

REVISIONAL CRIMINAL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Rachhpal Singh*

1934
October, 23

KASHI PRASAD VERMA *v.* MUNICIPAL BOARD,
BENARES*

Municipalities Act (Local Act II of 1916), sections 155, 160, 164—Octroi—Prosecution for non-payment of octroi—Jurisdiction of criminal court to inquire whether the goods were liable to pay octroi duty—Municipal Account Code, rule 132, classes (14) and (16)—“Machinery and component parts thereof”—Tyres and tubes of motor cars.

In a prosecution under section 155 of the Municipalities Act, for non-payment of octroi on goods liable to the payment of octroi, the criminal court has jurisdiction to inquire into the question whether the goods imported were actually liable to the payment of octroi, as no offence under the said section can be said to have been committed unless the court is satisfied that the goods were in fact liable to octroi duty and not exempted from it. The mere fact that the accused had not sought the remedy of appealing against the assessment to the District Magistrate under section 160 would not compel the criminal court to convict him without inquiring whether the goods were liable to octroi or exempt; nor is the jurisdiction to make such inquiry barred by section 164 of the Act. Section 164, no doubt, provides that the liability of a person to be assessed or taxed cannot be questioned in any other manner or by any other authority than is provided in the Act. But a criminal court being the authority provided in the Act for hearing complaints under section 155, it can not be said that an accused person in such a case, who questions his liability to pay the duty on the ground that the goods were not in fact liable to the payment of octroi duty, is questioning his liability in any manner or before any authority other than that provided in the Act.

Held, also, that a whole motor car is exempt from octroi under class (16) of rule 132 of the Municipal Account Code, but not parts thereof. Tubes and tyres which are specially designed for motor cars only, and are not meant for any thing else which is not a machinery, are component parts of machinery, within class (14) of rule 132, and are exempt from payment of octroi. Parts of a motor car which are driven by

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power must be regarded as parts of the machinery, and so would be other indispensable, essential and component parts of the machinery. Accordingly the wheels, and also tyres and tubes which are necessary adjuncts of the wheels, are to be regarded as parts of the machinery; further, they are not adapted for any other purpose; hence they come under clause (14) of rule 132.

Mr. *K. L. Misra*, for the applicant.

Mr. *A. M. Khwaja*, for the opposite party.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

SULAIMAN, C.J., and *RACHHPAL SINGH, J.*:—This is a reference by the Additional Sessions Judge of Benares recommending that the conviction of the accused under section 155 of the Municipalities Act be set aside, and is connected with a criminal revision filed by the accused. The accused is an importer of tubes and tyres. He imported a large quantity of such goods without paying any octroi duty. There was considerable correspondence between the officers of the Municipal Board and the accused, but the accused failed to pay the octroi duty which was demanded by the Board. He was then prosecuted under section 155 of the Act and has been convicted and fined.

A preliminary objection is taken on behalf of the Board that it is not open to this Court, and for the matter of that was not open to the Magistrate even, to inquire into the question whether the goods were really liable to the payment of octroi. The argument is that once the municipal authorities have chosen to assess octroi on certain goods, the only remedy open to the importer is to proceed under section 164 of the Act and appeal to the District Magistrate, whose order is final. If he omits to do that, then the criminal courts have no option but to convict the accused under section 155, even if they are of opinion that the goods were not liable to the payment of octroi and were expressly exempted under the Act and that therefore the accused is not

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guilty. On the face of it such a contention is difficult to accept.

Section 155 provides that a person introducing or attempting to introduce within octroi limits or abetting such introduction of any goods or animals liable to the payment of octroi for which the octroi has neither been paid nor tendered, shall be punishable with fine. The complainant must, therefore, satisfy the criminal court that the accused has introduced or attempted to introduce or abetted the introduction of any goods or animals "liable to the payment of octroi". Unless this condition is fulfilled and the criminal court is satisfied that the goods imported are really liable to the payment of octroi, no offence under section 155 can be said to be committed. It is an essential ingredient of the offence that the importation should be of goods which are liable to the payment of octroi. No offence is committed if goods, which under the Act are exempt from liability, are imported. The mere fact that the accused had not sought the easier remedy of appealing to the District Magistrate would not compel the criminal court to convict him in the face of an express exemption under the Act. Any other interpretation of the section would stultify criminal courts which would be constrained to convict persons of an offence, although they know that they are not guilty. The burden, in our opinion, is on the Municipal Board to satisfy the criminal courts that the goods in fact were liable to duty.

