A

TOWN MUNICIPAL COUNCIL

v.

URMILLA KOTHARI

January 20, 1977

B [A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Karnataka Municipalities Act, 1964—Sec. 124—Karnataka Municipalities Taxation Rules, 1965—Rule 26—Trucks passing on the highways within municipal limits—Whether octroi payable—Meaning of "brought into" and "immediate exportation".

The respondent is a transporter. The respondent lifts the iron ore in his trucks from Hubli Railway yard and carries it to Karwar and Belekeri harbours. C The trucks of the respondent have to pass in the course of transit through the limits of various Town Municipalities situate on the highway of which the appellant happens to be one. The respondent does not unload or re-load the iron ore at any intermediary point or stop. The appellant passed a resolution in purported exercise of s. 124 of the Karnataka Municipalities Act, 1964 read with rule 26 of the Karnataka Municipalities Taxation Rules, 1965, imposing a fee of Re. 1/- per trip of each truck. The respondent filed a writ petition challenging the levy of the fee. The learned single Judge of the High Court dismissed the writ petition. The Division Bench, however, allowed the appeal. D

Dismissing the appeal by certificate,

HELD : The present case is not covered by "any article or animal brought into the municipal limits for the purpose of immediate exportation" mentioned in s. 124. "Brought into" and "immediate exportation" do not comprehend within their sweep the continuous process of transit of goods by vehicles which merely use the State High Way passing through the areas which lie within the E municipal limits. In the instant case, the iron ore is carried in the trucks of the respondent which merely pass through the areas which lie within the municipal limits and is not unloaded and reloaded at any place within the municipal areas. The continuity or continuous process of the carriage of iron ore is not in any way, in fact, broken within the municipal limits. The respondent cannot be said either to bring in or export the iron ore as contemplated by s. 124 of the Act read with Rule 26 of the Rules and, as such, is not liable to pay F octroi or what is styled as supervision fee. A contrary interpretation would make rail borne goods passing through the Railway Station within the limits of the municipality liable to the imposition of the fee on their arrival at the Railway Station and departure therefrom which could not be the intention of the Legislature. [662 G-H, 664 B, G-H, 665 A-B]

The Central India Spinning and Weaving and Manufacturing Company Limited, the Empire Mills, Nagpur v. *The Municipal Committee, Nagpur* [1958] SCR 1102=AIR 1958 SC 352, followed.

Brown v. *State of Maryland* (1827) 12 Wheat 419, 442; 6 L. Ed. 678, 686 G and *Wilson* v. *Robertson* 24 L.J.Q.B. 185, quoted with approval.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1386 of 1976.

From the Judgment and Order dated 21-9-76 of the Karnataka High Court in W.A. No. 150 of 1976.

H *H. B. Datar, Sanjeev Aggarwal* and *R. B. Datar* for the Appellant.

S. T. Desai, S. K. Mehta, K. R. Nagaraja and *P. N. Puri* for Respondent.

The Judgment of the Court was delivered by

JASWANT SINGH, J. This appeal by certificate which is directed against the judgment and order dated September 21, 1976, of the High Court of Karnataka at Bangalore reversing the judgment and order dated March 3, 1976 of a Single Judge of that Court dismissing writ petition No. 6945 of 1975 filed by the respondent involves a substantial question of law of general public importance relating to the validity of the levy of what is styled as 'supervision fee' under section 124 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as 'the Act') read with rule 26 of the Karnataka Municipalities Taxation Rules, 1965 (hereinafter referred to as 'the Rules').

The facts of the case lie in a short compass and may be stated as follows :—

Iron ore which is extracted from its mine heads in Hospet Taluka is brought over and stocked in Hubli Railyard by the Mysore Minerals Limited which is a Government undertaking. Having taken up the contract of transhipment of the iron ore from Hubli Railyard to Karwar and Belekeri harbours, the Mysore Minerals Limited has sublet the same to the West End Minerals and Exports Private Limited. The latter has in turn entrusted the execution of the contract to the respondent which is engaged in transport business. The iron ore is accordingly lifted by the respondent in its trucks from Hubli Railyard and carried to Karwar and Belekeri harbours. The trucks of the respondent carrying the iron ore have (en route) to pass in the course of transit through the limits of various town municipalities situate on the highway of which the appellant happens to be one, but they do not unload and reload the iron ore at any intermediary point or stop.

