

(1973) 07 GUJ CK 0009
In the Gujarat High Court

Anjar Municipality

APPELLANT

Vs

Gaurishankar Purshottam Joshi and Others

RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 101, 101(c), 101(c), 102, 99(1)(b)
Gujarat Municipalities Octroi (Agricultural Produce) Rules, 1968 — Rule 3, 3, 3(c)

Citation : (1974) 15 GLR 91

Hon'ble Judges : B.J. Divan, C.J;P.D. Desai, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—Both these Letters Patent Appeals arise from the judgment of M.P. Thakker J. in Special Civil Application No. 87 of 1971, decided by our learned brother on February 20, 1971. The petitioner in the Special Civil Application is a trader and a resident of Anjar in the district of Kutch, and the respondent in the Special Civil Application was the Anjar Municipality. In the Special Civil Application the petitioner the imposition of the tax of octroi on "Kapas" (cotton), ginned or unginned, and "Kalan" (cotton-pods). The petitioner contended that the Municipality was trying to collect octroi on cotton and cotton-pods without due authority of Jaw because the requirements of law for the imposition of this levy were not satisfied. Anjar Municipality imposed octroi for the first time on April 1, 1963, after the provisions of the Gujarat Municipalities Act, 1963, had come into force. At the time when the octroi was imposed for the first time, the Municipality was constituted as a Municipal Borough under the Gujarat Municipalities Act. The necessary rules and bye-laws were duly sanctioned before April 1, 1968 and from that date octroi was being levied by the Anjar Municipality in accordance with the rules and bye-laws. Under Rule 3 "A" of the bye-laws, provision was made for category of tax and taxable articles and it was provided that on all the goods that may be imported into the octroi limit of Anjar Borough Municipality mentioned in Schedule I annexed to the Rules, for use, consumption or sale, octroi will be levied at the rates shown in such Schedule but the exemptions laid down in Schedule II will have to be observed.

Thus, it is clear that Schedule I set out the lists of articles on which the octroi could be levied and Schedule II set out the list of articles which were exempted from levy of octroi, it may be mentioned that Schedule I was divided into two parts. In the first part of Schedule I were set out articles on which octroi was to be levied on valuation i.e. on ad valorem basis; where as second part set out the articles on which octroi was to be levied either on weight or measurement or quantity.

2. The Rules which were framed before the octroi was levied with effect from April 1, 1968, were framed u/s 271, Clause (1), which permits the municipality to make rules not inconsistent with the Act and the Rules or orders made by the State Government under the Act, inter alia prescribing the taxes to be levied in the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the condition on which and the extent to which remission will be granted, and the system on which refund will be allowed and paid, in respect of such taxes. The bye-laws regarding the imposition of octroi and governing the system of octroi were made u/s 275(1)(1), which enables the municipality to make from time to time, alter or rescind bye-law's not inconsistent with the Act, fixing octroi limits and stations; providing for exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not to be intended for consumption, use or sale within the municipal borough; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum amount for which any claim to refund may be made. Under the Gujarat Municipalities Act, 1963 (hereinafter referred to as the Act), Section 99 provides that subject to any general or special orders which the State Government may make in this behalf and subject to the provisions of Sections 101 and 102 a municipality may impose for the purposes of the Act any of the taxes set out thereunder and under clause(iv) of Sub-section (1) it is open to the municipality to levy an octroi on animals or goods or both brought within the octroi limits for consumption, use or sale therein. We may mention that under Clause (b) of the second proviso Section 99(1) it has been provided that subject to such exemptions and conditions as the State Government may prescribe by rules, no octroi shall be leviable on agricultural produce brought within the octroi limits for sale in Accordance with the provisions of the Gujarat Agricultural Produce markets Act, 1963, in market established within such limits under that Act.

3. It is common Around between the parties that within the limits of Anjar Municipality, a market yard constituted under the provisions of the Gujarat Agricultural Produce Markets Act is functioning and hence subject to the rules which have been made by the State Government prescribing exceptions and conditions as mentioned in the said Clause (b) of the second proviso to Section