The learned advocate for the Municipal Board contends before us that the provisions in section 164 of the Act created an absolute bar against the jurisdiction of civil and criminal courts in matters of municipal taxation. So far as civil courts are concerned, his contention is well founded. But the jurisdiction of the criminal courts is only partially barred, because subsection (1) provides that the liability of a person to be assessed or taxed cannot be questioned "in any *other* manner or by any *other* authority than is provided in

this Act". Now a criminal court is one of the authorities referred to in this very Act for hearing complaints under section 155 of the Act. An accused person, who questions his liability to pay octroi duty on the ground that the goods were not in fact liable to the payment of octroi, before a criminal court hearing a complaint under section 155, is not questioning his liability in any manner or before any authority other than that provided in this Act. Section 164 would more appropriately apply to cases where the goods are detained by the municipal authorities, or where octroi duty has been paid which the importer thinks is in excess of what he was bound to pay. On such matters the order of the appellate authority is final and the importer has no right to claim a refund in any civil or criminal court. But we are unable to hold that on that account a criminal court is compelled to convict an accused person, even though satisfied that the goods on which he has not paid octroi were not liable to the payment of octroi. We accordingly overrule the preliminary objection.

The learned advocate for the Board has drawn our attention to rule 231 of the Municipal Account Code and the schedule attached thereto, under which a breach of any of the rules, including rule 145, i.e. failure to pay the octroi assessed by the octroi superintendent, is punishable with fine. The accused has not been prosecuted and convicted under rule 231 of the Municipal Account Code. We are, therefore, not called upon to express any opinion as to whether in a case of this kind, where the goods were not stopped at the barrier at all, there has been an assessment by the octroi superintendent within the meaning of the rules in Chapter X of the Code.

The next question is whether the tubes and tyres which had been imported by the accused were liable to the payment of octroi.

Chapter X of the Municipal Account Code contains a list of a large number of classes of articles on which

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duties are expressly made leviable and articles which are expressly made exempt from the payment of such octroi. Rule 132, class (16), specifically refers to carriages and vehicles of all sorts, including motor cars, bicycles, and tricycles. Thus a motor car as a whole is expressly exempt from liability; but parts of a motor car are not mentioned in class (16). The accused, therefore, cannot claim exemption for parts of a car under this class (16).

The learned advocate for the accused relies strongly on the exemption in class (14), under which "machinery, namely, prime-movers and component parts thereof, including.....motor tractors.....and other machines in which the prime-mover is not separable from the operative parts" are exempt from the payment of octroi. Under the same class are also exempt "machinery (and component parts thereof) meaning machines or sets of machines to be worked by electric, steam, water, fire or other power not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts;.....provided that the term does not include tools, etc.....and provided also that only such articles shall be admitted as component parts of machinery as are indispensable for the working of the machinery and are, owing to their shape or to other special quality, not adapted for any other purpose".

This category is very unhappily worded. In the same class we have two different sentences which both apply to machinery. If there were nothing else in this rule, one might have been inclined to think that the definition that machinery means machines or sets of machines worked by power was wide and comprehensive enough to include motor cars also. But there are some circumstances which cannot be ignored: (1) Motor cars are especially mentioned in class (16) which does not mention parts thereof; (2) It is especially provided in class (14) that motor tractors are exempt, but that class does not mention motor cars. On the other hand, it

must be conceded that these classes are not mutually exclusive, and there can be overlapping, for instance some goods, which fall under other classes, may also fall under class (12) when the octroi payable is less than one pice, or under earlier classes when they are property belonging to Government or the Municipal Board.

