

Tata Engineering and Locomotive Company Limited and another

Vs

Municipal Corporation of the City of Thane and others

Civil Appeal No.4702 of 1991

(K. Ramaswamy, V. Ramaswami-II, A. M. Ahmadi JJ)

22.11.1991

JUDGEMENT

V. RAMASWAMI, J.:-

1. Leave granted.

2. The first appellant - Tata Engineering and Locomotive Company Limited (hereinafter called the 'Company') is a company registered under the Indian Companies Act, 1913 and the second the appellant is one of its Directors. The Company is carrying on business of manufacture and sale of motor vehicles and spare parts of motor vehicles and Excavators. Their manufacturing units are at Pune and Jamshedpur outside the Thane Municipal Corporation Limits. They have a bonded warehouse within the municipal limits in which they bring and stock motor vehicles parts and excavators parts from their own factories at Pune and Jamshedpur. They also bring in parts manufactured by their ancillaries within India and also parts imported from abroad. These products of parts are brought in bulk and thereafter taken or sent out from the Municipal limits in smaller packings depending on the requirements of the customers in various parts of the country. It is stated that the parts imported or purchased from others and brought in are relatively very small in quantity and the major portion of the activity related to their own factory produced parts.

3. On and from 1st October, 1982 with the notification under Section 3 of the Bombay Provincial Municipal Corporation Act, 1949, the Thane Municipal Council became a Municipal Corporation (hereinafter called the Corporation). Prior to the constitution of the Corporation it was a municipality and were governed by the Thane Municipal Council constituted under the Maharashtra Municipality Act, 1965. Prior to 1st October, 1982 the Thane Municipal Council had granted to the Company current account facilities in respect of payment of octroi under the Maharashtra Municipalities Act, 1965 and the Maharashtra Municipalities (Octroi) Rules, 1968 made thereunder. The Municipal Council had also granted permission under Rule 10(2) to the Company for maintaining a godown or warehouse of their own. There is no dispute that even after the coming into existence of the Thane Municipal Corporation the appellants were permitted to have a warehouse of their own and keep a current account facility without the requirement of immediate payment of octroi at the octroi Naka. In terms of granting those facilities the Company had made as security a cash deposit of Rs. 7 lakhs with the Corporation and had also given a Bank Guarantee for an equivalent amount as agreed to between the Company and the Corporation. However, there is some dispute as to what were the formalities that were dispensed with the matter of claiming refund of the octroi when the goods were exported. But suffice it to say at this stage that the appellants were permitted to carry out their activities of imports and exports under the current account procedure with a facility of unpacking the bulk, repacking and exporting.

4. During the period 1st January, 1983 to 31st March, 1984 it is stated that the appellants had made 1182 claims for refund. All these claims were rejected by the letters of the Corporation dated 31-8-1983, 12-1-1984, 5-4-1984 and 6-4-1984. They were rejected on the following two grounds: (1) the Company had "sold" the spare parts within the octroi limit (which is conterminous with the Corporation limit) in contravention of R. 25(3)(d) of the Maharashtra Municipalities (Octroi) Rules, 1968 (hereinafter called the 'Rules'), (2) the procedure prescribed for export and the claim of refund had not been strictly followed. The non-compliance with the procedure prescribed referred to in the second ground according to the Corporation were; (i) Form 4 of the Octroi Rules and the original invoices were not submitted, or (ii) forms 11 and 12 filed were incomplete and all the required information were not given or (iii) certificate of the octroi Exit Naka Officer had not been obtained. The rejection of the claim was either on one or more than one or all the grounds mentioned above. The appellants filed a writ petition under Article 226 in the High Court of judicature at Bombay contending that the action of the Municipal Corporation in refusing refund is unconstitutional and illegal and for certain other reliefs. The Division Bench of the High Court which heard the same dismissed the writ petition on the 26th August, 1988. It is against this judgment that the present appeal has been filed.

5. It appears that during the hearing of the writ petition the learned counsel appearing for the Corporation did not counter the contention of the Company that the rejection under Rule 25(3)(d) was not correct and the learned Judges have also recorded the same in the judgment. But the learned Counsel for the respondent before us stated that it is not correct to say that he had conceded any point and that since he could not argue that point in view of the decision of another Division Bench of the same High Court in *Khandelwal Trader Akola v. Akola Municipal Council*, AIR 1985 Bombay 218 which was binding on the Bench which heard the writ petition and also in view of certain observations of this Court in *Burmah Shell Company v. Belgaum Municipal* 1963 Suppl (2) SCR 216 : (AIR 1963 SC 906) and *Hiralal Thakorlal Dalal v. Broach Municipality*, 1976 (Suppl) SCR 82: (AIR 1976 SC 1446) he did not press the point. We have, therefore, permitted the point to be argued in this appeal.

6. Before we discuss the points in controversy we may state that in the counteraffidavit filed in the writ petition the respondents have admitted that the Company was enjoying the current account facility prior to 1-10-1982 and the respondent-Corporation had also given the said facility to the Company even after 1st October, 1982 on their making a cash deposit of Rs. 7 lakhs and furnishing a Bank Guarantee for a like sum as security for grant of that facility. The respondents had also admitted that the Company had been given permission under Rule 10(2) to maintain their own godown from 12th December, 1982. Broadly stated under the current account facility granted, no octroi duty is recoverable in cash from the appellants at the entry octroi naka point. However, the Company was required to submit a statement of goods imported in Form 5 before the 10th of the following month. The officers of the respondent after scrutiny of the statement so filed determine the octroi duty payable thereon and debit the amount in the current account kept and send a demand notice to the Company. The Company is required to pay the amount to the Corporation within 15 days of the determination of duty.

7. The first submission of Mr. Andharujina learned counsel for the appellants was that the sales were not for consumption or use within the octroi limits and that the parts were sold to parties outside the octroi limits and also for consumption or use outside such limits and therefore the rejection of the claims on the ground that the spare parts were sold within the municipal limits and that it amounted to a contravention of Rule 25(3)(d) of the Rules is illegal. Mr. K. K. Singvi the learned counsel for the Corporation on the other hand contended that the meaning of words "sales therein" in the

definition of octroi in the Acts and in Entry 52 of List 11 could not be limited to sales of the goods for purposes of consumption or use within the municipal limits.