99(1) to octroi on agricultural produce brought within the octroi limits of Anjar Municipality for sale in the market yard set up in accordance with the provisions of the Gujarat Agricultural cotton whether ginned or unginned, and "Kalan" cotton-pods, in the list of items on which octroi should be levied may be mentioned at this stage that under the rules and bye-law, which came into force on April 1, 1968, under item No. 100 of part 1 Schedule 1, octroi duty at the rate of 1 np. was to be said on basis on all articles, which are not included in Part 1 and Part 2 and the octroi was to be paid, as we have stated above, at the rate of 1 paise per one rupee of the value of the goods. In the list of exempted items at Sr. No 19, in Schedule II, cotton, "Kapas" and cotton seeds were mentioned in the rules and bye-laws which came into force from April 1, 1968. It may be mentioned that there is a slight difference between the English version and the Gujarati version of Schedule II of the Rules of 1968. But under bye-law 21, the English version is the authorised text of the bye-laws and similarly under Rule 23, the English version is the authorised text of the rules pertaining to the levy and collection of octroi by the Anjar Municipality. The Gujarati version mentioned "cotton "Kapas" "Kalan", and "Kapasia" (i.e. cotton-seeds)"; whereas the English version mentioned only "Kapas" and cotton-seeds i.e. ginned cotton, unginned cotton L seeds" but it did not include cotton-pods (Kalan). It is therefore that, by virtue of the residuary article even before April 30, 1970, it was open to Anjar Municipality to collect octroi on cotton-pods not specifically exempted in Schedule II of the octroi rules and bye-laws. However, it is common ground that before April 30, 1970, Anjar Municipality had not collected any octroi on cotton-pods mentioned earlier, by the Resolution of April 30, 1970, Anjar Municipality decided to amend the octroi lists by including "Kapas" and "Kalan" i.e. cotton and cotton-pods, in the list of items on which leviable on the basis of measurement, weight or quantity as distinguished from octroi on the basis of valuation. After passing that April 30, 1970, the Municipality published the notice and u/s 101 of the Act invited objections from the residents of the area under Anjar Municipality to the different amendments which the Municipality had resolved to make by the Resolution of April 30, 1970. After the objections were received, the Municipality considered those objections and on July 30, 1970, the Municipality passed a Resolution disallowing most of the objections and resolved that the different rates of octroi and the amendments to the rules and bye-laws as set out in the schedule to the resolution should be carried out. It was in this Resolution of July 30, 1970, that it was inter alia mentioned that the following three items should be taken out from the list of exempted items under Schedule II and should be inserted in Part 2 of Schedule I for levying octroi at the rates mentioned against each of the three items in the Resolution. Those three items were:

1. Grain of every kind and pulses.
2. Unginned cotton and ginned cotton, except pressed bales.
3. Cotton-pods.

This Resolution of July 30, 1970, mentioned against ginned and unginned cotton to levy octroi at the rate of 25 Paisa per 40 Kg. and as against cotton-pods it proposed that octroi should be levied at 10 Paise per 40 Kgs. It may also be mentioned that this was also the original proposal which was considered and resolved upon by the Municipality at the meeting of 30th April 1970; and the resolution was to levy octroi at the rate of 30 paisa per 40 Kgs. of "Kapas" and at 25 Paise per 40 Kgs. of cotton-pods. The rates were thus reduced in the case of cotton, ginned or unginned and the rates in respect of both these items was reduced as shown above. In the resolution of April 20, 1970 under the head of Part 2, it was first mentioned the above three items of grain of every kind and pulses, "Kapas" and "Kalan" as "items to be excluded from the exempted list" and immediately below these three items it was mentioned "the three items mentioned above to be excluded from the list of exempted items and to be added in Part 2". Thus, the Resolution of April 30, 1970, as it is shown from the original minute book of the Anjar Municipality, which has been produced before us, clearly mentioned that "Kapas" and "Kalan" which were being treated as exempted in Schedule II were to be subjected to octroi on the basis of weight and were to be added in Part 2 of Schedule I. In the Resolution of July 30, 1970, before setting out the three items: "grain of every kind and pulses, unginned cotton and cotton, except pressed bales and cotton-pods" a note was added as follows:

It is resolved that the below-mentioned items from Schedule II are to be excluded from exemption and are to be added in Part 2 afresh for levying octroi at the rates mentioned below.

Thereafter the Anjar Municipality through its officers sent the Resolution of July 30, 1970, together with the objections and its own opinions thereon, together with the notice and the rules to the State Government as contemplated by Section 101(c) of the Act. The Government of Gujarat exercising its powers u/s 271, proviso (a) read with Section 102 of the Act, accorded sanction the revised rules of octroi on certain items in Schedule I, as proposed by the said Municipality. Proviso (a) to Section 271 provides that no rule or alteration of rescission of a rule made u/s 271 shall have effect unless and until it has been approved by the State Government. Section 102 of the Act provides that the State Government may refuse to sanction the rules submitted u/s 101, or may return them to the municipality for further consideration; or if no objection or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed u/s 101, may sanction the said rules without modification, or subject to such modifications not involving an increase in the amount to be imposed, as it deems fit. This Resolution of the Government was passed on December 24, 1970 and it may be mentioned so far as is relevant for the purposes of this judgment that in the Schedule the rates of octroi of Anjar Municipality are mentioned and different items in Schedule I, where octroi was being levied on valuation basis are set out and the new rate per value of one rupee of the value of item concerned are provided in column 4 of this Resolution.

