

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5586 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIGVIJAY CEMENT CO.LTD.

Versus

RANIP NAGARPALIKA

Appearance:

MR P M Raval with Mr Harin P Raval for Petitioners
MR Jayant Patel for Respondent No. 1
Ms. Harsha Devani, AGP for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR
Date of decision: /12/96

C.A.V. JUDGEMENT

The question involved in this Special Civil Application is the correctness of the assessment and levy of octroi duty by the respondent Ranip Nagar Palika on the items viz; clinker and asbestos fibre imported by the petitioner, Shri Digvijay Cement Company Ltd.

2. After the enactment of the Act No.17 of 1993 amending Municipalities Act, 1963, the Ranip Gram Panchayat governed under the provisions of Gujarat

Panchayats Act, 1963 became a Nagarpalika i.e. Municipality. Before coming into force of the amended provisions of the Gujarat Panchayats Act, 1963 (Gujarat Act 18 of 1993) with effect from 15.4.1994 as a transitional measure, three Notifications were issued on 14.4.1994 declaring the Gram/Nagar Panchayat as transitional areas as Municipalities in smaller urban areas and appointing administrators in the Nagar Panchayat and Municipalities with effect from 14.4.1994. Its consequence was provided under Notification dated 15.4.1994. Clause 2 of the said Notification provides besides other things, that any Rule, Bye-law or form made, issued or granted or deemed to have been made under Panchayats Act, immediately before the said date, in respect of the local area shall continue in force and shall be deemed to have been made, issued or granted in respect of the municipal boroughs, until it is superseded or modified by any other appointment, notification, notice, order, scheme, licence, permission rules, bye-law or form made under the Municipalities Act. Section 3 of the aforesaid Notification provides that any tax, fee or cess levied under section 181 of the Gujarat Panchayats Act, 1961, which was immediately before the said date were being levied by the State Government or Ranip Gram Panchayat shall continue to be levied in the Municipal Boroughs until it is superseded. By virtue of the aforesaid Notification, the respondent has levied and collected octroi duty as per schedule-I of Rule 24 of the Gujarat Gram & Nagar Panchayats (Taxes & Fees) Rules.

3. Prior to 1.4.1995, the respondent was collecting octroi under an agreement of lumpsum payment. The petitioner's application for renewal of the agreement was rejected and the petition company was informed that the octroi will be collected as per the octroi schedule. The petitioner challenged the action of the respondent by way of filing Special Civil Application which was registered as Special Civil Application No. 2679/95. The said Special Civil Application, was resisted by the respondent on the ground that Ranip Nagar Panchayat having been converted into Nagarpalika, it is governed by the provisions of Gujarat Municipalities Act and as such the provisions of section 179 of the the Gujarat Panchayats (Payment of lumpsum contribution by Factories in lieu of Taxes) Rules, 1964 would have no application after the agreement having ended on 31.3.1995. It was thus realised that respondent Nagarpalika cannot be compelled to enter into such agreement and liability to pay octroi has arisen after 1.4.1995. In view of this, the learned Advocate for the petitioner made a submission that the petitioner will make an application to the Nagar Palika

under section 128 of the Gujarat Municipalities Act, which enables the Municipality to direct that a current account may be kept open on behalf of the Municipality on the octroi duty from a person and accordingly the petitioner did not press the petition at that stage. The petition was accordingly rejected as not pressed.

4. The respondent, by letter dated 17.6.1995, called upon the petitioner to produce bills from 1.4.1995 to 19.6.1995 and settle the accounts on or before 19.6.1995. The petitioner, in response to the aforesaid communication, gave a complete statement of items imported by them during April-May 1995. The petitioner also made payment of Rs.60,000/- as demanded by the respondent. The petitioners were threatened by letter dated 28.6.1995 that they should make full payment otherwise, coercive measures will be taken. The petitioner immediately sent a letter dated 28.6.1995 asking the respondents to give the details of accounts and explain as to how the same has been computed. The petitioner under communication dated 5.7.1995 was called upon to pay octroi duty with respect to items such as clinker fibre, gypsum, fly ash, cement. Petitioner's two trucks of clinker fibre were stopped at the octroi outpost and they were asked to pay octroi duty in cash as per the schedule. A dispute arose as to whether clinker falls within entry No.69 and 70 of the schedule or residuary entry No.71. Rule 24 of the Gujarat Gram and Nagar (Taxes & Fees) Rules (hereinafter referred to as 'Taxes and Fees Rules') provides that octroi will be levied by the Panchayat on any of the goods specified in column 1 of schedule I on their entry into octroi limits at the octroi naka, but not below the minimum and not exceeding the maximum rates specified in columns 2 and 3 respectively of that schedule. According to the petitioner, the imported items i.e. clinker and asbestos fibre being minerals fall under entry No.70. According to the respondent, these items fall under the residuary item at entry No.71. Entry No.69 reads as under:

"Entry No.69 - Granite stone, soft stone and any other stone not used for buildings construction"

"Entry No. 70 - Silica, Quartz, Zircon and Felspar, Gypsum, Grog Minerals and Oxides used as raw materials."

