M/s. Shroff And Co.

Vs

Municipal Corpn. of Greater Bombay and Another

Trade Links Ltd. and Another

Vs

Municipal Corpn. of Greater Bombay and Another

Civil Appeal No. 737 of 1988

(Sabyasachi Mukharji, A. Ranganathan JJ)

12.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal by special leave is directed against the decision of the Division Bench of the High Court of Bombay dated November 24/25, 1987. The other two special leave petitions challenge the same judgment and the points and the facts involved are also more or less identical and it is, therefore, desirable to deal with the facts of the first appeal. Disposal of the first appeal would entitle the disposal of the other two special leave petitions.

2. The appellants are registered partnership firms carrying on business of dealing in wines and spirits and are licensed to import and store liquors in their bonded warehouses at Maulana Shaukat Ali road, Bombay. The appellants are also holder of licence issued under the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 framed under the Prohibition Act of 1949 being Act No. 25 of 1949 of the State Government. As early as 1888, Bombay Municipal Act was enacted empowering the Bombay Municipal Corporation to levy octroi on goods brought to the city. We shall refer to the provisions of the said Act as relevant to the present purpose later. In 1949 Bombay Prohibition Act (hereinafter called 'the Act') was passed. The provisions of the Act and the Rules which will be referred to hereinafter empowered the State Government to impose excise and other duties. In 1965 Maharashtra Foreign Liquor (Storage in Bond) Rules, 1964 were enacted. Under these rules, the importer can import liquor and stores the same in warehouse without payment of countervailing duty. The Octroi Rules were amended time and again on July 28, 1976 and June 28, 1983 to impose octroi on the assessable value which includes customs duty paid on import of liquor. The appellants herein filed writ petition challenging the inclusion of countervailing duty in the assessable value for octroi on the ground that the said duty was non-incurred 'till the date of removal of the goods from the place of import'. On June 28, 1983 the words 'countervailing duty' were included in the definition of Rule 2 (7) (a) of the Bombay Municipal Corporation Levy of Octroi Rules, 1965. A learned Single Judge of the High Court of Bombay allowed the writ petition on January 14, 1986 holding that countervailing duty was neither incurred nor was it liable to be incurred until after the bonded liquor had been removed from the place of import and allowed the writ petition. Respondents herein filed Letters Patent Appeals against the decision of the learned

Single Judge. The Division Bench by the impugned judgment reversed the judgment of the learned Single Judge and held that countervailing duty was includible in the assessable value for the imposition of octroi. In pursuance of the same the Deputy Assessor and Collector (Octroi), Bombay, issued notice demanding payment of octroi amounting to Rs. 76,70,308.71. The facts and circumstances of the other two special leave petitions are more or less identical and are governed by the same judgment.

3. The sole question, therefore, involved in this appeal, is whether countervailing duty is includible in the octroi. Octroi, as Shri Soli J. Sorabjee appearing for the appellants in the instant appeal drew our attention is governed by entry 52 of List II of the Seventh Schedule being tax on the entry of goods into a local area for consumption, use or sale therein. It is submitted that in order to be a valid octroi, there must not only be a physical entry of the goods within the limits of the municipality but the entry of the goods must be either for consumption, use or sale. Being in mind the basis constitutional provision, therefore, octroi should be so construed as to follow upon the entry of goods either for consumption or for use or for sale and not mere physical entry.

4. Section 105 of the Act provides as follows :

> 105. (1) An excise duty or countervailing, as the case may be, at such rate or rates as the State Government shall direct may be imposed either generally or for any specified local area on -
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> (a) any alcoholic liquor for human consumption,
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> (b) any intoxicating drug or hemp,
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> (c) opium,
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> (d) any other excisable article, when imported, exported, transported, possessed, manufactured or sold in or from the State, as the case may be :
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> Provided that duty shall not be so imposed on any article which has been imported into the territory of India and was liable on such importation to duty under the Indian Tariff Act, 1934, or the Sea Customs Act, 1878 or on any medicinal or toilet preparation containing alcohol, opium, hemp or other narcotic drug or narcotics.

5. Section 2(14) of the Act defines "excise duty" and "countervailing duty" as follows :

> 2. (14) 'excise duty' and countervailing duty' means such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 in List II of the Seventh Schedule to the Constitution.
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> 6. Section 106 of the Act provides as follows :
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> 106. Subject to any regulations to regulate the time, place and manner of payment made by the Commissioner in this behalf, the duties referred to in Section 105 may be levied in one or more of the following ways :
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> (a) in the case of an excisable article imported -

(i) by payment either in the State at the time of its import or in the State or territory of export at the time of its export, or

(ii) by payment upon issue for sale from a warehouse established or licensed under the provision of this Act;

(b) in the case of an excisable article exported by payment in the State at the time of its export, or in the State or territory of import;

(c) in the case of excisable articles transported -

(i) by payment in the district from which they are transported, or

(ii) by payment upon issue, for sale from a warehouse established or licensed under the provisions of this Act;

(d) in the case of spirit or beer manufactured in any distillery established or any distillery or brewery licensed under this Act;

(i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued from a warehouse established or licensed this Act, or,

(ii) by rate charged in accordance with such scale of equivalents calculated on the quantity of materials used or by the degree or attenuation of the wash or wort, as the case may be, as the State Government may prescribed;

(e) in the case of intoxicating drugs manufactured in the State by payment upon the quantity produced or manufactured or issued from a warehouse established or licensed under this Act :

Provided that where payment is made upon issue for sale from a warehouse established or licensed under this Act, such payment shall be at the rate of the duty in force at the date of issue from the warehouse :

Provided further that where one and the same person is permitted -

(i) to manufacture or import and to sell, or

(ii) to manufacture and export, country liquor or any intoxicant, such duty may be levied in consideration of the joint privileges granted, as the Collector deems fit.