8. When an importer wants to, export dutiable goods temporarily detained by him in his own godown he shall present an intimation-cum-application for written permission in Form 11 to the Superintendent of Octroi to export such goods. Rule 25(3)(d) states that no such intimation shall be accepted unless:

"the exporter and the importer of these goods are one and the same person and such articles have not undergone change of ownership".

9. The case of the Corporation was that there was a change in the ownership of the goods since a sale in law had taken place inside the octroi limits though the purchaser was residing and carrying on business outside the octroi limits and under the sale the goods were intended to be and in fact exported for the purpose of consumption and use outside the octroi limits.

10. Section 127 of the Bombay Provincial Municipal Corporations Act, 1949 and the corresponding S. 105 of the Maharashtra Municipalities Act, 1965 authorises the Municipality to levy "Octroi". Both these Acts define octroi as meaning a tax on the entry of goods into the municipal area "for consumption, use or sale therein". The Maharashtra Municipalities (Octroi) Rules 1968 made under the Maharashtra Municipalities Act, 1965, provides for the levy, collection and refunds of octroi duty on the goods specified in the schedule thereunder and the procedure for the same. These Rules were in force in Thane Municipality before Thane was declared as "City" under the Bombay Municipal Corporations Act LIX of 1949. However these Rules are continued in the Thane Municipal Corporation by virtue of paragraph 5 of Appendix IV to the Act LIX of 1949.

11. The legislative entry relating to the constitutional power to levy this tax is found in List II Entry 52 of the 7th Schedule to the Constitution which reads:

"52. Taxes on the entry of goods into a local area for consumption, use or sale therein."

12. The Bombay Municipal Boroughs Act, 1925 which was in force prior to the enactment of the Maharashtra Municipalities Act, 1965 also contained a similar provision in Section 73 enabling the Municipalities covered by that Act to levy "Octroi on animals or goods or both brought within the octroi limits for consumption or use therein". This provision was amended by amending Act 35 of 1954 by substituting the words "use or sale" for the words "or use" with effect from May 5, 1954. In other words before 1954 the word 'sale' was not included in the provision of octroi on goods which the Municipality was authorised to impose. After the amendment the Municipality could levy octroi on goods brought within the octroi limits "for consumption, use or sale therein." This provision came up for consideration in *Burmah Shell case* (AIR 1963 SC 906) (*supra*). Two of the categories of transactions which were considered in this case related to transactions under which (1) goods were sold by the Company through its dealers or by itself and consumed within the octroi limits by persons other than the Company and (2) goods sold by the Company through its dealers or by itself inside the octroi limits to other persons but consumed by them outside the octroi limits. The Company contended that the tax could not be collected on goods which were merely sold but not consumed inside the octroi limits. In connection with this contention this Court considered the meaning of words "consumption, use or sale therein" and observed (at pp. 911-12 of AIR):

"It is not the immediate person who brings the goods into a local area who must consume them himself, the act of consumption may be postponed or may be performed by someone else but so long as the goods have been brought into the local area for consumption in that sense, no matter by whom, they satisfy the requirements of the Boroughs Act and octroi is payable."

"..... The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area who are to use and consume."

And concluded holding (at p. 912 of AIR):

"In our opinion, the Company was liable to pay octroi tax on goods brought into local areas (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it. The Company was, however, not liable to Octroi in respect of which it brought into the local area and which was reexported."

13. The ratio is thus not a mere sale inside that attracts octroi but a sale intended for consumption of the goods inside the octroi area though ultimately the person to whom it was sold for consumption does not consume the goods inside but does the same outside the limit.

14. After consideration of the judgment in *Burmah Shell Company's case* (AIR 1963 SC 906) (supra) the Gujarat High Court in one of the cases arising for refund of octroi duty paid, took the view that octroi is leviable on goods brought within the octroi limits 'for consumption, use or sale therein' and that the word 'sale' could not be given the narrow meaning of a sale for consumption to the ultimate consumer within the octroi limits. Accordingly if the goods were sold within the octroi limits by the importer even if it resulted in export and consumption was also outside the octroi limit, octroi duty paid is not refundable. This decision came up in appeal before this Court and the decision of this Court is reported in *Hiralal Thakorlal Dalal v. Broach Municipality* 1976 (Suppl) SCR 82: (AIR 1976 SC 1446). On facts that case related to a consignment sale and the goods were despatched to destination outside octroi limits for consumption there. A plea for review of the decision in *Burmah Shell Company's case* (AIR 1963 SC 906) (supra) was also made in this case. However a Constitution Bench rejected the request for reconsideration and held that the word "sale" in the colloquium of the words "consumption, use or sale therein" means sale for consumption within the octroi limits. The ratio of these two decisions was considered by the Bombay High Court in *Khandelwal Traders Akola's case* (AIR 1985 Bombay 218) (supra), which was referred to in the judgment under appeal. It was held in this case also that where a dealer imports goods within the octroi limits not for ultimate consumption or sale for consumption within the limits but for the purpose of export and obtain permission for export he is not liable to pay octroi on such goods notwithstanding that in the larger sense for purposes of export he sells the goods within the octroi limits, that is to say even where the situs of the sale could be fixed within the octroi limit. The matter is now put beyond any pale of doubt by the latest decision of this Court in *Municipal Council, Jodhpur v. M/ s. Parekh Automobiles Ltd.*, (1990) 1 SCC 367. Rule 13(4) of the Rajasthan Municipal Octroi Rules, 1962 which was one of the provisions considered in this case provided that :

"In cases provided for in sub-rule (3) (that is who is given the account current

facility) amount of octroi duty payable shall be based on the total amount of the octroi as shown by the entry passes less the total amount of goods transported outside the municipal limits as shown by the transport passes:

Provided that in computing the octroi duty payable under sub-section (4), the goods transported outside the municipal limits shall be lessened only if such goods have not been sold within the municipal limits and if they have been exported out of such limits within a period of six months from the date of their import in such limits."

