

2007 (2) GLR 1082

GUJARAT HIGH COURT

Hon'ble Judges: Jayant Patel, J.

Kothariya Gram Panchayat Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 5668 of 1997 ; *J.Date :- DECEMBER 11, 2006

- [GUJARAT GRAM AND NAGAR PANCHAYATS TAXES AND FEES RULES, 1964](#) Rule - [36\(1\)\(r\)](#)
- [GUJARAT PANCHAYATS ACT, 1961](#) Section - [200\(8\)](#), [259](#)

Gujarat Gram and Nagar Panchayats Tax and Fees Rules, 1964 - R. 36(1)(r) - Gujarat Panchayats Act, 1961 - S. 200(8), 259 - exemption from payment of octroi - claim that respondent no. 2 was 100 per cent export oriented unit and, therefore, entitled to exemption under R. 36(1)(r) - exemption refused - eligibility for claiming exemption - necessary certificate was required to be issued with approval of Secretary of Ministry of Commerce of Government - held, as no authenticated record was produced by respondent no. 2 before State - therefore, in absence of any material impugned order of State cannot be faulted with - moreover, as per R. 36(1)(r), exemption from octroi was available only to raw material imported by 100 per cent export oriented unit - no illegality or error of jurisdiction is demonstrated - petition dismissed.

Imp.Para: [[6](#)] [[7](#)]

Equivalent Citation(s):
2007 (2) GLR 1082 : 2007 (2) GCD 1472

**JUDGMENT :-
JAYANT PATEL, J.**

1 The short facts of the case are that the petitioner is a Gram Panchayat and was collecting octroi from Respondent No. 2 since 1992-93. Respondent No. 2 claimed octroi exemption on the ground that it is 100% export oriented unit and, therefore, entitled to the exemption under R. 36(1)(r) of the Gujarat Gram and Nagar Panchayats Tax and Fees Rules, 1964. It appears that upon the application of the petitioner, initially the matter was considered by the District Development Officer and the Gram Panchayat was informed to take necessary

action in this regard. It was also opined by DDO vide letter dated 20.2.1997 that Respondent No. 2 is 100% export oriented unit and entitled for the exemption from payment of octroi. The documents were submitted by Respondent No. 2, but the petitioner Panchayat denied the same, observing that the item of C.R. Sheet is not engineering goods and other items No. 2 to 10 were treated as engineering goods and, therefore, the octroi on that item was collected. It appears that the respondent No. 2 addressed a letter to the State Government on 8.5.1997 praying for intervention and passing necessary orders for exemption and refund of the amount of octroi already paid. The said letter was treated for exercise of the revisional power by the State Government and ultimately after hearing the petitioner Panchayat on 30.6.1997 the State Government passed the order, whereby the decision of the Gram Panchayat vide resolution dated 12.9.1996 was cancelled and it was further ordered that the refund of Rs. 7,94,508.00 be made to Respondent No. 2 Company by the Gram Panchayat. Under these circumstances, the petitioner approached this Court by preferring the present petition.

2 I have heard Mr.Mehta, learned Counsel for Mr.Lakhani, learned Counsel appearing for the petitioner and Mr.Soni, learned AGP for the respondent No. 1.

3 Mr.Mehta, learned Counsel appearing for the petitioner raised the contention that for eligibility of exemption, as per rule, the necessary certificate is required to be issued and he submitted that the said certificate must be with the approval of the Secretary of the Ministry of Commerce of Government of India and since there is no such certificate produced, the exemption cannot be claimed. The said contention deserves to be rejected on the face of it in as much as the certificate is already produced by Respondent No. 2 together with the affidavit-in-reply Annexure III colly dated 29.6.1992 and vide Clause No. 27 of the conditions attached to the letter of Intent, it has been also expressly provided that the application of the industrial undertaking is approved by the specially constituted Board of approval for 100% export oriented undertaking formed under resolution No. 8/15 (78/EP) dated 31.12.1980 issued by the Ministry of Commerce. In any case, the certificate is issued by the Government of India for 100% export oriented unit and when the certificate is not under challenge, such a contention even otherwise also cannot be accepted.

4 Mr.Mehta, learned Counsel appearing for the petitioner also contended that the State Government ought not to have exercised the revisional power upon the letter of the respondent No. 2 company when there were remedies provided under the law namely; appeal before the Appellate Committee as per Sec. 200(8) of the Gujarat Panchayat Act and other remedy. He further submitted that the order of the State Government deserves to be quashed on that ground. In my view the said contention is also ill-founded in as much as the existence of alternative remedy is no bar to the jurisdiction of the State Government u/s. 259 when the power is to be exercised in revisional jurisdiction. It is by way of a discretion, the State Government may in normal circumstances not entertain

the matter is a different aspect, but once the jurisdiction is invoked and is exercised, such a ground cannot be said as valid for assailing the order, if otherwise the order can stand on merits in the eye of law. Therefore, such contentions cannot be accepted.

5 Mr.Mehta, learned Counsel appearing for the petitioner, lastly submitted that the item, which was not considered for the purpose of exemption of octroi was C.R. Sheet and other items are considered as engineering goods and, therefore, he submitted that the decision of the Government for treating as 100% octroi exemption on all items is not correct.

6 As such no authenticated record was produced on by the Panchayat before the State Government and, therefore, in absence of any material, the order of the State Government cannot be faulted with. Even the petitioner in the present proceedings has not produced any certificate to show that the item of C.R. Sheet cannot be considered as engineering goods for the production of respondent No. 2 company.

7 Apart from the above, as per R. 36(1)(r), the exemption from payment of octroi is to the raw-material imported by 100% export oriented unit. Therefore, if C.R. Sheet is an item of raw-material for manufacturing of the cylinder as per the certificate issued by the Chartered Engineer, Shri Mahendra Doshi, who has been referred to by the State Government in the order, the conditions of exemption from payment of octroi would be attracted. Therefore, it cannot be said that any error of jurisdiction is committed by the State Government while exercising the revisional jurisdiction.

8 In view of the above, the order passed by the State Government in revisional jurisdiction does not deserve to be quashed and set aside as no illegality or error of jurisdiction is demonstrated.

9 Under the circumstances, the petition fails. Rule discharged. Interim relief, if any, stands vacated. No costs.