The say of the petitioner is that there is an apparent mistake in entry No.70 when it refers to Grog Minerals. There is no mineral known as Grog and as such there should be comma after the word Grog before Mineral.

Thus, if comma is supplied after the word Grog and before the word Mineral, the entire entry will refer to the substances which are used as raw materials.

5. Mr Udesinh K Vaghela, Chief Officer has filed affidavit on behalf of the respondent Nagar Palika. The respondent has raised preliminary objection viz; firstly that the petitioner cannot be permitted to reopen the question which have already been concluded by the judgment of this Court rendered on 7.4.1995 in Special Civil Application No.2679/95. Secondly, the petitioner has an alternative remedy under the Gujarat Panchayats Act as well as under the Gujarat Municipalities Act. Under the Act of 1961, appeal lies to the District Panchayat as per section 178 (6) of the Act of 1961 and appeal lies under section 200(6) of the Act of 1993 and the condition precedent for filing appeal is to deposit the octroi amount with the authority concerned. Under the provisions of Gujarat Municipalities Act, if there is any dispute against the bill for recovery issued by the Municipality, the appeal lies to the Magistrate under section 138. Thirdly that the matter involves serious disputed question of fact which cannot be decided by this Court in exercise of powers under Article 226 of the Constitution of India.

6. Dealing with the merit of the case, it is denied that clinker is an item which would fall within entry No.69 or 70. It is asserted that clinker has not been provided under entry No.70 and as such it falls under the residuary entry at Sr.No.71. The interpretation of entry No.70 canvassed by the petitioner has been denied. It is stated that "Grog minerals" is a continuous word and if comma is put in between, it amounts to re-writing the whole statute. It is also stated that the clinker cannot be said to be a mineral by any stretch of imagination because it is a chemical formation of the raw material lime stone, coke, iron-ore etc. In the alternative, it is stated that even if it is assumed to be mineral, then also under entry No.70, clinker is not included as a mineral. With respect to Asbestos, it is stated that it is different from asbestos fibre. It is further stated that the petitioner-company is not using raw asbestos which is being excavated from mines. The fibre is extracted from asbestos after undergoing the process. The petitioner-company is importing asbestos fibre and not the asbestos. It is also stated that even in the year 1971-72, the octroi was being paid by the petitioner company on fibre. The receipts in this regard have been produced. Entry 70 was substituted as per the Notification dated 15.6.1971 and in the amended Schedule

as well the Grog Minerals is provided. By communication dated 2.4.1995, the petitioner's application for lumpsum contribution was rejected. Thus, it is wrong to say that by order dated 2.4.1995, the Municipality took a decision to levy and collect octroi.

7. Mr P M Raval, learned Sr.Counsel appearing for the petitioner has laid great deal of stress that there is no mineral like 'Grog'. Learned Advocate has also tried to point out the dictionary meaning of the word 'Grog'. He has also submitted that the petitioner made enquiries with the Director of Geology & Mining, Gujarat State by addressing a letter dated 14.7.1995 requesting him to give the petitioner in writing if any such mineral was known. The Director of Geology and Mining, State of Gujarat has put an endorsement on the said letter as follows:

"To the best of our knowledge, there is no mineral called "Grog"".

The learned Advocate has referred to the meaning of the word Grog as given in New Websters Dictionary which reads as follows:

"Grog (n) - a mixture of spirits, esp. rum and cold water."

Another dictionary namely; Universal Dictionary of the English Language defines the word "grog" as under:

"Grog - any kind of spirit (Orig. rum) diluted with water and used as a drink. A Sailor's word; comparatively rarely used except in nautical circles, or in allusion of sailor's drink".