15. Relying on this provision the municipality in that case contended that if the sale had taken place within the octroi limits though the sale was not for consumption or use within the octroi limits, duty was payable and no refund could be claimed. The learned single Judge who heard the matter in the High Court did not permit the importer to raise the question that the sale took place only outside the octroi limits of Jodhpur and proceeded on the footing that the sale of product in question took place within the octroi limits of Jodhpur. He however accepted the contention of the Indian Oil Corporation (importer) that the sale to the dealer was for the purpose of export and the dealer did export the goods outside the octroi limits and that, therefore, even if the sale was said to have been effected within the octroi limits no octroi was leviable. Since admittedly the goods had been sold in Jodhpur octroi limits only for their onward transmission for use and consumption in Dangia was outside the octroi limits he held that no octroi duty was payable. This view of the learned single Judge was confirmed on appeal by the Division Bench of the High Court. On appeal this Court confirmed this view and held that the Indian Oil Corporation (importer) who had the current account facility and governed by the terms of Rule 13 was entitled to go on paying octroi duty

"on the basis of the goods brought by it within the municipality less the goods transported outside the municipality even where the transport outside the municipality may be in pursuance of a sale within the municipality so long as such sale is in pursuance of an intention that the goods should be consumed or used outside the municipal limits."

16. In the present case the sales were to persons who were carrying on business outside the limits of the Corporation and the goods were also intended to be consumed or used outside such limits and in fact the goods were also exported. The ratio of the decisions above referred clearly, therefore, governs this case, even if it were to be assumed that the sale in the general sense took place outside the municipal limits.

17. However we may state that it was the contention of the learned counsel for the appellant that the sale in fact took place outside the municipal limits and in support of this contention he relied on the following facts among others. The spare parts were consigned by the Company to out station purchasers. The goods were transported by the Company themselves across the octroi limits. The consignment or lorry receipt mentioned the consignee as self. The bills for collection were sent through Bank and the goods were not to be delivered to the consignee until the payment was made by the consignee through the Bank. Right of disposal expressly reserved with the vendor. On the other hand on behalf of the Corporation it was contended that orders were both received and accepted in Thane, goods were despatched from Thane and challans were also made in the name of the buyers and the property in the goods passed within Thane. The sale had in fact taken place within municipal area. In fact he further contended that being a question of fact we are not entitled to go into the same in view of the finding of the High Court. It is not necessary for us, however, to consider this aspect and we would for the purpose of this case proceed on the assumption that

technically the sale in law had taken place inside the municipal limits.

18. Since the goods were sold by the Company to outside purchasers and the goods under the transactions of sale, were intended to be exported and were in fact exported, for consumption or use outside the municipal limits no octroi duty was leviable and the octroi duty paid on entry into the municipal limits was, therefore, liable to be refunded. Accordingly the rejection of the refund claims on the ground that R. 25(3)(d) had not been strictly complied with is illegal and could not be sustained. Such of those claims which were rejected only on the grounds of contravention of Rule 25(3)(d) shall now be taken up by the respondent and passed for payment.

19. In the case of impost of octroi the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area. Mere physical entry into the octroi limits would not attract levy of octroi. When the goods are brought in not for consumption within the area but for temporary detention and eventual export, octroi is not leviable. But in order to ensure, in such circumstances, that the goods are exported and to prevent evasion of octroi on goods consumed inside the octroi limit, Rules provide for deposit of a certain sum of money or the actual octroi duty payable subject to a right to get a refund of the same when the goods are exported. When the goods in respect of which octroi was paid are exported, the octroi became refundable and that is the very scheme of the levy of octroi. The octroiable event in such a case shall be deemed not have happened. Right to refund arises because the goods are not consumed inside the area but exported and the tax becomes not leviable. The rules merely regulate the system on which refunds shall be allowed. The procedure prescribed and the need to adhere to the procedure shall have to be considered in the light of these legal incidence and nature of octroi duty.

20. Before we deal with the question whether the Company had not followed any of the procedure prescribed and the right of the Corporation to deny refund of octroi on non-compliance with any of those provisions in the Rules, it is necessary to broadly set out the different types of procedures prescribed, depending on different purposes of imports and exports, contemplated under the Rules. This may be broadly classified into five categories, (i) goods imported for consumption, use or sale in the municipal area, (ii) goods imported not for consumption, use or sale within the municipality but for immediate export; (iii) goods intended to be temporarily detained within the municipality in the bonded warehouse maintained by the Corporation and eventual export; (iv) goods intended for temporary detention in the private licensed bonded warehouse of the importer and eventual export; and (v) goods imported by any person, mercantile firm or body which has been permitted by the municipal Corporation to keep an current account. In the first case, since octroi is attracted on arrival of the dutiable goods at the Octroi Naka the importer pays the amount of octroi assessed by the Octroi Officer and takes the goods inside the municipal limits. In the second case, the importer gives a declaration-cum-application that the goods are not being imported in the municipal limits for consumption, use or sale but are intended for immediate export outside the octroi limits. He is required to deposit an amount in accordance with the scale fixed under clause (b) of sub-rule (1) of Rule (5). On such deposit being made a receipt is given in the form prescribed by the Entrance Naka Inspector and a written permission-cum-transit pass issued by the Octroi Officer. On arrival of the goods at the exit Naka and on surrender of the written permission-cum-transit pass the deposit amount is refunded. In the third category of cases, the importer makes an application to the Octroi Officer at the Entrance Naka for a written permission to deposit such goods at the bonded warehouse maintained by the Corporation. The Octroi officer then makes an entry on the application that the importer is allowed to proceed with the goods to the bonded warehouse. The Officer in charge of the bonded warehouse will receive the goods and keep them in the bonded warehouse until exported. When the importer wants to export the goods he is required to apply for a written

permission cum-export pass in the prescribed form and also deposit an amount equal to the octroi leviable thereon. On such deposit made a written permission-cum-export pass is issued. When the goods are taken out of the municipal limits the Officer in charge of the Exit Naka endorses the export pass certifying the export and the refund of the deposit is claimed thereafter producing the certificate issued by the Exit Naka Officer. In the fourth category, the importer gives a declaration in Form 4 that the goods are meant for temporary detention with him at his own warehouse for eventual export. After verification of the particulars furnished in that form with the invoices and other documents produced he is required to deposit at the Entry Octroi Naka point itself an amount equal to the amount of full octroi duty thereon as deposit. A receipt is given by the octroi Inspector stating that the said amount on account of deposit has been recovered. When he wants to export the dutiable goods detained with him he presents an intimation-cum-application in Form 11 for written permission to export the goods. He is also required to produce the goods at the Central Octroi Officer along with the application. On satisfaction that all the conditions prescribed have been fulfilled and after verification of the goods a written permission cum-refund export pass in Form No. 12 is given to the importer. On presentation of these documents the Octroi Officer at the Exit Naka gives a certificate that the goods mentioned therein have passed octroi limits and with that the refund application is made and refund obtained.

