
(2001) 08 MP CK 0052

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3637 of 1995

Associated Cement Companies Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127(1)

Citation : AIR 2002 MP 166 : (2000) ILR (MP) 136 : (2002) 3 MPLJ 357 : (2000) 2 MPLJ 1

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Ravindra Shrivastava and A. Dharamadhakari, for the Appellant; V.K. Tankha and H. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner, Associated Cement Companies Ltd., has prayed for issue of writ of certiorari for quashment of demand dated 19-10-95, Annexure-P-6 and further to declare that respondent No.2, Minicipal Council, Kymore is not entitled to impose any export tax on petitioner's finished goods which are despatched by rail to any destination and further to restrain them from levying such tax,

The facts as have been depicted in the petition are that the petitioner is a Limited Company registered under the provisions of Indian Companies Act, 1956 and has its registered office at Bombay. It is engaged in the business of manufacturing cement. It has its factory at Kymore in Tahsil Vijayraghavgarh in the district of Jabalpur. The village Kymore, as pleaded, owes its existence because of the petitioner and Eternit Everest Limited which has set up its cement plant adjacent to the plant of the petitioner. Both the companies have developed

the entire village from their own resources and even they have constructed and established schools, hospitals etc. and made arrangements to provide basic amenities to the inhabitants of the area. They have also taken steps to provide all types of facilities to the inhabitants of the area in question and 3/4th of the total population are directly or indirectly connected with the activities of these two companies.

It is averred in the petition that the State has enacted a law called Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as "the Act") and the Municipal Council, Kymore is constituted under the provisions of the aforesaid Act. The Council was initially an elected body in the year 1985 the body was dissolved u/s 328 of the Act by the State and in terms of Section 328 (6) (b) the State appointed an administrator to perform the duties of the council during the period of supersession. It has been set forth that the said supersession continued for more than six years. It has also pleaded that the elections have already been held and an elected body has come into existence. It is set forth that under Entry No. 52 of the State List of the Constitution, the State while enacting the Act has empowered the Municipalities established under the Act to impose and levy of terminal tax on the entry of goods into any local area for consumption or sale therein. Section 127 of the Act empowers the Council to impose in the whole or any part of the Municipality any of the taxes which are mentioned in the aforesaid section. Section 127 (xvi) provides that a terminal tax shall be imposed on goods or animals imported into or exported from the limits of the Municipality. The said provision empowers the council to impose the aforesaid tax on passengers carried by road or inland waterways. Section 129 provides for the procedure as to how and in what manner the taxes which are mentioned in Section 127 are to be imposed.

It is averred in the writ petition that on 18-2-83 the respondent Council in exercise of powers conferred on it u/s 127 read with Section 129 of the Act resolved to impose terminal tax on the export of Cement manufacturing material on cement, coal ash and lime stone. The proposal said that the Council proposed to impose tax on all kinds of cement at the rate of 1/2% on the price. The schedule to the resolution mentioned that manufactured material of cement will be charged at the rate of 1 % on price. Coal ash was to be charged at the rate of Re. 1/- per tonne, limestone extracted from mines shall be charged at the rate of Re 1/- per tonne, and bricks will be charged at the rate of Rs. 2/- per thousand. The said resolution dated 18-2-83 has been brought on record as Annexure-1. An objection as contemplated u/s 129 (2) (3) of the Act was filed by the petitioner objecting such levy. The objections raised from all quarters were rejected by the Council on 27-8-84 and it eventually accorded its sanction accepting the resolution of the Municipal Council. A notification u/s 129 (8) was published on 12-7-91 vide Annexure-P-4. Feeling aggrieved by the (sic) the petitioner preferred a writ petition forming the subject-matter of M.P.No. 2438/90 before this Court assailing the aforesaid imposition. Along with the petitioner various other affected parties challenged the same before this Court