7. Section 26 of the Act provides as follows :

26. The State Government may -

(a) establish a distillery in which spirit may be manufactured in accordance with a licence issued under this Act on such conditions as the State Government deems fit to impose;

(b) discontinue any distillery established;

(c) license, on such conditions as the State Government deems fit to impose, the construction and working of a distillery or brewery;

(d) establish or license a warehouse wherein any intoxicant hemp, mhowra flowers or molasses may be deposited and kept without payment of duty; and

(e) discontinue any warehouse so established.

8. In the licence held by the appellants for storage in bond of foreign liquor there is a provision that no liquor shall be removed by them from the licensed premises for consumption within the State except on payment of excise duty and fees.

9. Section 192 (1) of the Bombay Municipal Corporation Act, 1888 as amended provides as follows :

192. (1) Except as hereinafter provided, a tax, at rates not exceeding those respectively specified in Schedule H, shall be levied in respect of the several articles mentioned in the said Schedule, or so many of them or such of them as the Corporation shall from year to year in accordance with Section 128 determine on the entry of the said articles into Greater Bombay for consumption, use or sale therein. The said tax shall be called an 'octroi'.

10. In other words, it provides for a tax in accordance with Section 128 on the entry of the articles into Greater Bombay for consumption, use or sale therein. The said tax shall be called "octroi". It is appropriate at this stage to refer to Rule 2 (7) (a) of the Octroi Rules as amended from time to time :

I. Prior to July 28, 1976

'Value of the articles' where the octroi is charged ad valorem shall mean the value of article made up of the cost of the articles as ascertained from the original invoice plus shipping dues, insurance, excise duties, sales tax, vend fees, freight charges, carrier charges, and all other incidental charges incurred by the importer till the arrival of the article at the place of import.

II. With effect from July 28, 1976

'Value of the articles' where the octroi is charged ad valorem shall mean the value of the articles made up of the cost price of the articles as ascertained from original invoice plus shipping dues, insurance, Customs duties, excise duties, sales tax, vend fees, freight charges, carrier charges and all other incidental charges excepting octroi incurred by the importer, till the articles are removed from the place of import.

III. After June 28, 1983 and onwards

'Value of the articles' where octroi is charged ad valorem shall mean the value of the articles as ascertained from original invoice plus shipping dues, insurance, customs duties, excise duties, countervailing duty, sales tax, transport fee, vend freight charges, carrier charges, and all other incidental charges, excepting octroi incurred or liable to be incurred by the importer till the articles are removed from the place of import.

11. Our attention was drawn to Octroi Rules applicable to Nagpur City as considered in a Division Bench Judgment reported in 1977 Maharashtra Law Journal 293 by Masodhkar and Kemble, JJ. The said rules provided for the imposition of octroi on goods and animals brought within the octroi limits of the Nagpur Municipal Corporation for sale, consumption or use therein.

12. Our attention was also drawn to certain different provisions as considered by the Division Bench consisting of Mohta and Qazi, JJ. on November 30, 1985. It is instructive at this stage to refer to the Rules in respect of levy, assessment and collection of octroi. Rule 2 (2) defines "import" to mean conveying of any article liable to octroi into Greater Bombay from any other area outside Greater Bombay."Place of import" has been defined in Rule 2 (4) to mean the docks, bunders, wharfs, railway yards, sidings, depots, airport terminus, municipal octroi posts at roads across Greater Bombay limits and such other places at which the articles arrive within Greater Bombay for the purpose of import. Section 12 of the Customs Act, 1962 imposes customs duty and provides that except as otherwise provided in that Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India.

13. The learned Single Judge in his Judgment noted that a question almost identical to the question posed above came to be considered by the Nagpur Bench of the Bombay High Court in Special Civil Application No. 779 of 1971, J. E. Bilimoria & Sons v. Corporation of the City of Nagpur. A Division Bench comprised of Masodhkar and Kemble, JJ., upheld the petitioners' contention by their judgment dated December 23, 1976. Rule 10 (a) framed under the City of Nagpur Corporation Act, 1948, read thus :

> 10 (a) Where the duty is chargeable on weight, gross profits including that of the package or container shall be adopted. When the duty is chargeable ad valorem the value thereof shall be the cost price to the importer plus all incidental charges and such as customs duty, insurance, excise duty, sales tax and freight and such other charges incurred by the importer, till the arrival of the goods at the octroi naka, if these have not already been included in the cost price.