21. The instant case falls under the fifth category. The Company has been permitted by the Municipal Corporation to keep the dutiable goods in a bonded warehouse of their own with a current account facility. The rules which were relied on by the respondent and some of which are said to have not been complied with by the Company may be set out:

"10. Maintenance of Bonded warehouses. -

(1) X X X X

(2) A Council may permit any importer to maintain a private Bonded Warehouse for keeping goods which are imported by such importer for temporary detention and eventual export and grant a licence to such importer for that purpose subject to the conditions and restrictions laid down in such licence. A fee shall be charged for such licence at the rates specified in the bye-laws relating to the grant of such licence."

"14. Declarations to be made by importer, etc. - (1) On arrival of any dutiable goods at the Octroi Naka, the Octroi Officer shall call upon the importer or the driver of the vehicle or conveyance or the person in charge of the pack-animal or other persons bringing the goods -

(a) to (c) x x x

(d) to make a declaration in Form 4, in respect of the goods intended for temporary detention with himself and eventual export;

(e) to make a declaration in Form 5, in respect of the goods imported by, or on behalf of, any person, mercantile firm or body which has been permitted by the Council to keep an account current under Section 142."

" 15. Procedure for assessment and recovery of octroi.-

(4) On receipt of a declaration in Form 5 under the last preceding rule, the Octroi

Officer shall ascertain whether the name of the person, mercantile firm or body on whose behalf the goods are being imported is on the list of persons, firms or bodies allowed to keep an account current, and if so, check the goods with the details entered in the declaration and fill up the certificate below the declaration and issue a pass in Form 6. The Octroi Officer shall forward all such declarations together with a list in duplicate thereof to the Central Octroi Officer for further action in accordance with the provisions of Section 142."

"24. Procedure for temporary detention of dutiable goods meant for eventual export, with importer himself.- (1) Where dutiable goods intended for temporary detention within the octroi limits and eventual export are to be detained by the importer at his residence or a Bonded Warehouse licensed under sub-rule (2) of rule 10 within the octroi limits, he may do so on giving a declaration to the Octroi Officer in Form 4, and on payment of an amount equal to the amount of full octroi due thereon as deposit either in cash or in the form of Bank Guarantee at the Entrance Naka.

(2) In case the importer cannot export the goods without breaking bulk or without assemble and testing in the case of machinery, he shall do the same only with the sanction of the Superintendent of Octroi in the presence of an officer deputed for this purpose by the said Superintendent. Such goods, if necessary, shall be formed into packages, which may be sealed and marked by the officer so deputed."

"25. Procedure for export of dutiable goods temporarily detained with importer.- (1) When the importer wants to export dutiable goods detained with him, he shall present an intimation-cum-application for written permission in Form 11 to the Superintendent of Octroi to export such goods, giving necessary details; and produce such goods for verification on any working day during the hours fixed by the Chief Officer at the Central Octroi Office or at any other Branch Office, as may be established by the Council for the purpose.

(2) A separate intimation-cum-application shall be given by each importer or his own goods. One such intimation-cum-application shall be sufficient for a single consignment. When such consignment contains goods of different descriptions, full details shall be given separately in the intimation-cum-application. Not more than one intimation-cum-application for export can be given by an importer for goods passing through an Exit Naka in a day.

(3) No such intimation-cum-application shall be accepted unless-

(a) it is complete in all respects and signed by the importer himself or by a person authorised by him in writing in this behalf;

(b) it is supported by the receipt for the deposit paid at the time of import and is accompanied by the original invoice, if any, filed at the time of import;

(c) the goods produced for inspection and intended to be exported are, subject to the provisions of sub-rule (2) of the last preceding rule, identical with what they were at the time of import.

(d) the exporter and the importer of these goods are one and the same person and

such articles have not undergone change of ownership.

Note.- The requirement of clause (c) shall not be applicable in the case of dutiable goods to which sub-rule (3) or (4) of the last preceding rule applies.

(4) On receipt of such intimation-cum- application and on arrival of the goods intended for export, at the Central Octroi Office or Branch Office, the Superintendent of Octroi or any officer authorised by him shall -

(a) satisfy himself that all the conditions prescribed above are fulfilled;

(b) verify that the goods actually produced for inspection are as described in the intimation-cum-application and in the relevant import invoice, if any, or in the import declaration in Form 4, and seal and mark such goods whenever deemed necessary; and

(c) issue a written permission-cum-refund export pass in Form 12 after obtaining a specimen signature of the importer or his authorised agent on such pass.

(5) The importer accompanied by an escort, if provided by the Council, shall then take the goods beyond the octroi limits through the Exit Naka within the time limit and by the route specified in the pass. Before crossing the Exit Naka, the importer shall present the goods to the Octroi Officer at the Exit Naka for inspection, with the pass. The time limit shall be fixed with due regard to the distance of the Exit Naka from the Central Octroi Office or the Branch office, but in no case it shall exceed 12 hours from the time of issue of the permission-cum-refund export pass.

(6) The Octroi Officer at the Exit Naka, on presentation of such goods as well as the pass, shall satisfy himself that -

(a) the pass as well as the goods are presented within the specified time limit;

(b) the seals or marks, if any, are intact; and

(c) the goods actually tally with those mentioned in the pass.

On being so satisfied, he shall make relevant entries in the register maintained for the purpose, obtain signature of the importer thereon, sign a certificate as given on the pass, deliver the same to the importer and allow the goods to pass beyond the octroi limits."

"28. Provision for refund of deposit.- (1) When any goods for which a deposit has been paid under rule 24 at the time of their import are exported, the amount of deposit recovered shall, subject to the provision of sub-rule (2), be refunded.