and this Court by order dated 10-5-95 repelled the contentions raised by the petitioner and gave the stamp of approval to the impost. Consequent upon the decision so rendered the respondents recovered the tax on the export of finished goods at the check-post meant for recovery of impost. On 27-5-95 the respondent No. 2 wrote a letter to the petitioner requiring it to supply the information as to how much quantity of finished goods of the petitioner were despatched by the Railway till 13-5-95. The petitioner was asked to pay a sum of Rs. 14.34.044/- by way of export tax being 1% of the value by impugned demand dated 19-10-95. It is set forth in the petition that levy of tax on goods despatched by rail is without any authority of law inasmuch as respondents have no constitutional authority to impose any tax much less terminal (whether import or export of goods) if they are despatched by rail. It is urged in the petition that Article 246 of the Constitution of India provides for laws to be made by the Parliament and by the State Legislature. Parliament has exclusive power to make laws in respect of matters enumerated in List-I in the Seventh Schedule (Union List) and State has power to make law in respect of the matter pertaining to the List-II in Seventh Schedule (State List). Reference has been made to Entry 89 of Union List of Entries 52 and 56 of the State List. It is pleaded that on a perusal of the entries it is quite clear that Entry 89 of the Union List gives exclusive power to the Parliament to enact laws imposing terminal tax on the goods/passengers which are carried by rail, Sea; or Air. It has also been urged that quantity of imposition of terminal tax undoubtedly vests with the Parliament by virtue of Entry 39. It is set forth that on scrutiny of the Entries 52 and 56 of the State List it is quite vivid that imposition of terminal tax on goods/passengers carried by Road or inland rests with State, it has been further pleaded that the Municipality Act by which the terminal tax is sought to be imposed by the respondents on the goods manufactured by the petitioner which has been upheld by this Court did not in any manner empower or authorise the respondents to impose taxes on the goods despatched by rail movements. In this factual backdrop it is averred that the petitioner does not have any liability to pay terminal tax when the goods are despatched by rail. It is further put forth that respondent No.2 cannot derive any authority from the resolution in view of the decision of this Court to impose terminal tax in so far as rail despatched of petitioner's goods are concerned as those goods are directly entrusted by the petitioner to the Railway authorities after paying all statutory charges payable under Indian Railways Act and other various tariffs which are issued by the Government of India through Ministry of Railway from time to time. It has been pleaded that goods are despatched in wagons to various destinations outside the State of Madhya Pradesh. In the grounds it has also been highlighted that there is a basic difference between the rail movements and movements by roads and respondents cannot equal these to impose tax in respect of the goods which are despatched by rail. It is put forth in the grounds that Indian Railways Act has taken care of all aspects and if constitutional provisions and the Railways Act are read cohesively the imposition of terminal tax by Municipal Council in relation to goods transported by rail is absolutely unjustified in law.

A counter-affidavit has been filed by the respondent No. 2 contending inter alia, that on an earlier occasion the petitioner had filed a writ petition wherein by decision dated 10-5-95 this Court upheld the power of the Municipal Council to impose terminal tax on goods which are exported from the local limits of the council. On the basis of the aforesaid decision the demand notice has been given to the petitioner. It is putforth that once decision has been taken, reiteration of the same grievance, is not permissible in law as same is barred by the principle of res judicata. It has-also been stated that this Court in the case of Smt. Meera Khandelwal v. State of Madhya Pradesh (W.P.No. 3161 /95) by decision dated 9-1-96 (reported in Smt. Meera Khandelwal Vs. State of Madhya Pradesh and Others, has held that goods which were manufactured and exported from the Municipal limit then the Municipal Council has power to impose the terminal tax. The further stand in the counter is that in earlier decisions the petitioner had raised the issue of constitutional validity of Sections 127 and 129 of the Act, to impose terminal tax on export of goods which are being manufactured within the municipal limit and their validity has been upheld. It is further putforth that tax which is being imposed by the petitioner in fact is a tax on the export of goods which have been manufactured/produced within the limit of the Municipal Council and it is not that the goods which are merely passing through limits of the Municipal Council. The further stand of the council is that the present writ petition is liable to be dismissed on the ground of alternative remedy being available u/s 172 of the Act. It is setforth that the writ petition absolutely misconceived and the reliance on Entry 89 of List-I of the Seventh Schedule is not attracted inasmuch as the power to impose tax on goods which is being manufactured within the local limits of Municipal Council is covered by Entry 56 of the List II of Seventh Schedule of the Constitution of India. With these averments it has been setforth that present writ petition has been filed to delay the payment of tax.

