

SUPREME COURT OF INDIA

Municipal Council, Kota

Vs

The Delhi Cloth and General Mills Co. Ltd.

(Mr. V.N. Khare and Doraiswamy Raju, JJ.)

Civil Appeal No. 4152 of 1991 with Civil Appeal Nos. 4153/1991, 2994/1984 and 2842/1989.

02.03.2001

JUDGMENT

Doraiswamy Raju, J. - These appeals involve for consideration an interesting question as to the nature and character of the levy of 'Dharmada', as it is called in the form of an octroi by the Municipal Council, Kota in Rajasthan State, which, according to respondents, is not really an octroi, but the levy and demand of 'Dharmada tax' as such on the goods imported by the respective respondent-companies into the municipal limits of Kota. It is necessary to trace the origin of this levy in this part of the State of Rajasthan.

2. From the records and materials placed before us, it transpires that in 1860 A.D. the late Ruler of Kota, claimed to be the Sovereign Authority to make even laws, imposed, though on the basis of also a volition expressed by the traders in the locality to pay one such, the levy of Dharmada on the traders of 'Nandgaon' (the ancient name of Kota city), as a compulsory levy by the authority of the said law made by the Ruler. The Schedule of rates of Dharmada, so imposed, was said to have continued till 1894 when it came to be sanctioned also by the Resolution dated 6.11.1894 of the Municipality Committee. This seems to have in succession followed by another Schedule of octroi dated 22.11.1922 issued by the Superintendent of Custom and Chief Excise Officer, Kota State, revised subsequently in 1923. It is also disclosed that prior to 1929 cases of evasion of Chungi/Dharmada were entertained and decided in the Court of Magistrate, Kota State, under Section 106 of the Customs Act, then in force and evasion of octroi and Dharmada were said to have been made even as a penal act punishable under the said Act. In the year 1929, the Kota State Chungi Act was said to have been passed empowering the levy and collection of Dharmada by the Municipal Board, Kota. In 1959, the Rajasthan Municipalities Act saved the operation of the Chungi Act, 1929.

3. The Rajasthan Municipalities Act, 1959 (hereinafter called the "Act") enacted a scheme of taxation for imposition of various categories of taxes by the local authorities classified as "obligatory taxes" in Section 104 and other taxes that may be imposed in Section 105, besides making provisions for levy of property tax, etc. Section 104, as it stood at the relevant point of time, obligated every Municipal Board by a mandate of law to levy "at such rate and from such date as the State Government may in each case direct by Notification in the Official Gazette and in such manner as is laid down in tis Act and as may be provided in the rules made by the State Government in this behalf, the following taxes, namely -

(1)

(2) An octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein."

4. Coming to the Notifications issued stipulating the rates, it may be stated at this stage that after the coming into force of the Constitution of India, several notifications came to be issued from time to time such as, i.e., Notification No. F.2(150)LSG/50 dated 21.8.1950; Notification published in the Official Gazette dated 17.12.1951; Notification No. F.150LSG/60 dated 1.2.1962 successively one after the other, in supersession of the earlier one.

5. It is seen that subsequently the Government has issued another notification dated 13.5.1968 under Section 104(2) of the Act authorising the Municipal Council, Kota, to levy octroi under three sub-heads for different and specific purpose and objects, namely, (1) Octroi proper; (2) Dharmada; and (3) Nirkhi, as follows :-

Rajasthan Gazette

Extraordinary

Jaipur, May 13, 1968

Notification Tax F.144(2) D.L.B. 161 :-

In supersession of current rates of octroi of Kota Municipal Board, the State Government in exercise of power conferred by Section 104(2) of the Rajasthan Municipalities Act, 1959 (Rajasthan Act No. 38/1959) hereby directs that the octroi will be levied on goods and animals brought within the limits of Kota Municipality for use, consumption or sale at the rates specified in the following schedule from the date of publication of the Schedule :

Schedule	Name of Goods	Specified Rate	Percentage	Serial No.	Dharmada	1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				101		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				102		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				103		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				104		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				105		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				106		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				107		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				108		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				109		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				110		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				111		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				112		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				113		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				114		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				115		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				116		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				117		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				118		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				119		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				120		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				121		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				122		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				123		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				124		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				125		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				126		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				127		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				128		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				129		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				130		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				131		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				132		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				133		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				134		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				135		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				136		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				137		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				138		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				139		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				140		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				141		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				142		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				143		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				144		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				145		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				146		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				147		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				148		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				149		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others
				150		1. Grain	2. Animals	3. Inflammables	4. Medicines, Chemicals, etc.	5. Shahnama Nirkhi	6. Miscellaneous	7. Tuktam Roghan	8. Others

By the Order the Governor

Sd/- P.N. Seth

Deputy Secretary (Admn.)"