14. The Division Bench in that case held, construing the rule, that it did not operate upon liabilities attached to imported goods that arose after the goods had entered the limits of the city of Nagpur for use, consumption or sale. Thus the value at the entry was only relevant for the purpose of calculation of the octroi and not its appreciation or depreciation thereafter but prepaid or pre-incurred though not paid duties before the goods were imported into Nagpur would be the part of the value. It was held that that would not be the position of duties or charges which were not incurred at the time of the entry of the goods within Nagpur but which were charged when the goods were dealt with after such entry. The Nagpur Municipal Corporation was, therefore, directed not to collect octroi upon bonded liquor brought into the limits of Nagpur without payment of excise duty by adding the excise duty payable in the incidental charges contemplated by Rule 10 (a). The learned Judge was of the view that Section 192 (1) of the Bombay Municipal Corporation Act empowered the collection of octroi upon entry of articles into Greater Bombay for consumption, use or sale. The emphasis is upon the entry of the goods into the city limits. Octroi therefore is attracted on entry. The taxable event for octroi is the entry of the goods. But the question is when do the goods enter ? The Learned Single Judge was of the view that the liquor in bond is imported when it is conveyed into Greater Bombay from outside Greater Bombay. When it is conveyed into Greater Bombay by road the place of import is the octroi post on the road across the limits of Greater Bombay. Nagpur rule applied to the charges incurred by the importer till the arrival of the goods at

the octroi naka. The learned Single Judge noted that it would not be proper to include within the word 'incur' the charges to be incurred after the import, and that the Bombay rule as it is now read used the words "liable to be incurred".

15. Rule 2 (7) (a) as it read before July 28, 1976 mentioned charges incurred till the arrival of the articles at the place of import. The charge of countervailing duty incurred subsequent to the arrival of the bonded liquor at the place of import fell outside the rule as it then read. Between July 28, 1976 and June 27, 1983 the rule mentioned charges incurred till the articles were removed from the place of import. Inasmuch as the charge of countervailing duty was incurred after the bonded liquor had been removed from the place of import, the rule as it then read could not apply to such countervailing duty. The rule as it reads subsequent to June 28, 1983 mentions countervailing duty but among charges incurred or liable to be incurred till the articles are removed from the place of import. According to the learned Single Judge, the countervailing duty is neither incurred nor is liable to be incurred until after the bonded liquor has been removed from the place of import. He was, therefore, of the view that the countervailing duty could not be included in the value of the octroi.

16. The Division Bench disagreed. It has to be emphasised that Rule 2 of the Octroi Rules deals with the definition of various terms and the expression "import" under Rule 2 (2) means conveying of any article liable to octroi into Greater Bombay from any other area outside Greater Bombay. Rule 2 (5) defines expression "date of import" which means the date on which the octroi is paid and in the event of non-payment of octroi at the time of import on account of any inadvertence, error or misunderstanding, it shall mean the date on which the articles are cleared from the place of import. The question is when the liability to pay countervailing duty was incurred by the importers of liquor. We have noticed entry 51 of List II and also Section 105 of the Prohibition Act. Excise duty is in essence a tax on manufacture or production of goods and excise duty can be levied only on such goods as are manufactured or produced within the State. The countervailing duty on the other hand is imposed for the purpose of setting off or compensating some other duty so as to place the home producer on an equal footing with the importer of foreign goods. The essence of countervailing duty is to set off the effect of non-payment of tax on manufacture. It is meant to protect the indigenous production.

17. The nature of countervailing duty was explained by this Court in Kalyani Stores v. State of Orissa. There this Court observed that power to levy countervailing duties under entry 51 List II is meant to be exercised for the purpose of equalising the burden on alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquors manufactured or produced in the State. Therefore, countervailing duties can only be levied if similar goods are actually produced or manufactured in the State on which excise duties are being levied.

18. Our attention was also drawn to the decision of the Allahabad High Court in Mohan Meakin Breweries Ltd., Ghaziabad v. State of U. P., where it was held that the excise duty is a single point duty, that is, if it is charged at the stage of manufacture or at the stage of transport, it cannot be charged at both the points.

19. Shri Divan, appearing for the Corporation, drew our attention to Rules 18, 19 and 31 of the Import and Export Rules. Rule 3 (2) of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 defines "bonded warehouse" to mean a place appointed by the State Government as a bonded warehouse for the storage in bond of Indian-made foreign liquor and includes a bonded laboratory. "Importing place" has been defined under Rule 3 (8) to mean any place in India outside the State of

Maharashtra to which foreign liquor is to be sent from the State of Maharashtra. Rule 11 of the said Rules is as follows :