A rejoinder affidavit has been filed by the petitioner to the return filed by the respondent No.2 It has been putforth therein that the issue which was decided by this Court related to the power of Municipal Council to impose the terminal tax but it had not decided that in case the goods in question are despatched by rail whether imposition of terminal tax by the Municipal Council would be legally valid or not. It has been reiterated that imposition of terminal tax is in complete violation of Entry 89 of the Union List and the reliance on Entries 52 and 56 of the State List does not save the jurisdiction of Municipal Council. Immense emphasis has been given on the goods being despatched by rail, free movement of trade and commerce, ineffecacy of the alternative remedy and the non-applicability of the earlier judgments rendered by this court which have been upheld by the Apex Court.

It is apposite to state here that an application for amendment was filed on 8-2-2001 wherein certain paragraphs were sought to be added which also relate to Jurisdiction of the Municipality to collect terminal tax when there is dispatch of goods by rail.

Though no formal order was passed allowing the amendment, there is no reason to reject the same as they are in consonance with the main writ petition and accordingly it is taken into consideration.

An affidavit has been filed by the petitioner-Company to indicate that the State Government has issued an order dated 19-2-2001 clarifying that terminal tax on export of cement is not applicable in case the export is made by way of rail. The said document has been brought on record as Annexure-B to the said affidavit.

I have heard Mr. Ravindra Shrivastava, learned senior counsel with Mr. Akshay Dharmadhikari for the petitioner and Mr. V.K.Tankha, learned senior counsel with Mr. H.K.Upadhyaya for the respondent No.2.

Before I advert to the relevant entries and their purposes Mr. V.K.Tankha has raised a preliminary objection that the decision rendered in the case of Eternit Everest Ltd. v. State of M.P. (MP 2610/91) was assailed before the Apex Court and in the said case a stand was taken that goods were exported by rail, and therefore, the matter cannot be agitated in the present writ petition. The learned counsel for the Municipal Council had produced SLP filed before the Apex Court to highlight that such a stand was taken.

Mr. Ravindra Shrivastava, learned senior counsel, has not disputed the said factual position. On the contrary, it is urged by him that dismissal in limine by the Apex Court does not operate as res judicata and in fact, is not regarded as a precedent on the point.

In this regard I may profitably refer to the decision rendered in the case of Hari Singh Vs. State of Haryana, wherein the Apex Court held as under :--

"10. It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that Courts of co-ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If Courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. But before any such principle is applied it must be held that the earlier order passed by this Court dismissing the SLP of the co-accused amounts to a judgment or an affirmance of the findings of the High Court, about the manner of the occurrence, participation of the different accused persons and the nature of offence committed by them.

Article 136(1) of the Constitution confers overriding and extensive powers of granting special leave to appeal or rejection thereof in the discretion of this Court. Article 136 does not confer a right to appeal, it confers only a right to apply for special leave to appeal, which taking all facts and circumstances into consideration may be granted or rejected. Even in a case where special leave application is rejected, the order of the High Court does not merge in the order of this Court, as is the case while exercising the appellate power. Similarly when

SLP is entertained against any final or interlocutory order this Court does not convert itself into a Court of appeal. It was said in the case of Vallikat Thekkedath Valappil Lakshmikutty Amma and Others Vs. Vallikat Thekkedath Valappil Demodara Mennon and Others, by Chandrachud, J. (as he was then) : (SCC p.321, para 8) : (at pp. 861-62 of AIR) :--

" With regard to the first submission it may be pointed out that an application for special leave under Article 136 of the Constitution against a judgment or an order cannot be equated with the ordinary remedy of appeal, as of right, under any provisions of law. It is an extraordinary right conferred under the Constitution, within the discretion of this Court, and such application for special leave does not come within the contemplation of appeal pending before the Court u/s 13-A(a)."

It is a basic principle of the administration of justice that like cases should be decided alike. It is a very sound rule and practice otherwise on same question of law or same set of facts different persons approaching a Court can get different orders. But can the appeal of an accused, who has been granted special leave to appeal, be dismissed on the ground that the SLP filed on behalf of a co-accused with more or less similar charges has already been rejected by this Court, although this Court is satisfied that either such accused whose appeal is being heard is entitled to acquittal or ought to have been convicted for a different offence with a different sentence. The doctrine of precedent is not applicable to an order passed by this Court rejecting a special leave petition. Any such order cannot be held to be stare decisis so that it is binding on us."