6. We shall now advert to the history of the present litigation and the stage at which it has been

brought to this court in the above appeals with particular reference to the facts in C.A. No. 4152/91. The respondent-Company in C.A. No. 4152/91 filed Civil Suit No. 51/79 in the Court of the Additional Munsif and Judicial Magistrate, First Class No. 2, Kota (South), seeking for a prohibitory relief against the appellant that it should not raise any demand of Dharmada tax on any of the goods imported by the company or take up any other proceedings for the recovery of the same and the appellant should neither impose nor realise any Dharmada tax on the raw materials enumerated in the plaint, when brought by the company within the Municipal limits of Kota and for a consequential permanent injunction to that effect. The sum and substance of the claim of the respondent-Company was that Section 104(2) enabled the State Government to authorise and as a consequence thereof, empower the appellant to levy the octroi tax, the kind of which envisaged in Entry 52 of List II of the Seventh Schedule to the Constitution of India and that the notification dated 13.5.1968 insofar as it empowered the appellant to levy and collect Dharmada is illegal, unauthorised, unacceptable, unreasonable and, therefore, null and void. In justification of the said plea, it was urged that there is no provision in any of the Entries contained in List II of the Seventh Schedule to the Constitution for imposing Dharmada tax and in the absence of any specific law made by the State Legislature, there can be no legal basis for the levy of Dharmada tax by the municipality. Though, as noticed earlier, in the judgment of the Division Bench, the English translation of the Notification issued in 1962 has been extracted, reference is also made in the plaint to the notification dated 13.5.1968 with a brief mention of the contents thereof by stating that under the said notification the appellant has been authorised to levy octroi tax on goods brought within the Municipal limits for sale, consumption and use at the rates specified in the Schedule to the notification from the date of its publication in the Official Gazette and that so far as 'Dharmada' is concerned, below the caption of the word 'Dharmada' various articles have been enumerated and found divided into 14 categories and in every such category not only the names of the articles but the rate of Dharmada on each category of those goods are also specified therein. It is also one of the objections of the respondent-plaintiff that on the same goods on which octroi tax is payable, Dharmada tax cannot be imposed at all with two different names. The stand taken by the appellant before the Civil Court was that Dharmada is not separate from the octroi levy but on the other hand is part and parcel of the same levy for a specific purpose and recovered along with the octroi and, therefore, was well within the power and competency of the appellant to levy by virtue of the statutory notification issued under Section 104(2) of the Act. Reliance was also placed on Article 277 of the Constitution of India in addition to relying upon the Kota Sate Chungi Act, 1929 and Section 2 of the Rajasthan Municipalities Act for the continued authority to levy the same.

7. The learned trial Judge by his judgment and decree dated 26.11.1979 held that Dharmada levy is also octroi and justified under Section 104(2) of the Act. Aggrieved, the respondent-companies pursued the matter in appeal in Civil Regular Appeal No. District Judge/12/80 and the learned Additional Civil Judge, Kota, by his judgment dated 8.9.1981 concurred with the conclusion of the learned trial Judge and dismissed the appeal. Thereupon, the matter has been pursued before the High Court. The learned Single Judge, placing reliance upon the earlier decision of a Division Bench in D.B. Special Appeal No. 154/73, which is the subject-matter of Civil Appeal No. 2994 of 1984 before us, allowed the claim of the respondent-company. It may be pointed out at this stage that the Division Bench sustained the challenge to the levy at the instance of the respondent-Companies by holding that Section 104(2) of the Act only dealt with the obligatory taxes like octroi and cannot be held to include 'Dharmada tax' and, therefore, the State Government could not have authorised the appellant-Municipality to collect Dharmada on the entry of goods within the municipal limits of Kota. Though the Division Bench while sustaining the claim of the company therein not only issued a perpetual injunction restraining the appellant from levying and collecting