The appellant, on the basis of a resolution passed by it on January 25, 1975, and approved by the State Government levies the aforesaid fee of Re. 1/- per truck under section 124 of the Act read with rule 26 of the Rules. The trucks of the respondent using the State highway within the municipal limits of Kalghatgi, District Dharwar are accordingly made to pay the fee for each of their trips.

Feeling that the fee realised by the appellant was invalid, the respondent filed a writ petition, being writ petition No. 6945 of 1975 in the High Court of Karnataka challenging the levy of the fee and seeking the issuance of a writ of mandamus restraining the appellant from realising the said fee.

A Single Judge of the High Court upheld the fee in question and dismissed the writ petition holding that the expression 'importer', 'place of import' and 'place of export' as used in section 124(1) of the Act are comprehensive enough to describe a person who merely brings the goods within the municipal limits for immediate exportation and the respondent who answered that description was bound to pay the fee. Aggrieved by this judgment and order, the respondent took the matter in appeal to a Division Bench of the High Court which allowed the appeal and issued the writ prayed for by the respondent by its

A judgment and order dated September 21, 1976. It is against this judgment and order that the present appeal is directed.

At the hearing of the appeal, counsel have reiterated the contentions urged on behalf of the parties in the High Court.

The sole question that arises for determination in this appeal
B relates to the validity of the aforesaid levy. For a proper determination of this question, it is necessary to advert to section 124 of the Act and rule 26 of the Rules.

"Section 124 : Non-liability for octroi and refund of octroi on goods in transit.—

C (1) Any article or animal brought into the municipal limits for the purpose of immediate exportation may at the option of the importer not to be subjected to levy of octroi if such article or animal be conveyed direct from the place of import to the place of export by such routes, within such time, and under such supervision as the municipal council may by resolution determine. For purposes of this sub-
D section the municipal council shall on payment of the prescribed fees issue promptly the necessary transport permits.

(2) When any article in respect of which octroi has been paid is exported from the municipal limits, in the same condition in which it was brought into or received from beyond the municipal limits, the amount of octroi paid shall, subject
E to such rules as may be prescribed, be refunded."

"*Rule* 26 : ...In case the person bringing the goods wishes to transport the goods at once beyond the limits of the municipality he shall do so only after obtaining a transport permit in Form IV, on payment of a fee of rupees two for each lorry and rupee one in other cases in the case of a
F city municipal council and rupee one for each lorry and fifty paise in other cases in the case of a town municipal council."

The opening words of section 124 of the Act viz. "any article or animal brought into the municipal limits for the purpose of immediate exportation" on the construction of which the up-shot of the case
G depends are very important. They imply processes of 'importing into' and 'exporting from' the municipal limits of goods or animals and are indicative of an element of repose and rest of the goods within the municipal limits. As rightly held by the Division Bench of the High Court, the expressions 'brought into' and 'immediate exportation' do not comprehend within their sweep the continuous process of transit of goods, by vehicles which merely use the State highways passing
H through the areas which lie within the municipal limits. In the instant case, the iron ore is carried in the trucks of the respondent which merely pass through the areas which lie within the municipal limits and is not unloaded and reloaded at any place within the municipal

area. As such, the important element of repose and rest which the words 'brought into the municipal limits for the purpose of immediate exportation' imply is absent in the instant case.