(2) The refund shall be admissible, if all the conditions below are satisfied:-

(a) The refund is applied for within one month from the date of export.

(b) The goods are exported out of the octroi limits within a period of six months of

their import.

(c) The application for refund is supported by a duly certified written permission-cum refund export pass.

(d) All the conditions in sub-rule (3) of rule 25 are fulfilled.

(e) The amount claimed as refund is withdrawn within three months from the date of intimation to the importer to receive the amount.

(f) The goods exported were declared to be intended for temporary detention with the importer and eventual export at the time of import :

Provided that the said period of six months shall not apply to goods imported by the Food Corporation of India established under Section 3 of the Food Corporations Act, 1964.

"29. Procedure for refund.- (1) The application for refund of deposit shall be made in Form 13 by the importer himself or by his duly authorised agent in this behalf in writing on any working day during the hours fixed for money transactions by the Council at the Central Octroi Office within one month from the date of the actual export. If the last day for claiming refund falls on a public holiday such application shall be accepted on the next working day.

(2) Such application shall be accompanied the duly certified relevant written permission cum-refund export pass and shall contain reference to the connected export intimation cum-application already given by the importer. There shall be a separate application for each written permission-cum-refund export pass.

(3) If the refund application is in order and satisfies all the conditions specified in the last preceding rule, the amount of the refund shall be correctly determined subject to the limitation prescribed in the next succeeding rule.

"30. Value, weight, etc. of goods for purposes of refund. - When the refund is claimed in respect of goods on which duty is leviable ad valorem, the value for the purposes of refund shall be the value as per invoice on the strength of which the duty was originally paid together with such cost of carriage and other incidental charges that were then determined. Where the value was determined in the absence of invoice on the basis of market rate prevalent on the day of import, that value only should be considered and not the market price prevalent in the local market on the day of export."

FORM 4

(Rules 14, 24 and 25)

Declaration in respect of the dutiable goods imported into the Municipal octroi limits, which are intended for temporary detention with the importer and eventual

export.

To

The Octroi Officer,

Octroi Naka No.....

..... Municipal Council.

I (insert full name and address of the importer) hereby declare that the below mentioned goods are meant for temporary detention with me at..... (specify address at which to be kept) for eventual export outside the octroi limits. I am willing to pay an amount equal to the amount of full octroi due thereon as deposit either in cash or in the form of Bank Guarantee and may claim refund according to the rules if these goods are exported outside limits within six months from the date of their import. The below mentioned details are true and according to the original invoice, true copy of which is filed herewith. The said invoice covers all the goods imported by me as per Bill of Entry/ Railway Receipt/ Goods Transport Memo/ Air Consignment Note No.???? dated????.

Sl.No.	No. & date of import document	No. and description of packages	Description of the goods
	Weight of goods	Value plus all incidental charges which are to be give	
	Sender's name & address in full	Remarks	
1	2	3	4
5	6	7	8

Full residential/business address of the importer.

Signature of the Importer

Date.....

I have checked the above particulars with the invoice and verified the goods, which are found to be correct. True copy of the invoice appended is verified and found to be correct. The weight or quantity or value, together with the incidental charges declared, is correct. The taxable weight/quantity/value of the goods is and the rate of octroi???.

Date???. Inspector/Clerk.

The amount of Rs??? on account of deposit has been recovered under receipt No.?? dated???

Date???. Inspector/ Clerk

(Rules 14 and 15)

Declaration in respect of the dutiable goods imported on behalf of person, firm, or body allowed to keep an account current.

To

The Octroi Officer,

Octroi Naka No

Municipal Council.

I, (insert the full name and address of the importer) hereby declare that the below mentioned goods are being imported into the Municipal Octroi-limits on behalf of (insert the name of persons, firm or body allowed to keep an account current) and that the below mentioned value and weigh quantity of the goods is true and correct and is according to the original invoice, true copy of which is filed herewith. The said invoice fully covers all the goods imported by me today as per Bill of Entry/ Railway Receipt/ Goods Transport Memo/Air Consignment Note, No.dated..... I further undertake to produce the said invoice for your inspection whenever demanded by you within one year fromtoday.

To be filled in by the importer
Octroi Office

To be filled in at the Central

Sl.No. Bill of Entry/Railway Receipt/Goods Transport Memo/Air Consignment Note Number
and description of packages Goods Description Weight quantity (Gross) Value plus incidental
charges which are to be given separately Rate of Octroi Amount of Octroi recoverable

No. Date

1 2 3 4 5 6 7 8

Date..... Signature of the importer

I have checked the above particulars with the invoice and verified the goods, which are found to be correct. True copy of the invoice appended is verified and found to be correct. The weight or quantity or value, together with the incidental charges declared, is correct. Issued pass Dues entered in Account Current Date

No.....

dated..... Octroi

Date..... Inspector/ Clerk Superintendent

FORM 6

(Rule 15)

Pass for goods imported on behalf of person, firm or body allowed to keep an account current
..... Municipal Council Municipal Council Book No Entrance Naka
No : Book No Entrance Naka No.....

Counterfoil of pass Pass for goods importer by(Name of person, firm or body) in
account current

Description or value	No. and description of packages	Description of the goods	Weight, quantity
1	2	3	

Dated.....

Dated.....

Entrance Naka Inspector/
Clerk

Entrance Naka Inspector/
Clerk

Form 11

(Rules 25 and 26)

Intimation-cum-Application for Written Permission for Export of Goods Temporarily detained with
the Importer

To,

The Superintendent of Octrio,

..... Municipal Council.

Sir,

I, ..(insert the full name and address of the importer) hereby declare my intention to export the
goods to through Naka No as detailed below. The certified copy of original invoice / invoices under
which these goods were imported are appended herewith .I have produced the goods for actual
verification. Kindly grant me the permission to carry the goods to the said Naka.

Sl.No.	Description of the goods	Quantity (Number of bags or cases)	Date of Import & No. of
entrance Naka	Import invoice No. and date	Deposit receipt number & date	Gross
weight			

1	2	3	4	5	6	7
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Value	Amount to be refunded	Number of Refund	Export pass granted	Name and address
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of the consignee How exported Remarks

8 9 10 11 12 13

Date Signature of Importer

Verified the contents and the weight as above and found correct.