any Dharmada tax on the goods brought by the company within the limits of the Municipal Council, but also granted a decree, though not specifically prayed and sought for as required in law, directing refund of collections made, the learned Single Judge in the case dealt with by him though upheld the claim for prohibitory relief, yet applied the doctrine of undue enrichment and on the view that the respondent-Companies have already realised the Dharmada tax paid by passing over the same to the customer, the company also ought not to be allowed to retain the same and consequently instead of ordering refund to the company directed refund of the amounts collected (within six months) to the State of Rajasthan with a further direction as to the manner in which such amount has to be utilised by the State. It is in such circumstances these appeals have been filed before this Court by the Municipal Council, Kota.

8. Mr. Altaf Ahmad, learned Additional Solicitor General appearing for the appellant, strenuously contended that whatever be the nomenclature in substance, the levy and collection under the heading of Dharmada being a levy on the entry of goods brought within the limits of the Municipality for consumption, use and sale therein, it is essentially an 'octroi' covered by Entry 52 of List II of the Seventh Schedule to the Constitution of India and the mere fact that for historical reasons and administrative purposes, different names and/or labels were given to the levy would not change the nature and character of the tax to render it any the less an octroi or different in content and character than the one which it really is octroi. Placing reliance on the historical origin of the levy, it is also contended that the collections from the Dharmada are being specifically earmarked for carrying out the charitable objects and obligations such as for feeding and clothing of the poor and the needy; for giving financial aid to educational institutions for maintaining Gaushalas and providing fodder to animals and rearing destitute cows; for taking care of stray dogs, for performing the last rites of unclaimed dead-bodies; for running Aushdhalyas, Dharamshalas, water huts; for distribution of books to poor boys and clothes and blankets to poor people; for giving subsidies to School, arranging sports, providing aid, for extension of hospitals and supplying medical instruments for the same and even so many such charitable schemes and objects. It is claimed that the levy thus came to be made as Dharmada, though it was well not only open but within the competency and jurisdiction of the State Legislature as well as the Government to authorise the Municipality to levy and collect for all those purposes under the specific category of octroi itself. The levy otherwise made under various headings such as octroi proper, Dharmada and Nirkhi are stated to be only to continue the long established practice of maintaining the distinction based upon the different purposes for which the octroi was being levied under different categories or names. Argued the learned Counsel further that in the absence of any specific prohibition or restriction in any law governing the particular levy, the State is entitled to a larger area of discretion and latitude in fashioning its own scheme, pattern, method or class of fiscal measures designed in the best possible manner that suits its financial and budgetary exigencies and necessities. As long as, in pith and substance, the levy satisfies the character of octroi, it is asserted, that how and in what form and manner and for what purposes the octroi or portions of the octroi are collected or utilised should be left to the discretion of the State. It is also contended that as a matter of principle, there is nothing illegal or unlawful and unconstitutional even to levy more than one tax or rates of tax on the same taxable event as long as all levies or rates put together is not shown or substantiated to be either expropriatory or irrational.

9. Dr. A.M. Singhvi, learned senior Counsel for the appellant in C.A. No. 4152/91, apart from adopting the submissions of the other senior counsel, noticed supra, further contended that as long as the levy satisfied the ingredients of the tax authorised to be imposed, it is irrelevant as to by what name the same is called or identified and that the Dharmada levy in question having had its origin in pre-Constitution laws at any rate is also saved and protected by virtue of Article 227 of the Constitution of India as well as Section 2 of both the 1951 and 1959 Acts. Reliance has also been

placed on Section 105(i), (ii), (iii) and (iv) to justify the levy in question. Both the learned counsel appearing for the appellants also relied upon the doctrine of prospective over-ruling by contending that the High Court ought not to have interfered with the levy and collections made for the period prior to the declaration of law by the Court and, at any rate should not have ordered for the refund of the tax already collected and spent on various charitable objects by the Municipal Council, either to the respondent-Companies or to the Government, particularly when in the normal course of events the respondent-Companies would have necessarily passed on the same to the consumers with the cost price of the products manufactured and sold by them.