In *The Central India Spinning and Weaving and Manufacturing Company Limited, The Empire Mills, Nagpur* v. *The Municipal Committee, Nagpur*(1), this Court while discussing the meaning of the expression 'a terminal tax on goods or animals imported into or exported from the limits of the municipality' occurring in section 66(1)(o) of the C.P. and Berar Municipalities Act, 1922, held that the goods which were in transit and were merely carried across the limits of the municipality were not liable to terminal tax. The following observations made therein which have an important bearing on the decision of the present appeal are worth quoting :—

> "The efficacy of the relative contentions of the parties requires the determination of the construction to be placed on the really important words of which are "terminal tax", "imported into or exported from" and "the limits of the Municipality". In construing these words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. ..... Lexico-logically they (the words 'import' and 'export') do not have any reference to goods in 'transit' a word derived from transit bearing a meaning similar to transport, i.e. to go across. The dictionary meaning of the words 'import' and 'export' is not restricted to their derivative meaning but bear other connotations also. ....The word "transit", in the Oxford Dictionary means the action or fact of passing across or through; passage or journey from one place or point to another; the passage or carriage of persons or goods from one place to another; it also means to pass across or through (something) to traverse, to cross. Even according to the ordinary meaning of the words which is relied upon by the respondent, goods which are in transit or are being transported can hardly be called goods "imported into or exported from" because they are neither being exported nor imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination which in the instant case was Nagpur. ....By giving to the words "imported into or exported from" their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. The effect of the construction of "import" or "export" in the manner insisted upon by the respondent would make rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or

(1) [1958] S.C.R. 1102=A.I.R. 1958 S.C. 352.

A departure therefrom or both which would not only result in inordinate delays and unbearable burden on trade both inter State and intra State. It is hardly likely that that was the intention of the Legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided."

B The enunciation of law in the above case fully covers the present case. In the present case also, the iron ore which is in transit from Railyard at Hubli to Karwar and Belekeri harbours can hardly be characterised as goods brought into or exported from the municipal limits of Kalghatgi because they are neither imported into nor exported from any point within the municipal limits but are merely carried C across a particular stretch of territory or across a particular area with the object of being transported to its ultimate destination. In *Brown* v. *State of Maryland*(1), Chief Justice Marshall dealing with the word 'importation' said as follows :—

"The practice of most commercial nations conforms to this idea. Duties, according to that practice, are charged D on those articles only which are intended for sale or consumption in the country. Thus sea-stores, goods imported and re-exported in the same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in by stress of weather, and landed, but not for sale are exempted from the payment of duties. The whole course of legislation on the subject shows that E in the opinion of the legislature the right to sell is connected with the payment of the duties."

In *Wilson* v. *Robertson*(2) where section 33 of The 48 Geo. 3, c. civ. imposed a duty on all goods "imported into or exported from Berwick Harbour", and the harbour extended from Berwick Bridge down the Tweed to the sea, but not above the bridge and goods were F brought up the river in a seagoing vessel which, having first used the Harbour Commissioners' rings and posts in order to moor the vessel while lowering the masts, passed through Berwick Bridge and unloaded her cargo about 200 yards above the bridge and beyond the limits of the harobur; it was held that these goods were not "imported into" the harbour and as such liable to duty.

G Bearing in mind the above authoritative enunciation of law, we are of opinion that as the continuity or continuous process of the carriage of iron ore is not in any way in fact broken within the municipal limits of Kalghatgi, the respondent cannot be said either to bring in or export the iron ore as contemplated by section 124 of the Act read with rule 26 of the Rules and as such is not liable to pay the octroi or what is styled as 'supervision fee'. A contrary interpretation would make H rail borne goods passing through the Railway Stations within the

(1) 1827 12 Wheat 419=442=6 L. Ed. 678, 686.
(2) 24 L.J.Q.B. 185.

limits of the municipality liable to the imposition of the fee on their arrival at these Railway Stations and departure therefrom which could not be the intention of the Legislature. The High Court was, therefore, perfectly justified in allowing the appeal and issuing the writ sought for. A

In the result, the appeal fails and is hereby dismissed but in the circumstances of the case without any order as to costs. B

P.H.P. *Appeal dismissed.*