As per Encyclopaedia Brittanica 1980 Edition, Macropaedia, Vol.IV, Grog means mortar made of aluminium compounds and used as a refractory; sprayed to form linings of furnaces and ovens. Dealing with grog chemicals it is stated that "Most refractories are produced in the form of brick, bonded and fired in furnaces. Some castable refractories are made in the form of mortars, usually tabular alumina with calcium aluminate cement as a binder. These mortars, called grog, are sprayed under pressure to form the linings of the steel industry's basic oxygen furnaces, electric ore furnaces, steel ladles, and coke ovens, and for steam boilers, rotary kilns, and many other high temperature applications". Learned Advocate for the petitioner has also referred to Indian Standard Glossary of terms

relating to asbestos issued by Indian Standards Institution, New Delhi. In the glossary terminology, asbestos mineral has been provided at point No.2.1 which is reproduced as under:

"2.1. Asbestos Mineral - Acicular silicate mineral with a structure based upon silicon oxygen tetrahedra. The different varieties are as given below:

- a) Asbestos Actinolite
- b) Asbestos Amosite
- c) Asbestos Anthophyllite
- d) Asbestos Chrysotile
- e) Asbestos Crocidolite
- f) Asbestos Tremolite

2.5. Cross-Fibre - Asbestos fibre that originates from veins or seams in which fibres are oriented predominantly at right angles to the plane of the vein or seam".

8. On the basis of the aforesaid dictionary meaning, it is submitted that there is no mineral known as grog, and therefore, the correct and reasonable interpretation should be placed on entry 70 by supplying comma after the word grog and before the word mineral. If comma is supplied, as submitted, the entire entry 70 relates to substances which are used as raw materials. It is further submitted that since grog is used as raw material, it will fall within the entry 70. Advancing the contention, the learned Advocate submits that Silica is Hard White mineral, variety of which are plain quartz and forming principal constituent of sand stone, Felspar and other rocks. It is further submitted that silica and its compound, such as silicate and oxide have wide range of use to the industry as raw material. Thus, according to the petitioner, entry No.70 not only includes mineral but also their compound like oxides. Emphasis of the learned Advocate is that dominant intention of entry No.70 includes all those minerals belonging to a group of raw material, except those minerals which are mentioned in other entries of the Schedule, such as Marble stone etc. With respect to asbestos, it is submitted that it is a mineral which is used as raw material which is evident from the Indian Standard glossary of terms referred to above. It is thus submitted that the items namely; clinker and asbestos would not fall within the residuary entry No.71 but it would fall within entry No.69 and 70 which are chargeable

on the basis of weight.

9. Mr Uday Singh Vaghela, Chief Officer of the respondent-Ranip Nagarpalika in his counter affidavit, with respect to the letter of 13th July, 1995 of the Director of Geology and Mining, has stated that the said letter has been obtained giving the impression that the petitioner-company is interested in the purchase of grog minerals. It is also submitted that some information has been extracted cleverly by the petitioner company by misleading and by not giving the necessary details to the Director, Mining and Geology. In view of this, the petitioner cannot take advantage of the letter of the Director.

10. Dealing with asbestos, it is stated that it is different from asbestos fibre. The petitioner is importing fibres which are excavated from asbestos after undergoing certain process. It is also stated that the petitioner-company is importing asbestos fibre from foreign countries. The petitioner-company is not using asbestos which are being excavated from the mines.

11. Mr G K Sharma, Vice President of the Company has filed affidavit and reiterated the submissions made in the petition. It is denied that asbestos fibre is something different from asbestos. It is submitted that asbestos fibre is imported and is also available in the country. It is asserted that as a matter of fact, asbestos fibre itself is a mineral. These articles are not straightaway taken from the mines and as such they cannot be considered in the category of mineral raw material. A further affidavit has been filed by Mr Uday Singh Vaghela and stated that there is a product known as grog mineral and such product is manufactured by Bhavnagar refractories and Manufacturing Co. Ltd., Nari Road, Near Kumbharwada, and the same company is also selling the product known as "Grog Minerals" in the market. It is also stated that one Hi-Tech Investment Castings Pvt. Ltd., a company which is having its registered office at 306, Madhav Complex, Shastrinagar, Bhavnagar having factory at 204/A, GIDC, II, Sihor, Dist. Bhavnagar is also purchasing Bhavnagar Refractories and Manufacturing Company. This statement of fact is not disputed. Mr S K Mishra, Manager (Law & Excise) of the petitioner-company stated that on reading the affidavit of Mr Uday Singh Vaghela, he was advised to contact Bhavnagar Refractories & Ceramic Manufacturing Co. Ltd., Bhavnagar on 30.8.1995 and made enquiry as to their product which was referred in the affidavit of the Chief Officer as "grog Mineral" and requested for the quotation