10. Shri Shanti Bhushan, learned senior Counsel appearing for the respondent-Company, whose submissions have been adopted by the other learned Counsel, with equal vehemence and force, contended that the levy of tax by the name of Dharmada is unknown to law and there is no authority to provide for imposition of such a tax under the Constitution either by the State Legislature or the Government and consequently even by Local Authority and, therefore, the same has rightly been set aside by the High Court. It was also contended that Section 104(2) of the Act empowers the Government only to prescribe the rate and date for the levy of octroi in the manner provided in the Act and the Rules and, therefore, the very language of the Section precludes any argument that Dharmada could be included in the octroi in any manner. Dharmada, it is contended, is a well-known concept and when the same notification issued by the Government advisedly stipulates levy of octroi and Dharmada separately, both cannot be claimed to be the same but instead considered as separate levies altogether. It is also further contended that municipal fund created has to be applied in respect of various purposes enumerated in Sections 98, 99, 101 and 102 and the sum collected could not be sent on Gaushalas, an item totally not permitted under law. Anything in excess of the rates fixed as octroi cannot be said to be octroi at all, according to the respondents and, therefore, Dharmada sought to be levied over and above, by a separate name cannot also be called octroi. So far as the relief of refund granted is concerned, it has been contended for the respondents that there is no material on record to show that they have passed on the tax to the consumers and that a levy, which has been held to be unauthorised and illegal, if found to have been also collected by a public authority, has to be refunded to the person who paid it under the coercion of law. Reference has also been made to the interim orders passed by this Court during the pendency of the appeals, granting leave to the appellant to recover from the companies, half of the Dharmada tax due with effect from the date of the High Court judgment with a further condition that in the event of the appeal being dismissed the amount recovered should be refunded to the company with interest at 12% per annum. Consequently, it is contended that the appellants must be made to refund the tax collected in terms of the orders of this Court once their claims in the appeal fails and no plea based either on the 'doctrine of undue enrichment' or the principle of 'prospective over-ruling' could be permitted to be even raised. In traversing the claim of the appellant based on Articles 277 and 376 of the Constitution of India, it has been urged that those Articles will have no relevance or application to the case on hand. Reliance has been placed upon the decision reported in *The Commissioner of Income Tax, (Central) Delhi, New Delhi v. Bijli Cotton Mills (P) Ltd., Hathras, District Aligarh, 1979(1) SCC 496*, to substantiate the stand based upon the nature and character of Dharmada sought to be levied and collected.

11. We have carefully considered the submissions of the learned Counsel appearing on either side in the light of the case law placed before us for our consideration. The main issue that looms large for consideration in these appeals is as to the real character and nature of the levy sought to be imposed and collected under the name of Dharmada and if the answer is to be that it is in no way different from octroi and it is one and the same it would become unnecessary for us to advert to the other aspects of the submission made on either side.

12. The genetic history of levy of octroi has been judicially noticed by this Court on many an occasion. In *Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Belgaum v. Belgaum Borough Municipality, Belgaum, AIR 1963 SC 906* a Constitution Bench of this court not only traced the emergence of this concept as a limb of public finance but also succinctly noticed the successive stages of its development before it got crystallised into a topic of legislative power as enumerated in Entry 52 of List II of the Seventh Schedule to the Constitution of India in the following manner :

"14. The particular tax was 'octroi' and there was no description of the tax. The word 'octroi' comes from the word 'octroyer' which means 'to grant' and in its original use meant 'an import' or 'a toll' or 'a town duty' on goods brought into a town. At first octrois were collected at ports but being highly productive, towns began to collect them by creating octroi limits. They came to be known as 'Town duties'. These were collected not only on 'imports' but also on 'exports' see Beuhler : Public Finance (3rd Edn.) p. 426. Grice in his National and Local Finance p. 303 says that they were known as 'ingrate tolls' because they were collected at toll gates or barriers. Normally, they were levied on goods meant for consumption but in Seligman's Encyclopaedia of Social Sciences Volume IX page 570, 'octrois' are described without any reference to consumption or use. This is how the editors describe octrois :-

"As compared with the facilities of the National Government the possibilities of raising revenue by local bodies are quite limited. All forms of indirect taxation are practically closed to local authorities. They are unable to levy customs duties, although they may collect the so-called octrois; that is, duties levied on goods entering town."