In this Resolution at the end under the heading "Part 2" several items at Sr. Nos. 1 to 10 are mentioned, where the different items on which new proposed rates of octroi on the basis of weight of quantity or measurement was to be levied are set out. After completing Sr. Nos. 1 to 10 the Resolution mentions:

Deduction from Exempted Items 1. 19-A Cotton (Kapas) Clarification: 0-25 per 40 Kg. of Cotton includes all kinds cotton including ginned cotton and unginned cotton. 2. 19-B : Cotton Pods 0-10 per 40 Kg.

4. After this Resolution of the Government, the Rules sanctioned by the Government with the modifications were published by the Municipality in the Municipal Borough together with the notice reciting the sanction and the date and the serial number thereof and the tax as prescribed by the rules so published and it was specified in the notice that new rates of octroi were to come into force with effect from February 3, 1971. The relevant resolution was passed by the Municipal Board on January 3, 1971. u/s 103 of the Act, the date from which the octroi could be levied at the new rates was not to be less than one month from the date of the publication of such notice. The notices were published on January 2, 1971, at different places within the municipal borough and they were duly published and an intimation that these amendments were displayed both in English and Gujarati was also published in the newspaper called "Kutch-Mitra" circulating in Anjar town; and with effect from February 3, 1971, the Municipality started levying octroi on cotton, ginned and unginned, and cotton-pods. It may be stated that even after the amendments thus introduced with effect from February 3, 1971, cotton-seeds still continued to be excepted from the levy of octroi because they still continued to be included in the exempted list in Schedule II to the rules and bye-laws pertaining to octroi.

5. In anticipation of the coming into force of the new octroi rules, Special Civil Application No. 87 of 1971 was filed in this High Court towards the end of January 1971 and it was prayed in that Special Civil Application that a writ of prohibition, mandamus or any other writ or order may be granted declaring that the imposition of octroi-tax by the respondent-Municipality on "Kapas" and "Kalan" is illegal, unlawful and ineffective and it was prayed that the respondent (Anjar Municipality), its servants or agents be restrained from levying, collecting or recovering octroi in respect of "Kapas" and "Kalan" brought within the octroi limits of Anjar. The petitioner also prayed that during the pendency of the Special Civil Application, the Municipality, its servants or agents be restrained from levying, collecting or recovering octroi in respect of "Kapas" and "Kalan" brought within the octroi limits of Anjar. The Special Civil Application was heard by our learned brother M.P. Thakkar J., who disposed of the matter by his judgment, dated 19th/20th February 1971 and he held that as a result of the Government Resolution of December 24, 1970, only "Kalan" i.e. cotton-pods, could be subjected to the levy of octroi duty but not "Kapas" and he, therefore, held that the petition must succeed partially. He directed that the writ of mandamus should issue restraining Anjar Municipality from collecting octroi duty on

cotton-"Kapas" imported within the Municipal limits of Anjar so long as the rules as at present held the field. The prayer for a similar relief in respect of "Kalan" (cotton-pods) was refused, and rule was made absolute to that limited extent. It is against this judgment and order of our learned brother that Anjar Municipality has filed Letters Patent Appeal No. 94 of 1971 and the original petitioner has filed letters Patent Appeal No. 107 of 1971. For the sake of clarification, it may be mentioned that when the petition was originally filed, there was only one petitioner but when an order under Order 1, Rule 8, C.P.C. was passed, another petitioner was added and at the time when the petition was disposed of, there were two petitioners in Special Civil Application No. 87 of 1971. Since both these Letters Patent Appeals arise out of one and the same judgment, we will dispose them of both by this common judgment.

6. Mr. K.N. Mankad for the original petitioners has contended that the octroi on "Kalan" was not validly imposed. We will consider his contentions first because he contends that the entire levy of octroi with effect from February 3, 1971, is not validly imposed; and if that argument succeeds, then the levy both as regards "Kapas" (cotton ginned and unginned) and "Kalan" (cotton-pods) would be illegal. Mr. K.N. Mankad contended as follows:

- (1) No resolution was passed by the Municipality to include "Kalan" and "Kapas" in Schedule I as required by Rule 3A of the Octroi Rules of Anjar Municipality.
- (2) The formalities required by Section 101, particularly in connection with the publication of proper notice before the stage of inviting objections and after the consideration of objections, have not been gone through.
- (3) The Government Resolution as it stands has not sanctioned imposition of octroi on "Kapas" and "Kalan".
- (4) After the Government sanction was given by the Resolution of December 24, 1970, mandatory requirements of Section 103 have not been complied with so far as the publication of notice was concerned.