> 11. Issue of pass. - (1) On receipt of the application made under Rule 10, the Collector shall make such inquiries as he may deem necessary and if he sees no objection he may -
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> (a) where the foreign liquor is to be imported in bond, require the importer to execute a bond, in Form C, with two sureties, for the payment of the amount of duty leviable on the foreign liquor to be imported or a general bond, in Form D which would remain in force for a period of three years, along with two sureties for the payment of a sum sufficient to cover the amount of duty leviable on the total quantity of foreign liquor which may be imported by him from time to time during the period of three years, and on the execution of the bond grant an import-in-bond pass in Form E :
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> Provided that the execution of the bond under this clause may be dispensed with by the Collector in the case of any importer of known good standing who has deposited with the Collector a sum which in the opinion of the Collector is sufficient to cover the amount of duty payable by him.
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> (b) where the foreign liquor is to be imported on pre-payment of duty in the State of Maharashtra, grant an import pass in Form F provided that the duty leviable under the Act on the foreign liquor to be imported has been paid.
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> (2) Every pass granted under sub-rule (1) shall show the designations of the officers by whom, and the places at which, the consignment of liquor to be imported is to be inspected en route under Rule 15 and examined on arrival at the place of import under Rule 16. In cases of import by road, one of the inspecting officers shall be the Prohibition and Excise Officer-in-charge of the taluka in which the place where the consignment enters the limits of the State is situated. In cases of import by rail direct to the place of import, one of the inspecting officers shall be the Prohibition and Excise Officer-in-charge of the place where the railway station to which the consignment is to be booked is situated.
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> (3) Every pass granted under sub-rule (1) shall be in four parts. Part I shall be retained on the records of the officer issuing the pass; Parts II and III shall be sent by post to the Excise Officer at the exporting place with a request to endorse on Part III the quantity of foreign liquor in litres and proof litres issued to the importer and thereafter to return Part III to the officer issuing the pass. Part IV shall be handed over to the importer or his agent together with the Form "Certificate 2" annexed thereto.
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> (4) No pass under sub-rule (1) shall be granted unless the foreign liquor is to be exported to the place of import from a distillery, brewery or bonded warehouse in the exporting place.

20. Rule 18 enjoins as follows :

> 18. Deposit of consignment in, and withdrawal from, the bonded warehouse in the case of import in bond. - (1) Where the foreign liquor is imported in bond, the

consignment shall after it is examined under Rule 16, be sent to bonded warehouse together with Part IV of the pass and the certificate. Particulars of the consignment shall be entered by the officer-in-charge of such warehouse in the register of deposits and withdrawals which shall be kept in such form as the Director may direct. Where the consignment is of rectified spirit imported for use in a bonded laboratory, it shall be allowed to be removed to the bonded laboratory and the Prohibition and Excise Officer-in-charge of such laboratory shall after entering particulars about it in the register of receipts verify its quantity and strength. On receipt of the Chemical Analyser's report, the officer-in-charge of the bonded warehouse or laboratory shall fill in the various columns on the reverse of Part IV of the pass. The consignment shall then be allowed to be removed from the bonded warehouse under a transport pass on payment of -

(a) the duty leviable under the Act, on the foreign liquor imported,

(b) the fees prescribed under the Bombay Foreign Liquor and Rectified Spirit (Transport) Fees Rules, 1954, and

(c) other charges, if any, payable in respect of the consignment.

The Officer-in-charge of the bonded warehouse shall then prepare a copy of the Part IV of the pass and forward it to the Collector for record with Part I of the pass in his office.

(2) The whole consignment of the foreign liquor imported into and stored in the bonded warehouse under these rules shall be removed from the warehouse at one and the same time and within a fortnight from the date of receipt in the warehouse. If any liquor remains in the warehouse for a longer period than a fortnight, warehouse rent at the rate of one paisa per week, per litre, or at such other rate as may from time to time be fixed by the Director shall be charged, but in no case shall a consignment or any part thereof be allowed to be kept in bond for a period exceeding one month.

21. Rule 19 provides as follows :

19. Release of consignment after examination in cases of imports of Indian-made foreign liquor pre-payment of duty - (1) Where the foreign liquor is imported on pre-payment of duty in this State, the examining officer shall note the result of his examination under Rule 16 on the reverse of Part IV of the pass and on the certificate. He shall then allow the consignment to be removed if he is satisfied that the full amount of duty on the foreign liquor imported and the fees leviable under the Bombay Foreign Liquor and Rectified Spirit (Transport) Fees Rules, 1954, have been paid or that the importer has agreed in writing to pay any excess amount of duty or fees that may be found to be due from him on the result of the examination officer's examination or on receipt of the report of the Chemical Analyser to government. He shall then hand over Part IV of the Pass to the importer after making a note thereon in this respect and keeping a copy of Part IV of the pass. A similar note shall also be made on the certificate which shall be kept by the examination officer.

(2) On result of his examination or on receipt of the Chemical Analyser's report, as the case may be, the examining officer shall calculated the amount of duty and the

aforesaid fees due on the consignment and forward the copy of Part IV of the pass to the Collector stating what excess amount of duty or fees, if any, is recoverable from the importer. The Collector shall then take the necessary steps to recover the amount from the importer. The copy of Part IV of the pass shall be recorded by the Collector with part I of the pass keeping note thereon as to the excess amount of duty or fees paid by the importer.