15. It will be noticed that in the Government of India Act 'octroi' was named but not described and not the Constitution avoids the word 'octroi', as did the Government of India Act 1935 before, and gives a description. In the Boroughs Act the definition of 'octroi' includes Terminal Tax. Terminal tax, as the Indian Statutory Commission points out, formerly meant in Indian fiscal terminology a tax which was levied at Railway Stations and collected by the Railway Administration on all goods imported or exported from the Station. It was also collected from passengers in some municipalities. We also learn from the Report that on the recommendation of a Committee appointed in 1908 terminal tax took the place of octroi in a large number of Municipalities at first in the United Provinces and then in others. At first the Government of India were not in favour of such a change. Octrois were levied on goods brought into a local area for consumption, use or sale and were indirect taxes but terminal taxes were regarded as direct. On July 6, 1917, the Government of India by a Resolution reversed their former policy and agreed that the conversion was not a change from indirect to direct taxation. Terminal taxes were of the nature of octrois, but were not quite the same. The main differences were, that there was no system of refunds under the Terminal Tax Rules (Terminal taxes as Findlay Shirras tells us were sometimes known as 'octrois without refunds') and for octroi to be levied the goods must be brought in for sale, use or consumption.

16. After the Scheduled-tax Rules the collection of terminal tax was restricted to those areas in which octroi was levied on or before July 6, 1917. Most of the municipal laws allowed collection of terminal taxes only if octrois were not levied. As the Taxation Enquiry Commission observes : (Vol. III Ch. IV page 401).

".....the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must not only enter the area, but must be "for the purpose of consumption, use or sale therein. Usually, this requirement is sought to be satisfied by (a) the *ab*

initio exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds, therefore, are the distinguishing features of the octroi system."

17. Octrois and terminal taxes were different taxes though they resembled in one respect, namely, that they were leviable in respect of goods brought into a local area. While terminal taxes were leviable on goods 'imported or exported' from the Municipal limits denoting thereby that they were connected with the traffic of goods, octrois, according to the legislative practice then obtaining were, leviable in respect of goods brought into a Municipal area for consumption or use or sale. It is not necessary to cite the Municipal Acts prior to 1935 but a reference to them will amply prove that such was the tax which was contemplated as octroi.

18. When the Government of India Act 1935 was enacted terminal taxes became a central subject, vide entry No. 58 of List 1, which reads as follows :-

"58. Terminal taxes on goods or passengers carried by railway or air."

At that time, it was suggested by Sir Walter Leyton that both octrois and terminal taxes should be provincial subjects and that it would perhaps be possible to fuse the two. The Joint Committee, however, recommended otherwise and terminal taxes were separated from octrois and included in the central list. The proceeds of the terminal taxes, however, were to be distributed among the provinces. In allocating 'octrois' to the Provinces, the word itself was avoided because terminal taxes are also octroi in a sense and instead a description of the tax was mentioned in entry No. 49, which has been quoted already, and which read "Cesses on the entry of goods into a local area for consumption, use or sale". This Scheme has been repeated in the Constitution with the difference that the entry relative to terminal tax now reads "terminal taxes on goods and passengers carried by railway, sea or air", and the word "taxes" replaced the word "cesses" in the entry relative to octrois.

19. The history of these two taxes clearly shows that while terminal taxes were a kind of octroi which were concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods brought into the area for consumption, use or sale. They were leviable in respect of goods put to some use or other in the area but only if they area meant for such user. When the Government of India Act, in its Scheduled Tax Rules, mentioned "octrois", it intended to give the power to levy taxes in this well-understood sense, namely, on the entry of goods in a local area for consumption, use or sale....."

13. There is no challenge in these cases to the levy of octroi as such but what is questioned is that which is purported to be levied and collected as 'Dharmada' only which though the appellant Municipal Council would contend is only a levy of octroi for Dharmada purposes or to meet the obligations cast upon the counsel to carry out the various public charitable objects enumerated under Sections 98, 99, 101 and 102 of the Act, is challenged by the respondent-Companies to be a different and separate tax, unwarranted, unauthorised and uncalled for under the provisions of the Constitution, the Act and notification issued under Section 104(2) of the Act and, therefore, illegal. Though strong reliance has been placed upon the decision reported in 1979(1) SCC 496 (supra) to contend that a payment of Dharmada is always understood as a gift or voluntary payment by commercial or trading custom for charitable purposes, in our view the said judgment though may be of help to understand the nature of 'Dharmada' collected by traders from customers as a customarily established trade practice in certain areas or fields can be of no assistance whatsoever for determining the legality, propriety and validity of the notification issued under Section 104(2) of the

Act or the levy and recovery of octroi sought to be made under the heading of Dharmada. Yet another important fact to be noticed and firmly recorded is that there is no challenge by the respondent-Companies to the levy on the ground that the levy and collection of Dharmada and Nirkhi under the Notification taken together with octroi or separately as octroi renders the levy either expropriatory or irrational, since such issues pertaining to the constitutional validity of a levy cannot be raised before ordinary civil courts and that too in a collateral manner, in a bare suit for injunction.