It may be mentioned that though those were the original contentions of Mr. Mankad, he has not pressed the last point regarding non-compliance with the provisions of 103 of the Act and his main attack has been on the ground of first three contentions mentioned above.

7. As regards the first contention, Mr. Mankad relied on the provisions of Section 101 of the Act and contended that though octroi was proposed to be levied on "Kapas" and "Kalan" for the first time, and was thus a new tax, necessary rules and bye-laws were not framed in respect of the said new tax though such rules and bye-laws were required to be framed under the provisions of law and since no such rules and bye-laws were made and though they were not appended to the notice contemplated by Section 101. In order to appreciate this contention of Mr. K.N. Mankad, we will set out hereinbelow the provisions of Section 101 of the Act so far as they are relevant:

101. A municipality before imposing a tax shall observe the following preliminary procedure:

(a) It shall, by resolution passed at a general meeting, select for the purpose one or other of the taxes specified in Section 99 and approve rules prepared for the purposes of Clause (1) of Section 271 prescribing the tax selected, and in such resolution and in such rules specify:

(i) the classes of persons or of property or of both, which the municipality proposes to

make liable, and any exemptions which it proposes to make;

(ii) the amount or rate at which the municipality proposes to assess each such class;

(b) When such resolution has been passed, the municipality shall publish the rules so approved with a notice in the form of Schedule I prefixed thereto.

Schedule I to the Act lays down the form of the notice to be published u/s 101(b) and it is in this form:

Notice is hereby given to the inhabitants of the municipal borough of... that the municipality desire to impose the octroi defined in the rules appended.

Any inhabitant of the municipal borough objecting to the proposed tax may within one month from the date of this notice, send his objection in writing to the municipality. (The rules approved by the Municipality under Clause (a) of Section 101 are to be appended here.)

It has been contended by Mr. K.N. Mankad that at the time when the municipality resolved on April 30, 1970, to amend the list of items on which octroi could be levied inter alia by including "Kapas" and "Kalan" in Part 2 of Schedule 1 and to remove them from the list of exempted items under Schedule II, it was obligatory on the municipality when it published the notice under Clause (b) of Section 101, first to frame new rules and bye-laws and to publish the new Rules pertaining to octroi on "Kapas" and "Kalan" in the form the Schedule I. In our opinion, this contention of Mr. Mankad cannot be accepted. The rules which are contemplated by Section 101(a) are the rules which are prepared by the municipality when any tax or octroi under the powers conferred by Section 99(4) is proposed to be levied for the first time. In the instant case, what the municipality was proposing to do was not to prepare new rules or to impose octroi for the first time in the town of Anjar. All that it was proposing to do was to amend the rules and bye-laws and particularly Schedules I and II to the rules and bye-laws by excluding cotton and cotton-pods from the list of exempted items in Schedule II and including them in Part 2 of Schedule I so as to indicate that octroi was proposed to be levied on "Kapas" and "Kalan" at the rates mentioned against them in the resolution. No amendment of the rules and bye-laws was proposed so far as octroi rules and bye-laws of Anjar Municipality were

concerned; and, in our opinion, all that the Municipality was called upon to do was to append to the notice proposed amendments to the rules and bye-laws pertaining to the octroi. No useful purpose could be served by appending to the notice contemplated by Section 101(c) the entire body of rules and bye-laws when no changes were proposed to be made in those rules and bye-laws. After all, these rules and bye-laws by reason of the fact that they were enacted as delegated legislation of the municipality, formed part of the law pertaining to municipal taxation of Anjar and all residents of Anjar must be deemed to be aware of those rules and bye-laws. To the extent to which amendment was to be carried out, the proposed amendment was required to be brought to the notice of the residents of the municipality so that appropriate objections to the proposed amendment could be raised and the objections could be considered u/s 101(c); and we find from the materials on record that this was precisely what was done by the municipality. The paper-book which has been filed in this case shows that notices were issued on May 15, 1970, in pursuance of Section 101 of the Act indicating to the residents within the limits of Anjar Municipality that by the resolution of the General Body of Anjar Municipality, held on April 30, 1970, certain amendments were proposed to be made in the rules and bye-laws pertaining to octroi and also to the schedule of rates for octroi as then prevailing and the drafts of those amendments were placed along with the notice for the information of the general public at seven different places within the limits of Anjar Municipality. It was also mentioned in this notice that if any resident within the limits of Anjar Municipality had any objections regarding the proposed amendments, he should file those objections within one month from the publication of the notice or upto June 18, 1970, by submitting written objections at the municipal office. It was also indicated in the notice that after the expiry of period of one month from the date of the notice, the Municipality would reconsider the question regarding the proposed amendments and would take the final decision. In para 8 of the petition, it was averred that after passing the Resolution of April 30, 1970, by which octroi tax on "Kapas" and "Kalan" was to be imposed, a notice was published for the imposition of the tax but no rules were appended to the notice as no rules were approved. The Municipality did not publish any draft or proposed bye-laws u/s 375(1)(1) as no bye-laws were made. There is no specific contention in the petition or anywhere on the record on behalf of the petitioners that the provisions of Section 101(b) were not complied with inasmuch as the amended rules were not published in the borough. In the affidavit-in-reply filed on behalf of the Municipality by the Chief Officer, it was averred:

A notice was published for imposition of proposed tax but it was not necessary to new rules or to append them with the said notice, or to get them approved. Only Schedule had to and change in the Schedule was existence and in force. That was not necessary for publish any draft or proposed Bye-laws u/s 275(1)(1). Such Rules u/s 275(1)(1) were already therein existence. Some changes in Administrative Rules were suggested viz., Rule 2H was to be amended, and 3D

was to be added and, 13D was to be amended. And new Rule 36 in Schedule 2 was to be added. However these suggestions and proposed amendments have no connection with imposition of octroi on "Kalan" and "Kapas". They are not material for the purposes of this petition.

In view of these statements or submissions in the petition and the affidavit-in-reply, the only thing which we can say is that there was no specific challenge on the ground of want of proper publication of the notice at the stage of Section 101(b) of the Act in the instant case; and hence the Municipality was not called upon to meet the challenge by showing that the notices were published in the proper manner at different places within the limits of Anjar Borough Municipality as contemplated by Section 10(b). Therefore, in the absence of a specific plea in the petition that the proposed amendments to the rules were not appended with the notice published in the borough limits, this challenge on the ground of non-compliance with the provisions of Section 101 of the Act cannot be entertained.

8. It was next contended by Mr. K.N. Mankad that in any event, the rules and bye-laws framed by Anjar Municipality pertaining to octroi are in conflict with the rules made by the State Government prescribing exceptions and conditions u/s 99(1), proviso Clause (b). As we have pointed out above, it is open to the State Government to prescribe by rules exceptions and conditions subject to which no octroi shall be leviable on agricultural produces brought within the octroi limits for sale in accordance with the provisions of the Gujarat Agricultural Produce Markets Act, 1963, in a market established in such limits under that Act. In para 17 of the petition, the petitioners have averred that both "Kapas" and "Kalan" are agricultural produce within the meaning of the Gujarat Agricultural Produce Markets Act, 1963. Hence under Clause (b) of second proviso to Section 99(1) of the Act, octroi can be levied on "Kapas" and "Kalan" subject to such exceptions and condition only as the State Government may prescribe by Rules. Subject to that no octroi can be levied on "Kapas" and "Kalan" brought within the octroi limits of Anjar Municipality as a market has been established in such limits under the Gujarat Agricultural Produce Markets Act, 1963. In para 18 of the petition, the petitioners have averred:

That by an order No. KP/1353/OR-4065/3223-P, dated 20th July 1968, the Gujarat Government has framed the Gujarat Municipalities Octroi (Agricultural Produce) Rules, 1968. Rule 3 of the said Rules provides for deposit of octroi at the Octroi Naka and for return of the deposit by the officer of the Municipalities appointed in that behalf at the place of entrance of Agricultural produce in the market yard. Hence, before imposition of octroi tax on "Kapas" and "Kalan" it was incumbent on the respondent Municipality to amend its bye-laws made u/s 275(1)(e) and to provide for the system under which the person bringing the "Kapas" and "Kalan" within the octroi limits, shall deposit with the officer demanding octroi at the octroi naka, for the issue of a receipt to the person depositing the sum, fixing the place of entrance and the place of exit of "Kapas" and "Kalans" in and outside the Market Yard of Anjar and to provide for refunds

of deposit and other allied matters. As the respondent Municipality has made no bye-laws in that behalf, the imposition of octroi tax on "Kapas" and "Kalan" is unlawful and illegal.

In the affidavit-in-reply filed on behalf of the Municipality by its Chief Officer, paras 17 and 18 of the petition are dealt with in paras 18 and 19. The Chief Officer admits that what is stated in para 17 of the petition is correct. In para 18, the Chief Officer stated:

With reference to paragraph 18, I say that the 1968 Rules provide a complete code in themselves. No separate rules are necessary for the two items of "Kapas" and "Kalan". The procedure and system is well laid down in those Rules and the machinery is acting accordingly. The same machinery which would be tackling the other items would be tackling the new items of "Kapas" and "Kalan". But since these two items are agricultural produce the duty on them is subject to Rules framed by the Government u/s 99(1) I say that the octroi nakas and octroi limits are fixed. I say that the market-yard is also fixed by the Agricultural Produce Market Committee and the Rules provide that when the goods enter at the octroi naka the duty will have to be paid and the moment it enters the market yard refund will be given and again if the goods are sold for the use and consumption in Anjar town, the duty will be levied and if the goods are for export, exemption certificate would be granted. So the only thing that the Municipality is required to do is to appoint an officer at the market-yard and for the appointment of the officer at the market-yard no new rules are to be made. The Municipality has only to make the appointment and the officer will carry out the duties according to the Agricultural Produce Rules. If, as is stated by the petitioner in his affidavit-in-rejoinder, there are three places of entrance and exit, then the Municipality will make necessary arrangement for the purpose, but on that ground the imposition of the octroi is not illegal.