22. Therefore, clearance from bonded warehouse, it was contended on behalf of the respondents, envisaged payment of an incurred liability. Our attention was drawn to the observations of this Court in Mc Dowell & Company Limited v. CTO and reliance was placed on the observations at page 814 of the report (SCC p. 247, para 27) that these cases established that in order to be an excise duty (a) the levy must be upon 'goods' and (b) the taxable event must be the manufacture or production of goods. It was further submitted that countervailing duty is an incidental charge. Our attention was drawn to the expression "incidental" in the Words & Phrases, Permanent Edition, 20-A, pages 10-101 and also to Webster's New Twentieth Century Dictionary, page 922 and Webster's Third New International Dictionary, page 1142.

23. In state of Bombay v. S. S. Miranda Limited, the respondent held a trade and import licence for foreign liquor as well as a vendor's licence under the Bombay Abkari Act. It kept liquor in a bonded warehouse. On April 2, 1949, the appellant asked the respondent to remove the liquor from the bonded warehouse after paying the necessary excise duty. The respondent paid the duty, got the transport permits and took over the liquor, some of which was sold. On December 16, 1948, the appellant issued a notification doubling the duty on foreign liquor and called upon the respondent to pay the additional duty on the liquor which was still lying in its godown. The respondent contended that the imposition of additional duty on the stock on which duty had already been paid at the time of its issue from the bonded warehouse was illegal. The appellant's case was that the respondent was bound to pay the duty prevailing on the transport of liquor at the time of transporting the same from its premises to another place within the State of Bombay. It was held that the imposition of the additional excise duty was illegal. Once the duty had been paid the liquor could be transported free from any further imposition, except where it was transported to a region where the duty was different from the region where the duty was paid. There was no power in the State Government to impose duty at every movement during the course of the trade. Though there was power in the legislature to levy duty at every movement of liquor, it had not exercised that power; nor had it delegated such power to the State Government. There at page 402 of the report, the Court had considered Section 3 (10) of the Bombay Abkari Act which defines "to transport" to mean "to move to one place from another place within the State". On the construction of the present Rules, it was contended on the authority of the said decision that unless there was movement, there was no imposition of the countervailing duty. But that is not a correct assessment of the nature of duty.

24. Our attention was also drawn to the observation of this Court in Central India Spinning and Weaving and Manufacturing Company Ltd. v. Municipal Committee, Wardha. There at page 1107 of the report this Court observed that 'import' is derived from the Latin word importare which means ' to bring in' and 'export' from the Latin word exporture which means 'to carry out' but these words were not to be interpreted only according to their literal derivations. Lexico-logically these do not have any reference to goods in 'transit' a word derived from transire 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. According to Webster's International Dictionary the word "import' means to bring in from a foreign or external source; to introduce from without; especially to bring (wares or merchandise) into a place or country from a

foreign country in the transaction of commerce; opposed to export. Similarly "export" according to Webster's International Dictionary means "to carry away; to remove; to carry or send abroad especially to foreign countries as merchandise or commodities in the way of commerce; the opposite of import". The Oxford Dictionary gives a similar meaning to both these words. At page 1113 of the report, it observed as follows :

> 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 departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both interstate 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.

25. Reference was also made to the observations of Chief Justice Marshall dealing with the words "importation" in Brown v. State of Maryland. Reference was also made to Corpus Juris, Volume 62, page 729 and it was emphasised that "terminal" in connection with transportation means inter alia "the fixed beginning or ending point of a given run". The court concluded that the terminal tax under Section 66 (1) (a) of the Act was not leviable on goods which were in transit and were only carried across limits of the municipality.

26. Reference was also made to Canada Sugar Refining Company Ltd. v. Queen, where at page 740-41 it was observed as follows;

> The real question, of course, is whether the sugar was "imported" within the meaning of Section 4 of the Tariff Act, 1894, before or after May 3, because it is by that Section as amended by the Act of 1895 that the duty is imposed. By the provision of Section 4 the duties are to be "levied, collected and paid" (which means nothing more than paid) upon the enumerated goods "when such goods are imported into Canada or taken out of warehouse for consumption therein". Their Lordship make the following observations upon this language : (1) The imposition of the duties is contained only in the direction for their payment. There are no words which render the goods liable for the duty or make the duty (as it is said) attach at any date prior to the date of payment. (2) The words "When such goods are imported into Canada" express the time at which the duties are to be paid. If therefore the goods are imported into Canada when the vessel enters a port of call on her way to her ultimate destination, the duties would be payable at that date, which is highly improbable, and contrary to the express provisions of Section 31. (3) The duties are payable at one of two dates - either the date of importation or the date when they are taken out of warehouse. There is no real contract between the date of arrival at a port of call and the date when the goods are taken out of warehouse. Because if the words mean in the first case that the duty attaches when the vessel arrives at a port of call, it must equally do so whether on arrival at the port of discharge they are delivered to the importer or warehoused in bond. The true contrast is that which their Lordship have

> just indicated, and, the words appear to them to mean - when the goods are landed and delivered to the importer or to his order, or when they are taken out of warehouse, if instead of being delivered they have been placed in bond. (4) The result is that, in the opinion of their Lordships, the words "imported into Canada" must, in order to give any rational sense to the clause, mean imported at the port of discharge, and cannot be used in the sense attributed to the word "imported" by the appellants, in accordance with the construction placed by them on the definition in Section 150 of the Customs Act. (5) If the goods were "imported" within the meaning of the Tariff Act, on or after May 3, (in other words) if the duty became payable after that date, the Crown was entitled to it.