In the case of Ajit Kumar Rath Vs. State of Orissa and Others, in paragraph 32 their Lordships held as under: --

"32. Learned counsel for the respondents has referred to the Judgment of the Orissa High Court passed in an identical situation and relating to the same service on 12-3-1985, by which the seniority was denied to certain promoted officers over those appointed by direct recruitment, on the ground that ad hoc promotion was contrary to rules. It is contended that a SLP against that judgment was dismissed by this Court on 28-3-1998. A copy of the order by which the SLP was dismissed has been placed on record which indicates that no reasons were given for dismissing the petition. This order, therefore, would not constitute a binding precedent. Moreover, the Judgment of the Orissa High Court was delivered on 12-3-1985, that is to say, many years earlier than the decision rendered by the Constitution Bench in the 1990 case of Direct Recruit Class II Engg. Officers" Assn. On the basis of the Constitution Bench decision as also the other decisions of this Court, the efficacy of the judgement passed by the Orissa High Court has altogether vanished and there was no occasion for the Tribunal to have relied upon that Judgment in preference to the Constitution Bench decision while writing the review judgment."

In the case of State of Manipur Vs. Thingujam Brojen Meetei, it has been held as

under : --

"The dismissal of a SLP by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. The effect of such a non-speaking order of dismissal without anything more only means that Supreme Court has decided only that it is not a fit case where the SLP should be granted. Such an order does not constitute law laid down by Supreme Court for the purpose of Article 141 of the Constitution."

In view of the aforesaid enunciation of law I am of the considered opinion that the order passed by the Apex Court in SLP No. 17849/95 is not a precedent on the point, and therefore, it is open to the petitioner to canvass the issue in question.

It is submitted by Mr. Shrivastava, learned senior Counsel that demand of export tax on the goods which are despatched by rail to its destination cannot be levied by the Municipal Council in exercise of powers vested in it inasmuch as such an imposition of tax does not rest with the Municipal Council. The learned counsel further canvassed that the export of cement by rail would be covered within the ambit and sweep of Entry 86 of the Union List and not by Entries 52 and 56 of the State List. It is further urged by him that on reading of Section 127 in proper perspective it is clear that it confers power on Municipality to levy or impose tax on goods in respect of their movements by road and not by rail and if such tax is imposition of tax would amount to usurpation of power.

Mr. V.K.Tankha, learned senior counsel for the respondent No.2, has contended that the goods are manufactured within the municipal area of Kymore, and therefore, the Municipal Council has the authority to levy import and export tax. It is his further submission that the controversy was put to rest in M.P.No. 2610/91, and therefore, the petitioner is estopped to raise the issue in this writ petition. Learned senior counsel has also placed heavy reliance on the decision rendered in the case of Smt. Meera Khandelwal Vs. State of Madhya Pradesh and Others, to bolster the stand that if the goods are manufactured within the Municipal Council limit and taken out of its limit the tax is imposable.

To appreciate the rival submissions raised at the Bar it is appropriate to refer to entry 89 of List-I, Union List, which reads as under:--

"89. Terminal taxes on goods or passengers carried by railway, sea or air; taxes on railway fares and freights."

Entries 52 and 56 of List-II, State List, read as under-

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

xxxxxxxxxxxxx

Taxes on goods and passengers carried by road or on on inland waterways."

Submission of Mr. Shrivastava is that in the earlier decision rendered in the case of Eternit Everest Limited (*supra*) the Division Bench upheld the validity of Section 129 of the Act and the notification dated 12-7-91. The Division Bench referred to Entry. No. 52 of List-II and also referred to the decisions rendered in the case of Monji Kalyanji and Others Vs. State of Madhya Pradesh, and Amrit Banaspati Co. Ltd. Vs. Union of India and others, and upheld the validity of the provision and dismissed the writ petition. At this juncture I may also note that Mr.V.K.Tankha has also placed reliance on the decision rendered in the case of Smt. Meera Khandelwal (AIR 1997 Madh Pra 163) (*supra*) wherein ultra vires of amended provision of Section 129 of the Act was called in question. After referring to Sections 127 and 129 and taking note of the relevant entries and Articles 301 and 304B of the Constitution of India the Division Bench of this Court came to hold that provision was valid in law. At this juncture I think it apposite to reproduce paragraph 18 of the aforesaid decision which reads as under : --

