

M/S GARWARE NYLONS LTD.

v.

PIMPRI CHINCHWAD MAHANAGAR PALIKA AND ORS.

MARCH 28, 1995

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Maharashtra Municipalities (Octroi) Rules, 1968 :

Rule 17—Scope and interpretation of—Octroi—Goods imported—Custom duty paid on—Held liable to be included while valuing the goods—Mention of charges in rule is illustrative and not exhaustive.

The appellant-company-a manufacturer of nylon and polyster yarn - imported goods which were liable to octroi. The Respondent-Corporation while valuing the goods for charging octroi under Rule 17(a) of the Maharashtra Municipalities (Octroi) Rules 1968 included the custom duty paid by the company on the imported goods. The appellant-company preferred an appeal which was dismissed. The High Court also held that even though the custom duty was not mentioned in Rule 17(a) yet it was liable to be included while determining the value under Rule 17. In appeal to this Court it was contended for the appellant- company that since the words 'custom duty' do not find place in Rule 17, they could not be included for determining valuation under the Rule.

Dismissing the appeal, this Court

HELD : Rule 17 of the Maharashtra Municipalities (Octroi) Rules, 1968 provides for determination of value of goods brought inside the Corporation or Municipal Board for consumption, use or sale. The use of various words in the rule widens its scope. It provides for inclusion of cost price, charges such as freight, carrier, custom duties and then all other incidental charges, dues etc. The mention of various charges and duties is more illustrative than exhaustive. It only indicates that it is not only the expenses which are usually incurred in normal course of commercial activity, but any incidental expenditure shall also constitute the value of the goods. The rule has to be understood in broad sense. No good can be imported from outside without payment of custom duty unless it is exempt. There appears to be no reason to exclude it while determining the value of

the goods. In any case, if duty counter-vailing could be considered to be incidental charges for importation, there is no valid reason to exclude custom duty from it. [25-H, 26-A-B]

M/s Shroff and Co. v. Municipal Corporation of Greater Bombay, [1989] Supp. 1 SCC 347, referred to.

M/s Goodyear India Ltd. v. State of Haryana and Anr., JT (1989) 4 SC 229 and *M/s McDowell and Co. Ltd. v. Commercial Tax Officer*, [1977] 1 SCC 44, cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1662 of 1988.

From the Judgment and Order dated 1.3.88 of the Bombay High Court in W.P. No. 420 of 1987.

M.L. Verma, Pallav Sisodia, Ms. Punita Singh, Ms. Sonu Bhatnagar and Sanjay Kishan Kaul with him for the Appellant.

V.E. Joshi for the Respondents.

The following Order of the Court was delivered :

The question that arises for consideration in this appeal is whether the customs duty paid by the appellant could be included for determining valuation for purposes of charging octroi under Rule 17(a) of the Maharashtra Municipalities (Octroi) Rules, 1968 made under sub-section (2) of Section 321 read with proviso to sub-section (1) of Section 105 of the Maharashtra Municipalities Act, 1965.

The appellant is a public limited company. It manufactured nylon and polyester yarn. Between September 1983 and August 1984 it imported goods liable to octroi. The corporation authorities claimed that the appellant was liable to include the customs duty paid by it in the valuation of the goods as it was a component of the value of the said goods for the purpose of Rule 17(a). The appeal filed by the appellant before the Civil Judge failed. The order was challenged by way of writ petition under Article 226 of the Constitution. The High Court negated the claim. Rule 17(a) is extracted below :

"R. 17.-Provisions to determine value where octroi is leviable *ad-valorem* :

- (a) If the original invoice is produced by the importer and accepted by the Octroi Officer the value of the goods means the value made up of the cost price of the goods as ascertained from that invoice plus freight charges, carrier charges, shipping dues, insurance, excise duties, sales tax, vend fee and all other incidental charges incurred by the importer till the arrival of the goods within the octroi limits".

Since the words 'custom duty' are not mentioned in the rule, it gave rise to an argument before the High Court and in this Court whether it could be included while determining the value under Rule 17. The High Court relying basically on the decision of this Court in *M/s. Shroff & Co. v. Municipal Corporation of Greater Bombay*, [1989] Supp. 1 SCC 347 held that even though the custom duty was not mentioned in the rule yet it was liable to be included while determining the value under rule 17. The learned counsel for the appellant urged that since the words 'custom duty' do not find place in rule 17, they could not be included for determining valuation under the rules. Reliance was also placed on *M/s. Goodyear India Ltd. v. State of Haryana and Anr.*, JT [1989] 4 SC 229 and *M/s. McDowell & Co. Ltd. v. Commercial Tax officer*, [1977] 1 SCC 441 and it was urged that in case the provision in taxing statute was susceptible to two constructions, then the one favouring the assessee should be accepted.

In *Shroff's* case (*supra*), it was held by this Court that countervailing duty being imposed for the purpose of compensating excise duty, it was includible in the expression 'duty'. The Court further held that expression 'incidental' used in the rule expanded its ambit and extended it to such duty that was an incident of importation. It was explained that the words 'incidental charges' have a very wide meaning, particularly in the context where duties and taxes are referred to and the idea seems to be to include all items that will be taken into account by an importer as part of his cost.

Rule 17 provides for determination of value of goods brought inside the Corporation or Municipal Board for consumption, use or sale. The use of various words in the rule widens its scope. It provides for inclusion of cost price, charges such as freight, carrier, custom duties and then all other

incidental charges, dues etc. The mention of various charges and duties is more illustrative than exhaustive. It only indicates that it is not only the expenses which are usually incurred in normal course of commercial activity, but any incidental expenditure shall constitute the value of the goods. The rule has to be understood in broad sense. No good can be imported from outside without payment of custom duty unless it is exempt. There appears to be no reason to exclude it while determining the value of the goods. In any case, if duty counter-vailing could be considered to be incidental charges for importation, there is no valid reason to exclude custom duty from it.

In the result, the appeal fails and is dismissed. But there shall be no order as to costs.

T.N.A.

Appeal dismissed.