Countersigned,

Octroi Officer Signature of the Refund Inspector/.

Receipt No. Clerk.

FORM 12

(Rule 25)

Written Permission-Cum-Refund Export Pass

Receipt No..... Date.....19

Sl.No.	Month and date	Name and address of the importer	Name and address of the consignee	Description of the goods	Quantity (number of bags or cases)	Gross weight
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1 2 3 4 5 6 7

Value	Deposit to be refunded	How exported	Exit Naka No.	Date & time by which the goods should reach the Export Naka	Whether goods sealed or escort given	Remarks
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8 9 10 11 12 13 14

*Fee for Written Permission-cum-Refund Export Pass Rs..... Miscellaneous Receipt No..... dated.....

Signature of the importer Signature of Octroi Officer

I hereby certify that the goods mentioned above have passed outside the octroi limits this day the of the month.....19 . Time.....a.m./p.m. in my presence Railway Receipt...../Vehicle No..... The seals, if any, thereon were intact when the goods were presented to me for verification.

Date..... Signature of the Exist Naka Officer

Naka No.....

*This fee should be levied in accordance with the bye-laws framed under Section 338 for granting permission to take the goods from the Central Octroi Office or Branch Office to the Exit Naka.

FORM 13

(Rule 29)

Application for Refund of Deposit

To

The Superintendent of Octroi,

..... Municipal Council.

Sir,

I..... the resident of..... hereby apply for refund of deposit as per enclosed Written Permission-cum-Refund Export Pass No..... dated....., as the goods mentioned in the pass were exported on under my intimation-cum-application, dated I, therefore, request you to grant the refund of Rs. and oblique

Enclosure:

Date..... Signature of the Importer

19. On a reading of these rules it appears to be that Rules 24, 25 and 28 in terms would apply only to cases falling under category four, stated above. The declaration in Form 4 referred to in Rule 24 and deposit of the amount equivalent to octroi duty payable at the entry point, production of the goods for verification at the Central Octroi Office are all consistent with its being applicable to a case where dutiable goods are imported for temporary detention and eventual export by a person having a bonded warehouse of his own contemplated in Rule 14(1)(d) and not Rule 14(1)(e). However, Rules 29 and 30 are general in terms and may be invoked in both the cases falling under Rule 14(1)(d) and (e). Sub-rule (3) of Rule 29 refers to the compliance of the conditions in Rule 28 and that is how it may be said that the provisions of Rule 28 are attracted to the cases of a person having a bonded warehouse and the facility of account current. However, the Rules have to be read and applied in such way that they do not conflict with but are consistent with the facility of current account given to the Company. Form 5 which is applicable to a case falling under Rule 14(1)(e) does not require the Company (importer) to give a declaration at the time of arrival of the goods at the entry Naka point that the "goods are meant for temporary detention with" the Company at its warehouse "for eventual export outside the octroi limits." The Company need not also make any deposit with the Naka Inspector at the point of entry. An amount equivalent to the octroi duty payable in respect of the goods is only entered in the account current after the goods have reached the warehouse and verified by the Octroi Officer. Form 4 is not applicable to the case of the Company which has got a current account facility. The Company is, therefore, bound to give a declaration only in Form 5, and need not give a declaration as in Form 4 nor is there any obligation to deposit an amount equivalent to the full octroi duty with the Octroi Inspector at the Entry Naka Point. Further reference to original invoices in Forms 4 and 5 is only for the purpose of checking the particulars entered into in the forms. The production of an invoice is not, having regard to the purpose of such production, to be insisted blindly. If the particulars furnished in the form including weight-quantity or value could be established satisfactorily by other documents, we have no doubt that will be sufficient compliance with the Rules. Column 5 of Form 11 also refers to invoice and the date of invoice. This is again to correlate the goods exported with the goods imported. If the identity of the goods could be established by evidence other than the production of invoices that

should satisfy the Rules. The invoice as such has no bearing on the liability of the goods for octroi or the right of the Company for refund.

20. So far as the production of the original invoices are concerned, the learned counsel for the Company pointed out that the goods are brought from their own manufacturing units at Pune and Jamshedpur and it will only be a stock transfer and this requirement of producing original invoice could not be complied with and is not applicable. Under the current account procedure the invoices, if any and all the other documents are verified when the goods reach the warehouse with reference to the description of the goods, weight / quantity, value and other particulars and it is only after verification the octroi duty leviable is determined and amount is debited in the account current and the demand also is issued.

21. The learned counsel for the appellant also referred to certain documents to show that for every category of article, the Company has given a distinctive number and the goods are easily identifiable and the number of items or quantity imported are all recorded in the register and computerised for easy verification. It is these identifying numbers of the articles that are mentioned in the intimation-cum-application for written permission for export. He also relied on the fact that the Company has no manufacturing unit within the Thane Municipality. Similarly, Column 6 of Form 11 also could not be complied with as it is not applicable to a person who is having current account facility. So far as the value is concerned the learned counsel for the appellants have fairly stated that the respondent was taking 72% of the list price of the articles of determining octroi payable, for which he has no objection. In fact, he has suggested that since the company publishes the price list periodically and that which shows the current price at any point of time may be taken as the basis for such valuation.

22. The Octroi Exit Naka Officer had refused to give the certificate of export pass on the ground that the particulars in Columns 5 and 6 of Form 11 could not be verified as the original invoices and the deposit receipts were not produced. Since these columns could be filled only to the extent possible by a person having an account current facility and there is no dispute about the export of the goods mentioned therein the refusal to give the export pass certificate by the Exit Naka Officer could not be sustained.

23. The next point to be considered is the procedure to be followed when the importer wants to "breaking the bulk" and repack the goods in smaller quantities and also the procedure relating to filling up Forms 11 and 12 and the refund applications in such circumstances. Rule 24(2) states that for breaking the bulk and repacking in smaller packages, sanction of the Superintendent of Octroi is necessary and the "breaking bulk" shall also be done in the presence of an officer deputed for this purpose. Rule 62 of Chapter VIII of the Schedule to the Bombay Provincial Municipal Corporation Act, 1949 provides that subject to the standing orders not less than 90% of the octroi paid on any goods shall be refunded if such goods are exported beyond the limits of city within six months of payment :

"provided that..... (C) in the case of goods which have been broken bulk prior intimation has been given to the officers specified in this be half in the standing orders and the place or places of storage have been reported to him from time to time."