27. Our attention was also drawn to the observations in the case of Wilson v. Chambers and Company Proprietary Limited where it was emphasised that the quantity of paint was shipped in England and consigned to a consignee in Sydney. The paint would have been dutiable under the Customs Tariff if imported into the Commonwealth. The ship did not go to Sydney but entered another port in New South Wales. The ship was about to discharge the paint there, and the consignee was willing to take delivery. While the ship was in the port an arrangement was made between C, acting on behalf of the consignee, and the captain of the ship, whereby the paint was taken over for the use of the ship. No customs entry was made in respect of the paint and it was not landed. By permission of the customs officer at the port, a guarantee having been given by the captain to furnish a list of all dutiable stores consumed on the voyage to Melbourne, the next port of call, the ship left the port with the paint on board. No duty was paid in respect of any of the paint. It was held (1) that the paint was imported, that the consignee had failed to enter imported goods as required by Section 68 of the Customs Act, 1901-1920, and that C had been directly concerned in that offence within the meaning of Section 236; (2) that the consignee had not, by reasons of the arrangement made for the paint being taken over for the use of the ship, interfered with goods subject to the control of the customs within the meaning of Section 33; (3) that the consignee had not evaded payment of duty which was payable within the meaning of Section 234. Starke, J. observed at page 150 of the report as follows :

> It cannot, in my opinion, be maintained that the mere act of bringing goods into port constitutes an importation; though unexplained it may be evidence of the fact. If goods, however, are brought into their port of destination for the purpose of being there discharged, the act of importation is complete. On the other hand, the act of importation is not complete if a ship enter some port of call with goods on board which is not the destined port of discharge for those goods. Actual landing is not necessary, as was argued, to constitute an importation for fiscal purposes.

Now, in the present case the goods were not brought to their port of destination but to Port Kembla, where the goods were to be landed with the assent of the consignees. That, in may opinion, was an importation of the goods within the meaning of the Customs Act. It is clearly the duty of an "owner" who imports goods into Australia to enter them at the customs, and the term "owner" includes the consignee of the goods (vide Section 37 and 4, "owner"). Consequently, in my opinion the defendant should have been convicted of the offence that it did not enter the goods, but there was no evidence of any intent to defraud the revenue.

28. Our attention was drawn to certain observations in Halsbury's Laws of England, Fourth Edition, volume 12, paragraph 889, page 313. There the law is different and value added tax on the importation of goods is charged and is payable as if it were a duty of customs. For the purposes of

value added tax goods of which entry has been made under the provisions relating to customs are treated as imported on the date on which the entry was made except where the entry is for warehousing, in which case the goods are treated as being imported on the date on which they are removed from warehouse.

29. The question that arises is whether the Division Bench was right in the facts and circumstances of the case. We have noted the relevant provisions of entry 51 of List II of the Seventh Schedule in Mohan Meakin Breweries Ltd. v. Excise and Taxation Commissioner, Chandigarh, where it was held that the contentions advanced on behalf of the appellant which seemed to proceed on the assumption that the Chandigarh Administration could impose duty only if liquor was consumed in its territory was erroneous as according to Section 31 of the Act read with the aforesaid entry 51 of List II of the Seventh Schedule of the Constitution, countervailing duty could be imposed on liquor meant for consumption which was manufacture or produced elsewhere in India. It was immaterial whether the liquor for which permits were obtained was consumed within the Union Territory of Chandigarh or was in existence in that territory or not. What is material is whether permits were obtained for import from Uttar Pradesh of alcoholic liquor meant for human consumption. This position stands confirmed by the observations of this Court in Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise and salt Act, 1944. Therefore, bringing goods into Greater Bombay with intention to use and not in transit, in our opinion, was decisive and any imposition on that would form part of the duty which could be imposed at the time of the entry and could be included in the octroi. However, for goods in transit Section 194-A of the Bombay Municipal Corporation Act, 1888 provides an exemption in accordance with the Octroi Rules framed. In Section 195 of the said Act refund is provided for in relation to articles which are exported from Greater Bombay after having paid octroi. Immediate exportation makes it inapplicable for imposition of tax on goods in transit. That problem does not arise in respect of importation into Greater Bombay. Section 105 of the Bombay Prohibition Act, 1949 which has been set out hereinbefore read with Sections 2 (14), 2 (20) and 2 (36) makes the position clear beyond doubt that the taxable event in the case of excise duty would be manufacture or production and in the case of countervailing duty, import within the state. Section 106 of the Bombay Prohibition Act, 1949 is headed "Manners of levying excise duties". This clearly envisages administrative convenience for the point of levy in the sense of 'collection'. The charge or incidence corelated to the taxable event is on entry into the State by way of import. The rate applicable would normally be the rate prevailing at that time. However, a specific provision is made to get over this normal position by the proviso. The proviso would otherwise be redundant.