9. Rule 3 of the Gujarat Municipalities Octroi (Agricultural Produce) Rules, 1968, is the only rule which is material for the purposes of this judgment. These Rules were published in the Gazette, dated August 1, 1968. Rule 3 is in these terms:

3. "Conditions for exemption from octroi. The exceptions and conditions to which no octroi shall be leviable under Clause (b) of the second proviso to Sub-section (1) of Section 99 of the Act on agricultural produce brought within the octroi limits of a Municipal Borough shall be as hereinafter mentioned, namely:

(a) The person bringing the agricultural produce within the octroi limits shall deposit with the officer demanding octroi at the octroi naka a sum equal to the amount of octroi which would have been leviable but for the provisions of the said Clause (b) and the officer demanding octroi shall issue a receipt to the person depositing the sum specifying therein the sum so deposited with the description of goods for which the sum is deposited.

(b) When the agricultural produce in respect of which a receipt has been issued under Clause (a) is brought within the limits of the market yard, a sum equal to

the amount of the deposit shall be returned to the holder of such receipt by the officer of the municipality appointed in that behalf at the place of entrance of such produce in the market yard.

(c) When the agricultural produce is again brought outside such market yard, the person so bringing such produce outside the market yard (whether he be the person who has purchased such produce or any other person) shall be liable to pay to the municipality octroi in respect of such produce at the existing rate for the levy of octroi on such produce:

Provided that if such person takes such produce or any quantity thereof outside the octroi limits of the Municipality for sale, use or consumption such limits, he shall be entitled to refund of the amount of octroi paid by him in respect of such produce or any quantity thereof, as the case may be, in accordance with the rules of the municipality for the refund of octroi.

10. The Gujarat Municipalities Octroi (Agricultural Produce) Rules, 1968, came up for consideration before us in Special Civil Application No 1516 of 1968 decided by us on July 14/15, 1971. (Keshavlal Joitaram Am. v. State of Gujarat and Anr.) Validity of Rule 3 of the said Rules was challenged in that Special Civil Application; and one of the contentions in that Special Civil Application was that the existing rules and bye-laws of Unjha Municipality, which was the Municipality concerned in that Special Civil Application, were inconsistent with Rule 3(c) and particularly with the provisions for refund set out in the proviso to Rule 3(c) and hence it was contended before us that the Unjha Municipality should be restrained from enforcing those rules and/or bye-laws 4 to 15 so far as the agricultural produce brought for sale within the market yard was concerned. It may be pointed out that in the instant case, there is no challenge to any of the bye-laws or rules of Anjar Municipality. The contention before us is that octroi on "Kapas" and "Kalan" is not leviable because the revised bye-laws do not provide for refund as contemplated by proviso to Rule 3(c) of the said Rules. In our judgment in Special Civil Application No. 1516 of 1968, we held that so far as the proviso to Rule 3(c) was concerned, the right to obtain the refund of the octroi at the time of being the market-yard is absolute under the proviso itself once the conditions mentioned in the proviso are satisfied. Secondly the right to obtain the refund as mentioned in the proviso will be available to the persons entitled to such refund irrespective of the provisions of the bye-laws and the rules made in that behalf by the different municipalities for refund of octroi. All that the proviso lays down is that at the time of paying the refund, the machinery for the payment of refund is as provided by the rules and bye-laws of the different municipalities. We held that discrimination as between the different municipalities so far as the right to obtain refund is concerned is envisaged by the proviso and therefore there is no question of any discrimination between the persons residing within the limits of different municipalities so far as the right to obtain refund of octroi is concerned. However, even if there is any classification as between the different municipalities, it must be borne in mind that each municipality is

permitted by the State Government to frame its own rules for the refund of octroi in accordance with the special needs of each locality and the circumstances prevailing in each area, where the municipality is functioning. We also held in Special Civil Application No. 1516 of 1968 that some of the rules of Unjha Municipality regarding octroi and particularly rule which laid down that no refund" shall be allowed in respect of goods which are exported after breaking bulk or after changing hands or after using, hiring or selling the same were in conflict with the proviso to Rule 3(c) inasmuch as the octroi refund was payable under that proviso even if a quantity of the goods taken out of the market yard was exported outside the export limits without being subjected to consumption, sale or use inside the octroi limits. We further observed in that Special Civil Application as follows:

We must hold in the light of the different bye-laws which we have painted out above that this system of refund mentioned in the rules and bye-laws of this particular municipality cannot be applied to the rules contemplated by Rule 3(c) and the authorities concerned must make new Rules and Bye-laws for the particular type of refund contemplated by proviso to Rule 3(c). The Rules and Bye-laws of the second respondent Municipality cannot be permitted to cut down in any manner the right to obtain the refund once the proviso to Rule 3(c) is satisfied and the conditions mentioned therein are duly complied with. Therefore, the right to refund mentioned in Rule 3(c) will not come into existence since there are no proper rules for the refund of this particular type of octroi on agricultural produce, which is to be collected in the circumstances contemplated by Rule 3(c) of the impugned Rules. The refund will have to be given by the municipality not in accordance with the rules of the second respondent municipality as they generally prevail but in accordance with the rules as may be framed in future for payment of such refund. Till such rules and bye-laws are framed, the second respondent municipality will have to pay the refund once the conditions laid down in the proviso to Rule 3(c) are satisfied on a proper application being made. In the meanwhile, an appropriate ad hoc system for payment of the refund will have to be devised by the second respondent Municipality for the payment of the refund on an application being made in that behalf after being satisfied that the conditions laid down in the proviso to Rule 3(c) are complied with. We may point out that it is in the interest of all concerned, and particularly of all municipalities, that the system which is contemplated by Clauses (a) and (b) is adopted in the rules for refund of the octroi contemplated by Clause (c). The most important part is that the system should be clear cut as far as possible and should be simple in administration so that the agriculturists, who are principally meant to be benefited by Clause (b) of the second proviso to Section 99(1) are not unduly harassed or subjected to a complicated procedure.

11. In view of our observations in our judgment in Special Civil Application No. 1516 of 1968, it is clear that the levy of octroi does not become bad because the rules and bye-laws of a particular municipality for refund of octroi are in conflict

with the proviso to Rule 3(c) of the Gujarat Municipalities Octroi (Agricultural Produce) Rules. It may be emphasized at this stage that the refund is under the proviso to Rule 3(c) but the refund is to be paid in accordance with the rules and the procedure for the refund of octroi of the Municipality concerned. The basis of our decision in Special Civil Application No. 1516 of 1968 was that if the rules of the municipality for the refund of octroi, which lay down the machinery for the payment of refund, in any way cut down the absolute right of refund set out in proviso to Rule 3(c), those rules to that extent will not apply to refund in the case of agricultural produce contemplated by the proviso to Rule 3(c) and to that extent those rules will not apply to such agricultural produce; but the omission to frame specific rules does not in any way render the levy of octroi invalid or does not vitiate the levy of octroi on agricultural produce covered by Clause (b) to second proviso to Section 99(1) and by Rule 3 of the Gujarat Municipalities Octroi (Agricultural Produce) Rules, 1968. The contention of Mr. Mankad based on the provisions of Clause (b) of second proviso to Section 99(1) must, therefore, fail.

12. The next contention of Mr. K.N. Mankad was that under the sanction accorded by the Government, the two items of "Kapas" and "Kalan" were not included in the list of items in Part 2 of Schedule I and he, therefore, contended that neither cotton-pods nor cotton could be subjected to the levy of octroi. He contended in the light of the observations of the Supreme Court in *The Atlas Cycle Industries Ltd. Vs. State of Haryana and Another*, that there cannot be any taxation by implication and he argued that there was no specific mention in the Government Resolution that cotton (Kapas) and cotton-pods were to be included in Part 2 of Schedule I. In our opinion, this contention of Mr. Mankad must be rejected. When we turn to the Government Resolution of December 24, 1970, we find that the Government had accorded sanction with modification "to the following revised rates of octroi of certain items in Schedule I to the Octroi Rules and Bye-laws of the Anjar Municipality as proposed by the said Municipality." We have already set out in the earlier part of this judgment what the proposal of the Anjar Municipality was and that proposal was modified. It may be pointed out, for example, though the Anjar Municipality had proposed to remove grains and pulses from Schedule II and to include them in part 1 of Schedule I and the rate of octroi was also proposed in the sanction which it accorded, the Government did not include "grains and pulses" as an item on which octroi could be levied by Anjar Municipality. As we have pointed out, this Resolution at the end below Part 2 mentions "Deduction from exempted items" and below this heading mentions "cotton" (Kapas) and cotton-pods and prescribes the rates at which octroi was to be levied per 40 Kg. of weight of these two items. It is obvious that the rates per 40 Kg. as mentioned in the 4th column of the resolution against cotton (Kapas) and cotton-pods can only be with reference to part 2 of Schedule I. The Resolution itself mentions that sanction was being accorded to the revised rates of octroi in Schedule I and, therefore, it is only Parts 1 and 2 of Schedule I which are dealt with by this Government Resolution of December 24, 1970. In order not to leave any room for doubt, the