Paragraph 5 of Appendix IV to this Act which we have noticed earlier states that the rules framed under the Municipal Act shall, "in so far as it is not inconsistent with the provisions of this Act, continue in force." Rule 62 of Chapter VIII forms part of the Act. The learned counsel for the

appellant, therefore, contended that Rule 62 shall prevail and prior intimation of the intention to 'breaking bulk' shall be enough and there was no necessity for the Company to get the sanction of the Superintendent of Octroi or break the bulk in the presence of an officer deputed for the purpose as required under sub-rule (2) of Rule 24. In other words according to the learned counsel Rule 24(2) of the Octroi Rules is inconsistent with Rule 62 of Chapter VIII of the Schedule to the Act and to the extent of inconsistency it shall be deemed to be not applicable. On the other hand the learned counsel for the respondent contended that Rule 62(c) deals with prior intimation and Rule 24(2) deals with the sanction and breaking of the bulk in the presence of an officer deputed for that purpose and both the rules can stay together and operate and there is no inconsistency. We are not impressed with the argument that there is an inconsistency between Rule 62 and Rule 24(2). The intimation contemplated in Rule 62 imply that the breaking the bulk shall be done with the knowledge of the octroi authorities. But it cannot be said that the rules further provide that after intimation the breaking of the bulk shall be done in the presence of the officers and after sanction that would in any case be inconsistent. Both the rules thus can stand together.

24. In *H.M.M. Limited v. Administrator* (1989) 4 SCC 640 : (AIR 1990 SC 47) this Court had occasion to consider the effect of non-compliance with this requirement of a similar provision, on the right to get refund. Shortly stated the facts in that case were these : The appellant brought into the municipal limits Horlicks in bulk containers (large steel drums) for being packed in unit containers (glass bottles) at the packing station in Bangalore and thereafter exported outside the municipal limits. In respect of the milkfood so exported in glass bottles the appellants sought refund of octroi on the ground that there was no consumption, use or sale within the municipal limits and the goods were exported. Rule 24 of the Octroi Rules that were in force in Bangalore city provided :

"24..... On all articles on which octroi duty has been paid and which are subsequently exported beyond the octroi limits without breaking bulk, refunds shall, subject to the following rules, be granted at the rate originally charged at the time of import provided that no such refunds shall, except in the case of timber imported and re-exported in log be granted unless such goods are exported within three months from the date on which octroi was levied."

Relying on this provision it was contended by the Municipality that breaking the bulk amounted to "use" within the municipal limits attracting levy of octroi and no refund was permissible. The refund application had also not been made within three months from the date on which octroi was levied. It was admitted that the appellants had not followed the procedure prescribed in Rule 24. This Court held that mere transferring of a bulk product in small containers like packets or bottles for the purpose of sale does not amount to use of the goods in the sense the word is used in relation to levy of octroi. It was further held that the words "without breaking bulk" is not an expression of art and that meant only transferring the product from the, drums by breaking the seal of the drums, to the bottles for the purpose of exporting or for taking them out of the municipal limits, and that would not amount to either use or consumption of the Horlicks powder within the municipal limits attracting the levy of octroi.

25. The ratio of the judgment clearly is that merely on the ground that the goods are not exported in bulk as originally imported, the levy does not become valid or that the importer who exported the goods loses his right to a refund of the octroi paid. The goods neither lose their identity nor cease to be identifiable. Once we reach the conclusion that there is no consumption or use, octroi is not attracted and if any levy has been made and the amount collected, the same becomes legally refundable even when the goods are exported in parts and in smaller packages. This is particularly

so because in the case of goods not consumed or used within the octroi area but exported there is a constitutional bar for the levy of octroi.

26. In this connection we may also refer to another decision reported in Municipality Committee *Khurari v. Dhannalal Sethi* (1969) 1 SCR 166 : (AIR 1968 SC 1458). The rules considered in that case also provided that an application for refund was to be made in the prescribed form and that the exporter after filling in the particulars had to present his application at the office appointed for that purpose. There were other rules which provided an elaborate procedure to be followed at the time of export of the goods. These rules related to the octroi officers satisfying himself that the goods brought for export agree with those mentioned in the application, presentation of the claim within the prescribed time, identifying of the goods exported with those imported and other matters. This Court held that (at p. 1461 of AIR 1968 SC 1458) :

"These rules do provide a procedure which an exporter wishing to claim refund has to follow. But the question is whether in a case where an exporter has not done so, is he disentitled from claiming the refund. The real difficulty in the way of the appellant Committee is that though the rules lay down a procedure which such an applicant has to follow, they do not provide at the same time that an applicant for refund who has failed to follow the procedure laid down in Rr 35 to 39 would be disentitled to claim the refund. In the absence of such a provision coupled with the categorical language of R. 27 giving of right to an exporter of dutiable goods to claim 7/ 8th of the duty paid on such goods on their import, it becomes difficult to uphold the denial by the appellant Committee of the right of respondents 1 and 2 to such a refund. We are, therefore, of the opinion that in the present state of the rules, the appeal must fail though for reasons different from those given by the Board of Revenue and the High Court.

27. It may be pertinent to mention that the Maharashtra Municipalities (Octroi) Rules, 1968 also do not contain any specific provision that an applicant for "refund who has failed to follow the procedure would be disentitled to claim the refund. It may be noted that the amount collected which is equivalent to the octroi duty payable on the goods, on entry into the octroi limits while in detention in the warehouse is only as a deposit pending export of the goods. The other aspect is that once octroi is not leviable the deposit made by the importer pending export is in the nature of a trust and refundable in the event of the export of the goods. Further in a given set of facts, whether the rules have been complied with will have to be tested having regard to the nature of the particular transaction and whether the object of the procedure provided is otherwise fully satisfied. Rule 28 also merely states that the refund shall be admissible if all the conditions in sub-rule (2) of that rule are satisfied. The object of requiring intimation or sanction and presence of an officer when breaking the bulk in the scheme of octroi levy and refund is to ensure that dutiable goods do not escape the assessment and refunds are made only in respect of goods exported. In other words the whole requirement relates to the identification of the goods. In that sense if the same is otherwise complied with the right to refund cannot be denied. These rules cannot be read as enabling the municipality to levy and collect octroi even in cases where the goods have not been imported for consumption or use. As held by this Court in *Kirpal Singh Duggal v. Municipal Board, Ghaziabad* (1968) 3 SCR 551: (AIR 1968 SC 1416) the octroi rules are intended to regulate the system on which the refunds shall be allowed and paid. What are merely matters of procedure which the municipality was entitled to require compliance with in granting refund cannot be treated as condition precedent for the entitlement of the refund itself. The Constitution prohibits levy of tax except in accordance with law. When the goods are not imported for consumption or use within the

octroi area the municipality ceases to have any constitutional right to levy octroi. If the goods therefore have merely entered into the octroi limits and passed out of the same no octroi duty is attracted.