of "grog mineral". It is further stated that one Mr Maheshbhai Makati informed him that Grog is not mineral. He has also informed him that the product is manufactured by them and sold as "grog" is different "mesh". It is thus submitted that grog is not a mineral. Mr Vaghela filed re-counter affidavit disputing the statement made by Mr S K Mishra. Mr Vaghela, in his affidavit stated that as per the inquiry and information, grog minerals which is manufactured by Bhavnagar Refractories and Ceramic Manufacturing Company is manufactured from clay/sand which is excavated from sea/ocean and thereafter, it is chemically processed and the finished product which is manufactured by them is known as "grog" mineral in the market. It is further stated that there are other manufacturers of grog minerals in Than area. It is also stated that grog minerals is normally used as raw material in ceramic industries and other industries which produce bricks, clay-roofs, clay items etc. It is thus submitted that what is required to be seen is that whether there is a product available in the market known as "grog mineral" or not. It is further submitted that there is a product known as "grog mineral" and not only that but the octroi is also being levied on such product under the head of "grog mineral" by the other local authorities concerned, namely; Sihor Municipality, which is also at par with the respondent Municipality. It is also submitted that whether grog is mineral or not is not of much relevance but what is relevant is whether there is a product known as "grog mineral" in the market or not. Attention has been invited to McGraw - Hill Dictionary of Scientific and Technical terms. In the said dictionary, it is provided that grog is of two types:

1. One grog -food which includes liquor diluted with water and served hot;
2. second is grog matter which includes fired refractory materials that is used in manufacture of the products which must withstand extreme heat.

Thus, according to the respondent, both the grogs can be included in the grog minerals because grog mineral which is used as food will be in the liquor form whether the grog matter which is used as fired refractory materials in substance form. It is further submitted that the grog in the present controversy is a grog as mineral which is in substance form being manufactured and marketed by Bhavnagar Refractories Cermaic Manufacturing Company.

12. Shri S K Mishra, Manager (Law & Excise has filed a rejoinder to the said affidavit stating that he approached some of the manufacturers at Thangadh. On enquiry he found that Shree Zalawad Tiles Works was manufacturing grog. He approached him and requested for quotation and price and the nature of grog. One Prakash Shah of Shree Zalawad Tiles Works gave him the quotation of different varieties of grog which was a bye-product according to them. He also approached another manufacturer viz; Dhaval Minerals and requested for quotation. In response to that he was told that grog is not a mineral. Thus, it is submitted that there is no mineral known as grog mineral, but it is a bye-product. Controverting the said affidavit, another affidavit has been filed by the Chief Officer of Ranip Nagarpalika. It is denied that grog is a bye-product. It is also denied that Shree Zalawad Tiles Works are manufacturing grog.

13. Narration from the affidavits and counter affidavits clearly indicate that there is serious disputed question of fact as to whether grog is a mineral or not. It is also disputed whether it is a raw material or not. There is serious dispute with respect to clinker and asbestos as to whether they are raw materials or not. All these disputed questions of facts cannot be conveniently decided in writ jurisdiction in exercise of powers under Article 226 of the Constitution of India. It is also not possible to decide the question on the basis of dictionary meaning. This Court will not direct to read a statute to expand the meaning of an item in an entry, more particularly on the premises of serious disputed question of facts. Lord Denning from the case of Seaford Court Estates v. Asher (1939) 2 All ER 155 p. 164 has advised as under:

"A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

After quoting Lord Denning, the Apex Court in the case of State of Tamil Nadu vs. Kodaikanal Motor Union Pvt.Ltd., reported in AIR 1986 SC 1973, observed as follows:

"Though the Courts must find out the intention of the statute from the language used, but the language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be ideal to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress

out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye "some" violence to language is permissible."

Thus, bearing in mind the observations of the Apex Court as stated above and the scheme of the Taxing provisions and the fact that there is a serious disputed question of fact involved as to whether grog is a mineral or not, as to whether clinker or asbestos, the form in which it is imported by the petitioner firm is raw material or not, the assessment made in levying of octroi by the respondent Nagarpalika calls for no interference by this Court in exercise of powers under Article 226 of the Constitution of India.

14. In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged. There shall be no order as to costs.

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FURTHER ORDER

Learned Advocate for the petitioner submits that the interim relief granted by this Court may be continued for a further period of four weeks, as the petitioner intends to move to the Division Bench by way of filing Appeal.

In the interest of justice it is directed that the interim relief granted by this Court shall continue for a further period of four weeks.

(N N MATHUR, J.)