14. Entry 52 of List II of the Seventh Schedule of the Constitution of India enables the State Legislatures to enact a law providing for the levy and collection of taxes on the entry of goods into a local area for consumption, use or sale therein otherwise known as octroi and/or authorise the local authorities concerned to levy and collect the same. Section 104(2) of the Act enables every Municipal Board to levy at such rate and from such date as the State Government direct by notification in the Official Gazette and in such manner as provided in the Act and the rules to be made by the Government an octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein. The levy of tax envisaged under Section 104 as a whole, has been classified as 'obligatory tax' with a duty to levy, once notified by the Government, unless specifically got exempted from doing so from the Government by means of a notification, therefor under the provisions, thereto.

15. The Notification under challenge issued in the undoubted and undisputed exercise of powers under Section 104(2) of the Act provide a schedule enumerating the class or category of goods and the rate of tax obligated to be levied by the Municipal Board. In the said schedule apart from specifying the levy to be made as octroi provision has been made to levy also Shaharnama Dharmada and Nirkhi Shaharnama with a specific enumeration and description of the class or category of goods, as and when such goods are brought into the Municipal limits for consumption, use or sale therein and the rates as well. The scheme underlying the notification issued in exercise of the powers under Section 104(2) of the Act seem to be to provide for an additional levy and collection of octroi on certain class or category of goods, under the nomenclature of Dharmada or Nirkhi, indicative more of the specific purpose or object of the demand so made but again only on goods brought within the limits of the Kota Municipality for consumption, use or sale demonstrating thereby that the collection under the name of Dharmada and well as Nirkhi is also by way of an octroi, the levy being on the very and only incidence of the entry of the goods and animals within the municipal limits for consumption, use or sale therein. If that be the correct position could it be legitimately questioned or challenged on the mere ground or for the only reason of there being a multiple rates of levy or double taxation.

16. Whenever a challenge is made to the levy of tax, its validity may have to be mainly determined with reference to the legislative competence or power to levy the same and in adjudging this issue the nature and character of the tax has to be inevitably determined at the threshold. It is equally axiomatic that once the legislature concerned has been held to possess the power to levy the tax, the motive with which the tax is imposed becomes immaterial and irrelevant and the fact that a wrong reason for exercising the power has been given also would not in any manner derogate from the validity of the tax. In *M/s. Jullundur Robber Goods Manufacturers' Association v. The Union of India and another*, AIR 1970 SC 1589 this Court while dealing with a challenge to the levy of rubber cess under Section 12(2) of the Rubber Act, 1947 as amended in 1960 observed that the tax in the nature of excise duty does not cease to be one such merely because the stage of levy and collection has been as a matter of legislative policy shifted by actually providing for its levy and collection from the users of rubber, so long as the character of the duty as excise duty is not lost and

the incidence of tax remained to be on the production or manufacture of goods. Likewise, once the legislature is found to possess the required legislative competence to enact the law imposing the tax, the limits of that competence cannot be judged further by the form or manner in which that power is exercised. In *(Morris) Leventhal and others v. David Jones Ltd., AIR 1930 PC 129*, the question arose as to the power of the legislature to impose 'Bridge Tax', when the power to legislate was really in respect of 'tax on land'. It was held therein as follows :-

"The appellants' contention that though directly imposed by the legislature, the bridge tax is not a land tax, was supported by argument founded in particular on two manifest facts. The bridge tax does not extend to land generally throughout New South Wales, but to a limited area comprising the City of Sydney and certain specified shires, and the purposes of the tax is not that of providing the public revenue for the common purposes of the State but of providing funds for a particular scheme of betterment. No authority was vouched for the proposition that as impost laid by statute upon property within a defined area, or upon specified classes or property, or upon specified classes of persons, is not within the true significance of the term a tax. *Nor so far as appears has it ever been successfully contended that revenue raised by statutory imposts for specific purposes is not taxation.*" (Emphasis supplied)