Government inserted the words: "deduction from exempted items" immediately before the two items of cotton and cotton-pods in order to indicate that two items which were in the exempted list in Schedule II till the Government sanction was accorded, were to be included in Part 2 of Schedule I and the octroi was to be levied at the rates mentioned in column 4 per 40 Kg. of weight of each of these two items. The only possible conclusion which can be drawn from mentioning of items in Schedule I in the recital at the commencement of the Resolution and from mentioning of Part 2 and mentioning of the rates against cotton and cotton-pods and the words "deducted from exempted items" is that on a proper interpretation of this Government Resolution, the Government accorded sanction to the levy of octroi on cotton and cotton-pods at the rates mentioned in the 4th column against these items at the end of this Government Resolution. Thus, there is no question of taxation by implication. The Government in terms by this Resolution accorded sanction to the imposition of octroi on cotton and cotton-pods at the rates mentioned therein and by that very resolution it amended Schedule II of these rules by pointing out that these two items which were till then treated as exempted items under Schedule II were being removed from the list of exempted items and were being included in Schedule I, Part 2, as items on which octroi could be levied at particular rates, and the octroi was to be charged on the basis of weight. With respect to our learned brother, we are unable to agree with his conclusion that by this Government Resolution of December 24, 1970, sanction was not accorded to the inclusion of "Kapas" in the items on which octroi could be levied on the basis of 25 paise per 40 Kg. of weight. It may be mentioned that in support of this contention Mr. K.N. Mankad urged that under the list of exempted items cotton-seeds are still exempted and both unginned cotton and cotton-pods contain within themselves cottonseeds. Now, it is well-settled that when different items are mentioned as taxable items what is to be looked at is item as a commercial commodity and each of the three items cottonseeds, unginned cotton and cotton-pods are distinct commercial commodities. From cotton-pods after removing outer shells unginned cotton is obtained and after ginning cotton-seeds are separated from ginned cotton or what would be called cotton fibre. This process is well-known to all concerned who are concerned with production of cotton as agricultural produce or to commercial circles who deal with these commodities. Therefore, because cotton-seeds still continue to be exempted, it cannot be said that unginned cotton or cotton-pods should also be exempted. Each of these three commodities is distinct and separate and after following a certain process, viz., removal of outer shell of cotton-pod, one can obtain a new commercial commodity viz., unginned cotton. After following a further process viz., that of ginning, cotton-seeds can be obtained as a distinct and separate commodity and there is use and consumption within the meaning of commercial sense when the process of extracting unginned cotton from cotton-pods is carried out or when the process of ginning by which cotton-seeds are separated from cotton fibre is carried out. Though cotton-seeds continue to be exempted, it is only when the cotton-seeds as such are brought within Anjar Municipal limits that they get

exemption and not when they are embedded in cotton-pods or in unginned cotton.

12.1 It was contended by Mr. Mankad that cotton and cotton-pods are not brought in Anjar for consumption, use or sale therein. This is a pure question of fact and it is well-settled that if there is no use, consumption or sale within the octroi limits, octroi cannot be levied at all and if it is established that there was no consumption, use or sale as contemplated by law, octroi has got to be refunded when cotton or cotton-pods leave the octroi limits. If there is no provision for such refund, the levy itself will be bad. It is not contended that there is no such provision for refund. If the commodity, whether it is cotton or cotton-pods, after being brought within the limits of Anjar Municipality, is subjected to any process as a result of which a new commodity emerges or is produced, then obviously there is consumption and use therefore, octroi levied cannot be refunded at all.

13. These were the only contentions which were urged on behalf of the original petitioners by Mr. K.N. Mankad. Each of these contentions fails and, in our opinion, the conclusion of our learned brother M.P. Thakkar J. that octroi can be levied only in respect of "Kalan" was not correct. In our opinion, on a proper interpretation of the Government resolution of December 24, 1970, both cotton (Kapas) as clarified in the Government Resolution and "Kalan" (cotton-pods) were taken out from the list of exempted items in Schedule II and were included in Schedule I, Part 2, in the list of items on which octroi could be levied on the basis of weight. The result, therefore, is that, in our opinion, Special Civil Application No. 87 of 1970, should have been dismissed. We, therefore, allow Letters Patent Appeal No. 94 of 1970 filed by the Anjar Municipality and we dismiss Letters Patent Appeal No. 107 of 1971 filed by the original petitioners. The Special Civil Application is dismissed with costs throughout.