs the Municipal Committees to impose the Cess. This is in accord with the terms of Section 62A(1) under which the order is issued. That there is no imposition of a tax by reason of an order issued under the provisions of sub-section (1) of Section 62A is clear from the provisions of sub-section (3) thereof. Sub-section (3) states that if the Municipal Committee H has failed to carry out an order that has been passed under sub-section (1),

the State Government may itself notify the imposition of the tax; such imposition operates as if it were a resolution duly passed by a Municipal Committee under the provisions of Section 62. Section 62(12) comes into operation when a Municipal Committee has imposed a tax after following the procedure laid down in Section 62. It is then that the notification of the tax is conclusive evidence that it has been imposed. Alternatively, if the Municipal Committee has failed to act as required by an order under sub-section (1) of Section 62A and the State Government has imposed the tax under sub-section (3) thereof, the provisions of Section 62(12) would then operate because an order passed by the State Government under Section 62A(3) operates as if it were a resolution duly passed by a Municipal Committee.

In the instant case, the order dated 30th November, 1990 was passed under section 62A(1). The Municipal Committee failed to impose the Cess in pursuance thereof. The State Government, thereafter, did not impose the Cess under the provisions of Section 62A(3). There was, therefore, no imposition of the Cess, and its recovery was without the authority of law.

Learned counsel for the appellant drew our attention to the judgment of this Court in *Atlas Cycle Industries Ltd. v. State of Haryana & Anr.*, [1972] 1 SCR 127. The paragraph that was relied upon reads thus :

“Section 62 (10) of the Act indicates that there is imposition of tax only when the State Government shall notify the imposition of the tax and shall in the notification specify a date on which the tax shall come into force. In the absence of imposition of tax by a notification under section 62(10) of the Act the municipality is not competent to impose, levy or collect tax. Section 62(12) of the Act enacts that a notification of the imposition of tax shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. It is the notification under the statute which is conclusive evidence of the imposition of tax.”

(at page 133)

What is said does not advance the case of the appellant. It is, in fact, consistent with the view that has been taken by the High Court and which we are inclined to take.

Reliance is also placed by learned counsel for the appellant on the decision of a Division Bench of the Punjab & Haryana High Court in *Shri Krishan Kumar Sanan and Others v. The Punjab State and another*, 74 P.L.R. (1972) page 149. The High Court has referred this decision in the judgment

A under appeal and has pointed out that it is inapposite because it was given in relation to an order that had been issued in exercise of the powers conferred by Section 62A(3) of the said Act.

The appeals must, therefore, fail and are dismissed.

B The appellant shall refund to the respondents the amounts collected from them as and by way of the Cess with interest at the rate of 12 per cent per annum from the dates of collection till the dates of payment.

No order as to costs.

C S.V.K.I.

Appeals dismissed.