17. A Division Bench of the Allahabad High Court, in a decision reported in *Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur, AIR 1962 Allahabad 83* had an occasion to consider the nature and character of an import levied by the name 'water tax', when the power was to levy 'tax on buildings'. The Division Bench, while applying the ratio in AIR 1930 PC 129 (supra) held as hereunder :

"5. 'Tax' means burden of charges imposed by the legislative power of a State on person or property to raise money for public purposes. The expression 'fee' connotes recompense for services rendered. There is an element of *quid pro quo* in the case of fee. It is not in the case of a tax. The learned Counsel for the petitioner pointed out that cl. (b) of Section 129 provides that water tax is to be imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal water works and that all moneys derived therefrom shall be expended on the aforesaid object. He argued that the fact that the money raised from water tax is to be spent only on the supply of water, introduces an element of *quid pro quo*. The argument does not appear to be tenable. Section 129(B) mentions the object of the tax. As the maintenance of regular supply of water and extending the supplies is one of the most beneficial public purposes, the section lays down that the money realised from this impost is to be spent on the construction, maintenance and extension of water works so that the purpose may not suffer on account of paucity of funds. In *(Morris) Leventhal v. David Jones Ltd., AIR 1930 PC 129*, their Lordships of the Judicial Committee held that there was no authority for the proposition that revenue raised by statutory imposts for specific purposes is not taxation.

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10. It is obvious that the subject-matter of water tax is not water. Though it is called water tax, it is not levied on its production. *As explained by their Lordships of the Judicial Committee in Governor-General in Council v. Province of Madras, AIR 1945 P.C. 98, it is not the name of the tax but its real nature, its 'pith and substance' as it has sometimes been said, which must determine into what category it falls.*"

(Emphasis supplied)

18. We affirm the statement of law thus made above to be correct and in our view it is not the nomenclature used or chosen to christen the levy that is really relevant or determinative of the real character or the nature of the levy, for the purpose of adjudging a challenge to the competency or the power and authority to legislate or impose a levy. What really has to be seen is the pith and substance or the real nature and character of the levy which has to be adjudged, with reference to the charge viz., the taxable event and the incidence of the levy. We are convinced on the indisputable facts on record that the levy sought to be imposed and recovered as 'Dharmada' being only on the goods brought within the municipal limits of Kota for consumption, use or sale therein the same in truth, reality and substance is only an octroi for the purpose of carrying out the several public charitable objects statutorily enjoined upon the Municipal Board and enumerated in Sections 98 and 99 and those undertaken pursuant to the stipulations contained in Sections 101 and 102 of the Act. The mere fact that it is called by a different name (all the more so when the word 'octroi' itself is not found used in Entry 52 of List II of the Seventh Schedule) for historical reason and administrative needs or exigencies by the draftsmen of the notification does not in any manner either undermine the nature and character of the levy or render it any the less a levy envisaged under Entry 52 of List II of the Seventh Schedule. The various charitable objects and ameliorative schemes and projects for which the taxes realised under the classified head of Dharmada are claimed to be spent cannot as the provisions of the Act stand enacted be said to be either unauthorised or without the sanction of law. That, apart, the irregularity or illegality, if any involved in spending the sum after collection cannot have any impact on or adversely affect, the otherwise competency of the Authority concerned to impose a levy, well within its legislative competence and further not shown to be violative of any provisions of the Constitution of India. Neither the High Court has gone into any such question of illegality in the matter of spending the tax realised nor are there any materials on record placed before us to substantiate any such claim by the respondent-Companies in this regard.