30. The Maharashtra Foreign Liquor (Storage in Bond) Rules, 1964 had been framed in 1964. These do not indicate whether any earlier similar Rules were framed. In any event, these Rules have been framed subsequent to the Act of 1949. Thus the charge and incidence of countervailing duty under the Act and the relevant Notifications of 1949 were already subsisting. By subsequent framing of these Storage in Bond Rules, incidence or charge cannot be deflected or altered. As a matter or fact the position is reinforced by proper reading of Rule 2 (2). Administrative facility is granted for deferred payment to the assessee. The words "without payment of duty" indicate that duty has become chargeable and the incidence was complete if, however, the assessee complies with the Rules, he is given a facility to defer payment. Rule 2 (9) also reiterates the same position. This clearly shows that the duty has become payable already. This is, therefore, only consistent with the fact that the charge or incidence has already been attracted on the taxable event taking place, namely, the manufacture or production in the case of excise duty or import in the State in the case of countervailing duty. The fact that a bond has to be executed, means the goods which are to be stored have already been the subject-matter of duty or charge. If they have not been so, there is no question

of bonding them with an undertaking to make payment of duty at the time of removal or before removal from bond.

31. Rules 3 (2), 3 (3), 3 (4), 3 (8), 11, 18, 19 and 31 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 clearly show that the normal rule is pre-payment of duty at the time or before the import. These corelate to the consignment entering the limits of the State. In case of import by railway, it is the nearest railway station as designated. Rule 31 clearly exempts consignments of foreign liquor which are conveyed under the Maharashtra Through Transport Rules, 1962. In other words, goods in transit are not subjected to duty. Collection of excise duty may be deferred if the goods are kept under bond. See in this connection the observations of this Court in R. C. Jall v. Union of India, where at page 451 of the report this Court reiterated that the method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience.

32. In McDowell v. CTO at pages 813-15 (SCC pp. 246-48) the position in relation to excise duty has been clearly stated. In the case of Chatturam Horilram Ltd. v. CIT the concept of imposition of duty has been explained. There are three stages in the imposition of tax. It was observed as follows :

> As has been pointed out by the Federal Court in Chatturam v. CIT quoting from the judgment of Lord Dunedin in Whitney v. Commissioners of Inland Revenue "there are three stages in the imposition of a tax. There is the declaration of liability that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay."

33. An argument was advanced on the basis of certain observations of this Court in Central India Spinning and Weaving and Manufacturing Company Ltd. v. Municipal Committee, Wardha (at 1114 of the reports) that there is no mixing up of goods which are in bond till these are removed from bond. The observations were made in the context of the facts of that case. There, the facts were that certain cotton bales were being transported in transit through Wardha. The municipality wanted to impose terminal tax. In that context it was observed that there was no mixing up of the goods in the mass of the property in the area. This case was not fully approved in Gramophone Company of India Ltd. v. Birendra Bahadur Pandey where at page 691 this Court observed as follows : (SCC pp. 554-55, para 30)

We are afraid the case (i. e., the Empress Mills case) is really not of any guidance to us since in the context of a 'terminal tax' the words 'imported and exported' could be construed in no other manner than was done by the court. We must however say that the 'original package doctrine' as enunciated by Chief Justice Marshall on which reliance was placed was expressly disapproved first by the Federal Court in the Province of Madras v. Buddu Paidanna and again by the Supreme Court in State of Bombay v. F. N. Balsara. Apparently these decisions were not brought to the notice of the court which decided the case of Central India Spinning and Weaving and Manufacturing Co. Ltd. v. Municipal Committee, Wardha.

34. It is clear from the observation made in Wilson v. Chamber and Company Proprietary Ltd. that these observations were made in the context of goods in transit or goods arriving by way of wrecks. All the judgements in the above cases accept the position that if goods are imported into Australia

for the purpose of the goods becoming part of the commerce of the country, these could be said to be imported. This is clear from the observations of Chief Justice Knox at page 136 of the report as well as the argument of Mr. Mitchell, counsel at pages 132 and 133 of the report. Therefore, the purpose of the import is decisive. If these are brought for the purpose of commerce or trade, these are imported. Justice Isaacs at page 139 highlighted the expression "imported goods", in Section 68 as meaning goods which, in fact, are brought from abroad into Australian territory, and in respect of which the carriage is ended or its continuity in some way in fact broken. The observations of Justice Starke set out at page 150 of the report reaffirm this position.

35. Countervailing duty also does form part of the incidental charges. Countervailing duty is clearly contained in Rule 2 (7) (a) of the Octroi Rules. The rule prevalent prior to June 28, 1983 was in the following terms :

> 'Value of the articles' where the octroi is charged ad valorem shall mean the value of the articles made up of the cost price of the articles as ascertained from original invoice plus shipping dues, insurance, customs duties, excise duties, sales tax, vend fees, freight charges, carrier charges and all other incidental charges excepting octroi incurred by the importer, till the articles are removed from the place of import.