The language employed is undoubtedly very ambiguous. But it has been the subject of interpretation by a learned single Judge of this Court in the case of *Surjan Lal v. King-Emperor* (1). DALAL, J., in that case held that a cylinder head was clearly part of a machine and was exempt. In the course of his judgment the learned Judge expressed the view that parts of motor cars are not exempted from duty, with the curious result that parts of the body of a motor car would be liable to duty but parts of the machine of a motor car would be exempt. That case, however, is not a binding authority for this statement of the law.

But we agree with the learned Judge that a distinction should be drawn between the machinery of a motor car and the body of such car. A motor car as a whole is an article which falls under class (16), but the machine or machinery of the motor car is an article which falls under class (14). It would, therefore, follow that a whole motor car would be exempt from duty; but the parts of the body of a motor car which are not a machinery would not be exempt from duty.

Bearing in mind a clear distinction which in common parlance is drawn between the machinery of a car and the body of a car, we must hold that that part of a motor car which is a set of machines worked by power is machinery; whereas the body of the car, which is not so worked but which is used for purposes of affording accommodation or presenting a good appearance, is not machinery. The difficulty, of course, will always arise in drawing the line of demarcation. But it may be stated broadly that the body of a car, which is well

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understood in common language as something distinct from engine, the chassis, and the machinery, is not machinery.

But we are unable to hold that the machinery of a motor car constitutes nothing but the dynamo or the engine and that the other parts of the machinery including the electric wires and the wheels and the axles and the chains are no parts of the machinery. It seems to us that parts of the car which are set in motion by power must be parts of the machinery, and so would be other indispensable, essential and component parts of the machinery. In this view, we would be prepared to go to the length of holding that wheels, axles and chains, which by connection are driven by power, are parts of the machinery of cars.

This, however, does not conclude the matter. The question in this case is whether tubes and tyres are component parts of the machinery. Now, in order that they be component parts of the machinery, it is necessary that owing to their shape or other special quality they should not be adapted for any other purpose.

The learned advocate for the accused strongly contends before us that tubes and tyres have been made by the manufacturers for use in motor cars and have been especially designed for such purposes. Had they been intended for use in slow going bicycles, they would have had a different texture, material and possibly shape.

If the wheels, which also are driven by power, are to be taken to be parts of the machinery, then it is obvious that a tube and a tyre, though detachable, are necessary adjuncts of a wheel just as the spokes and the rim are. The wheel of a motor car cannot serve its purpose without a tube and a tyre. The mere fact that these can be taken off and put on again does not make them any the less indispensable and essential parts of the wheel. Being constantly subject to friction with the road, they are much more liable to wear and tear than the main

wheel, and have to be replaced frequently. But on this ground they cannot cease to be component parts of the wheel. It is impossible to regard them as a part of the body of the car or any other dispensable part.

We are accordingly of opinion that tubes and tyres, which are specially designed for motor cars only, and are not meant for anything else which is not a machinery, are under class (14) exempt from the payment of octroi.

We accordingly accept the reference made by the Additional Sessions Judge of Benares and set aside the order convicting and sentencing the accused and direct that the fine, if paid, be refunded.

REVISIONAL CIVIL

Before Mr. Justice Bennet

MUNNA LAL AND SONS (PLAINTIFF) *v.* MUNICIPAL BOARD, JHANSI (DEFENDANT)*

*Municipalities Act (Local Act II of 1916), sections 160, 164—
Octroi—Assessment to octroi charge—Civil suit challenging
liability of the goods to pay octroi—Jurisdiction of civil
court barred.*

The remedy open to a person who has been assessed with octroi duty in respect of goods which, according to him, are not liable to the payment of any octroi duty is by way of an appeal to the District Magistrate under section 160 of the Municipalities Act. Civil courts are precluded, under section 164 of the Act, from entertaining a suit questioning the liability of a person to be assessed to any municipal tax, and octroi is a municipal tax, as laid down in section 128(1) of the Act.

Mr. S. C. Das, for the applicant.

Messrs. *Shiva Prasad Sinha* and *Shankar Sahai Verma*, for the opposite party.

BENNET, J.:—This is a civil revision brought by a plaintiff against a decree of the small cause court in Jhansi. The plaintiff imported into Jhansi a number of articles on which he was charged Rs.237-7-9 octroi.

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