28. The concept of octroi as held by this Court in *Burma Shell's case* (AIR 1963 SC 906) (*supra*) may include "the bringing in of goods in a local area so that the goods come to a repose there." It is this concept that is reflected in Rule 28(2)(d) when it requires evidence that the goods were exported out of the octroi limits within a period of six months of their imports. The learned counsel for the appellants Mr. Andhirujina had expressed certain difficulties in satisfying the Corporation that the goods imported were exported within the period of six months as provided in the rules in view of certain peculiar circumstances in this case. He pointed out the goods received in bulk are small items and there are about 16000 distinctive types of articles and when the bulks are broken and each of the categorised items are mixed up together it becomes difficult for him to individually identify when the goods were received and when they were exported. However, he was sure that the goods were exported before six months. When this difficulty was pointed out during the pendency of the appeal, as an interim direction this Court by Order dated 1-5-1989 directed the parties to proceed on the basis that the goods which came in first had gone out first unless some factors or features indicate otherwise. This is not equitable principle unknown to law. Even as early as in 1816 with reference to money paid on account to a creditor, in *Clayton's case* (1814-23) All ER Rep 1, it was held that in the absence of an agreement to the contrary in the case of current account containing debit and credit entries there is a presumption that the first item on the credit side of the account is intended to be applied in the payment of the first item on the deposit side of the account. This is an equitable principle which could be followed in the instant case and it may be presumed that the goods which came in first have gone out first and the six months period could be determined on that basis. In any case in view of the interim direction given by this Court on May 1, 1989 that may be usefully followed for the future also in this case.

29. To sum up : Having regard to the nature and incidence of octroi unless the octroiable goods are consumed or used or are meant to reach an ultimate user or consumer in the octroi area no octroi is leviable. The words 'sale therein' in the words "consumption, use or sale therein" in the definition of octroi means sale of octroiable goods to a person for the purpose of consumption or use by such person in the octroi area. If sale was intended for consumption or use in the octroi area whether the purchaser actually consumed inside or outside octroi area is irrelevant. Rules 24 to 30 and the forms in the system of levy of octroi are intended to regulate the procedure for collection, identification of dutiable goods and correlation of goods exported with the goods imported for the purpose of refunds of octroi collected. In view of constitutional bar, octroi is not leviable if the goods are not brought into the octroi area for purposes of consumption or use in the area but for export and in fact exported by the importer himself or the sale by him occasions the export. Compliance with the procedure prescribed in the Rules for filing claims of refunds are not conditions precedent for the right or eligibility for refund or the liability to refund but are provisions regarding proof of export of the goods imported and are not meant to be exhaustive either. They are to be interpreted and understood in that sense. The object of the Rules fixing a period of limitation for export however is different. The export cannot be put in perpetual doubt and the goods may be considered to have come to a repose if they were not exported within a particular period provided in the rules/Applying these principles to the instant case on facts the rejection of refund applications on the ground that Rule 25(3)(d) had not been complied with was illegal. Since the rejection of the claims for refund was merely on the ground that either Form 4 and original invoices were not produced or columns 5 and 6 of Form 11 or the corresponding columns in Form 12 had not been filled with reference to an original invoice or Form 4 or deposit receipt and the refusal to issue export pass certificates on those

very grounds which we have stated are untenable the other orders of rejections are also invalid. If the goods are mixed up and unidentifiable due to breaking bulk and repacking in smaller and asserted packages before export the principle that the first export was of the goods first imported, subject to any evidence available to the contrary may be applied and the six months period, prescribed for export may be determined accordingly.

30. When these appeals were pending by way of interim agreement this Court by order dated 25-4-1990 directed that in order to obviate the difficulty of identifying the goods at the time of export by reason of the breaking of the bulk and in order to avoid doubts, the respondent Corporation may depute their officer or officers on all working days at the warehouse of the Company to supervise the breaking of the bulk subject to the Company reimbursing the entire monthly payments and other allowances to be paid to the said officer or officers as per bill or pay slips sent by the Corporation to the Company. We think that this procedure could be continued and followed in future also so that while the purposes of the rules are served the free trade and commerce of the Company which is stated to have a large turnover is also not affected.

31. The learned counsel for the respondent then contended that the appellants have recovered the amounts paid by them by way of octroi duty from the dealers or the customers to whom they had sold the goods and therefore they are in any case not entitled to get a refund. The argument was that if refund is ordered it would amount to allowing the appellants to unjustly enrich themselves at the cost of the public to whom the burden had already been passed. This argument is based on the ground that in the selling price the Company had merged the octroi duty originally paid as deposit and if a refund is made the company would be getting an additional amount over and above normal price which they would have charged but for the fact that they were initially asked to deposit octroi. There is no evidence that any of the articles sold by the Company is subject to any price control by the Government or that the Company had charged any octroi separately in, the bills. Invoices and the other documents of sale to the outside purchasers produced before us do not also show that any octroi was separately charged and collected by the Company. It may be mentioned that in the rejoinder filed by the appellant in the writ petition they have specifically denied that they "have recovered the amount paid by them by way of octroi duty from the dealers to whom they had sold the goods or that the dealers in turn have recovered the octroi duty from the customers. " In view of this the question of unjust enrichment does not arise.

32. This appeal is accordingly allowed on the above terms. There will however be no order as to costs.

Appeal allowed.

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