36. This rule used the words "excise duties" as also the words "all other incidental charges". Section 105 of the Bombay Prohibition Act 1949 itself talks of excise duties so as to include both excise duty as well as countervailing duty. Therefore, the normal connotation of the words "excise duties" would take in countervailing duty also. Apart from that c__harges include taxes. In this connection reference may be made to the observations of this Court in D. G. Gouse & Co. v. State of Kerala. It was observed as follows : (SCC p. 420, para 5) The word 'tax' in its widest sense includes all money raised by taxation. It therefore includes taxes levied by the Central and the State legislatures, and also those known as "rates", or other charges, levied by local authorities under statutory powers. 37. The expression "incidental" has also been judicially interpreted. The expression "incidental" means necessary in certain contexts which does not mean a matter of casual nature only. See State of Orissa v. Chakobhai Ghelabhai & Co. 38.n that view of the matter we are of the opinion that countervailing duty was an incident of importation and, as such, it was includible even prior to June 28, 1983 as an octroi.

39. In that view of the matter, in our opinion, the Division Bench was right in the view it took and the appeal therefore fails and is accordingly dismissed. In the facts and circumstances of the case, the parties will pay and bear their own costs. All interim orders will stand vacated and taxes will be recovered in accordance with law.

S. RANGANATHAN, J. - (concurring)

I agree. In the ultimate analysis, the question arising for consideration in the present case is within a narrow compass. For answering this question, two sets of provisions have to be considered : (a) The Bombay Municipal Corporation Act and the Octroi Rules framed thereunder and (b) the Bombay Prohibition Act and the rules framed thereunder. Section 192 of the Bombay Municipal Corporation Act, 1888, read with Section 128 thereof and the rules framed thereunder imposes octroi, in respect of the goods with which we are concerned, on an ad valorem basis. Rule 2 (7) (a) defines the value of the articles concerned for the purpose of octroi duty. Broadly, the rule defines the value of article for the purpose of octroi duty as made up of the cost price of the article plus certain items of additions specifically mentioned in the rule itself and a residuary clause. There are three periods of

time that have to be considered (i) prior to July 28, 1976, (ii) between July 28, 1976 and June 28, 1983 and (iii) after June 28, 1983. For the first period, the rule specifically mentioned "shipping dues, insurance, excise duties, sales tax, vend fees, freight charges, carrier charges" and added : "all other incidental charges incurred by the importer till the arrival of the articles at the place of import". For the period between July 28, 1976 and June 28, 1983, it added customs duties to the items specifically mentioned and added "all other incidental charges excepting octroi incurred by the importer till the articles are removed from the place of import". For the period after June 28, 1983, the rules specifically included countervailing duty in the list of specific items and "all other incidental charges excepting octroi duty incurred or liable to be incurred by the importer till the articles are removed from the place of import". Under the Bombay Prohibition Act, the relevant sections are Section 2 (14), Section 26, Section 105 and Section 106. These and some of the rules on which reliance was placed have been referred to in the judgment of my learned brother Mukharji, J. and need not be repeated here.

41. In the light of these provisions, two issues arise for consideration. The first is the point of time at which the liability to pay countervailing duty arises. On this the appellants' argument is that, in principle, this liability is not attracted merely by the entry of goods at, or their removal from the customs barrier of the concerned territory but arises only at the point of time when those goods enter the market for purposes of use, sale or consumption and mix with other goods. It is said that this is why while Section 105 is general, Section 106 clearly lays down that the countervailing duty is payable only as and when the goods are removed from the bonded warehouse for such purpose and not earlier. I agree with my learned brother's conclusion that this argument cannot be accepted. The language of Section 105 which imposes the charge, of Section 106 which talks of payment and of the rules leaves no doubt that the duty is attracted at the point of import (i. e. physical entry of the goods into the taxing territory) and that only the payment of duty is deferred in case the goods imported are removed to a bonded warehouse, to a later point of time, for purposes of convenience of collection. It will not be appropriate to construe the provisions in such a manner as imposing a liability on some persons (who have to bonded warehouse) at one point of time and on others, at a different point of time. Also if, as urged, the liability to pay the duty itself were referable to a later point of time, the insistence on a bond in the terms prescribed would appear to be redundant. The provision that, where the facility is availed of, the assessee would pay duty at the rate prevalent at the later point of time (often higher than at the point of import but not necessarily so) is not inconsistent with the above concept but is rather a logical consequence of the privilege of deferment given to the assessee.

42. The second question is regarding the includibility of the countervailing duty for purposes of octroi. So far as the two periods after July 28, 1976 are concerned, I agree with my learned brother that there be no doubt that this is included. The specific inclusion of the word "countervailing" duty and broader reference to duties "incurred or liable to be incurred" in the 1983 amendment in my opinion, only further clarifies the position which was prevalent even prior to July 26, 1983. The words "incidental charges" have a very wide meaning, particularly in a 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. In regard to the period till July 28, 1976, I had a little doubt as the rule included only charges incurred "till the arrival of the article at the place of import". But, considering that "arrival" is the event which simultaneously attracts both octroi and customs, I think that the later change of language was only clarificatory and I agree with the conclusion my learned brother has reached that the position should be the same for the first period also.

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