19. There is no warrant or justification in law for the High Court preceding on an assumption that permitting the levy even as 'octroi' twice over would suffer the vice of double taxation and therefore bad in law, unmindful of the well settled position of law in this regard, also. A Constitution Bench of this Court in the decision reported in *M/s. Jain Bros. and others v. The Union of India and others*, AIR 1970 SC 778 in unmistakable terms declared the position to be as hereunder :

"It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax (vide Channell, J., in *Stevens v. The Durban-Roddepoort Gold Mining Co. Ltd.*, 1909(5) Tax Cas 402). The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of Section 23(5) by the Act of 1956. Nor is there any other enactment which interdicts such taxation. It is true that Section 3 is the general charging section. Even if Section 23(5) provides for the machinery for collection and recovery of the tax, once the legislature has, in clear terms, indicated that the income of the firm can be taxed in accordance with the Finance Act of 1956 as also the income in the hands of the partners, the distinction between a charging and a machinery section is of no consequence. But the sections have to be read together and construed harmoniously. It is significant that similar provisions have also been enacted in the Act of 1961. Sections 182 and 183 correspond substantially to Section 23(5) except that the old section did not have a provision similar to sub-section (4) of Section 182. After 1956, therefore, so far as registered firms are concerned the tax payable by the firm itself has to be assessed and the share of each partner in the income of the firm has to be included in his total income and assessed to tax accordingly. If any double taxation is involved the legislature itself has,

in express words, sanctioned it. It is not open to any one thereafter to involve the general principles that the subject cannot be stated twice over."

20. In *Avinder Singh etc. v. State of Punjab and another*, AIR 1979 SC 321 this Court has once again held as follows :-

"A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. Some of these contentions hardly merit consideration, but have been mentioned out of courtesy to counsel. The last one, for instance, deserves the least attention. There is nothing in Article 265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in *Western India Theatres*, AIR 1952 Bom. 261. Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is : Rest in peace and don't be re-born ! If on the same subject-matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist."

21. In *Sri Krishna Das v. Town Area Committee, Chirgaon*, 1990(3) SCC 645 and *Radhakishan Rathi v. Additional Collector, Durg and others*, 1995(4) SCC 309 the same position is found reiterated.

22. Though taxation of the same thing under different names is nonetheless 'double taxation' in popular sense, the expertise exposition of the topic seem to also lean in favour of the revenue, in that the legislature has been considered to possess the power to levy one or more tax or rates of tax on the same taxable event and since in these areas large latitude and wide discretion has always been allowed to the State to choose its own method or kind of tax or mode and purpose of levy and recovery, unless there is any prohibition in the Constitution or the very law enacted by the legislature itself prevents such a thing happening no infirmity can be said to vitiate such a levy. Wherever the taxes are imposed by different legislatures or authorities or where one of the two alone is a tax or where it is for altogether different purposes or when it is indirect rather than direct, there is no scope even for making any grievance of double taxation, at all. In the absence of any impediment specifically created in the Constitution of a country or the legislative enactment itself, the desirability or need otherwise to avoid such levies has been held to pertain to areas of political wisdom of policy making and adjusting of public finances of the State, and not for the Law Courts, though courts would unless there is clear and specific mandate of law in favour of such multiple levies more than once, in construing general statutory provisions lean in favour of an interpretation to avoid double taxation. So much are the principles or statement of law governing a challenge to any levy on the ground of Double Taxation.

23. Now coming to the facts and circumstances of the cases before us, we find that the levy is specific, definite and positive in terms, with a definitely disclosed object leaving no room for any double or any exercise to clear such assumed doubts. We have carefully gone through the original Notification in vernacular published in the Gazette dated 13.5.1968, noticed supra, and we find that the rates of the levy under challenge have been notified as part and parcel of one and the same schedule to the said notification and not by any different or more than one Schedule and that too by means of a simultaneous exercise of powers under Section 104(2) of the Act and not on different occasion or time. Though it is seen that some of the classified items or commodities enumerated in various Entries overlap those found in the other Entries under different captions including Dharmada, they are not mere mechanical repetitions in toto, viewed either from their classification,

enumeration or determination of the rates as well as the measure or quantity with reference to which the actual levy is to be made and collected. Therefore, the mere stipulation of plurality of rates in respect of some or the other of the commodities/goods under different classified groups for different purposes by itself will not render it to be dubbed or castigated as 'Double Taxation' for spearheading a challenge on them. The notification under consideration cannot, in our view, be said to involve the imposition of any double tax and the High Court has gone wrong in proceeding upon such an erroneous assumption and declaring thereby the levy for Dharmada purposes to be bad and illegal.

24. For all the reasons stated above, the appeals are accepted and allowed. The judgments of the High Court allowing the claims of the respondent-Companies by granting injunction and refund are hereby set aside. The suits filed by the respondent-Companies shall stand dismissed. But in the circumstances of the case, there will be no order as to costs.

Appeals allowed.