" 18. Likewise is the case of Bhikamchand v. M.C.C.Chhindwara 1961 MPLJ 937. As against this, in International Tourist Corporation and Others Vs. State of Haryana and Others, their Lordships had occasion to consider Entries 23 and 24 of the List-I as well as Entry 89 List-I Seventh Schedule while examining Section 3 of the Haryana Passengers and Goods Taxation Act and their Lordships held that the Haryana Passengers and Goods Taxation Act is a valid law made under the powers conferred by Entry 56 of List-II of Seventh Schedule and there is sufficient nexus between the tax and passengers and goods carried through national highways to justify the imposition and held that Section 3 (3) of the Haryana Passengers and Goods Taxations Act is intra vires as it is found to be regulatory and compensatory in nature. Likewise in the case of Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others, their Lordships upheld the validity of Section 178 of Delhi Municipal Corporation Act and held that levy of terminal tax on goods meant for destination other than Delhi and passing through Delhi is not valid. Their Lordships held that such action is not invalid and is justified. It was observed by their Lordships that the terminal tax would be leviable because in this case there are two separate transactions -- one by which the goods are meant for Delhi and the other by which after having reached and having been unloaded at Delhi they are re-booked and reloaded for some other place and which therefore is a fresh and different transaction. In such a case, terminal tax would be leviable at the entry point in the territory of Delhi. The contention of learned counsel therefore that levy of export tax is discriminatory is not sustainable."

Presently, I shall advert to the law relating to imposition of terminal tax on goods despatched by rail. In this context I may usefully refer to the decision rendered in the case of Bhikamchand Mangalchand Singhvi 1961 MPLJ 937 wherein a Division Bench held as under : --

"Municipal Committee cannot claim the power to impose a terminal tax on goods

exported from and imported in Municipal Limits by rail on which no such tax was being levied immediately before the commencement of the Constitution or the power to vary the rate of tax. For in neither case can it be said that there was in existence a levy on the date of the commencement of the Constitution which has been continued under Article 277 of the Constitution. That the variation in the rate of tax on goods already subjected to a terminal tax is also not permissible under Article 277 becomes clear when it is remembered that the rate at which a tax is imposed is an integral part of the imposition of a tax and that what is continued under Article 277 is the levy, that is, the collection and application of the proceeds of a tax which immediately before the commencement of the Constitution was being lawfully levied and not the liability of goods or persons in general to any tax, duty, cess or fee to which they were subject on 26th January, 1950."

(Quoted from the placitum)

I may also profitably refer to the decision rendered in the case of Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others, wherein their Lordships expressed thus :--

"the true Interpretation of Section 178 does not justify imposition of terminal tax on goods which merely pass through the territory of Delhi although their destination is not Delhi but places beyond Delhi. Merely because the goods after having unloaded in the godown situated in Delhi are sorted, reloaded in different trucks and thereafter pass through the territory of Delhi, they do not become exigible to terminal tax. The word "immediately" occurring in Rule 26 of the Terminal Tax Rules framed under the Act has to be liberally construed so as to imply a reasonable period and if the export is delayed the rules may apply if a reasonable explanation has been given. Rule 26 does not warrant that "Immediate export" must mean within a very short time irrespective of any other consideration. Terminal Tax can be leviable only if it is proved that the goods remained at the godown for an indefinite and unexplained period which could not be said to be reasonable. Where the goods are carried by trucks into the territory of Delhi and unloaded there and are also meant for Delhi and soon thereafter may be rebooked by the receiver of the goods to some other place, terminal tax would be leviable because in this case there are two separate transactions (1) by which the goods are meant for Delhi and (2) by which after having reached and having been unloaded at Delhi they are rebooked and reloaded for some other place and which therefore is a fresh and different transaction. In such a case, terminal tax would be leviable at the entry point in the territory of Delhi."

(Quoted from the placitum)

In the aforesaid case their Lordships culled out the proposition in paragraph 14 as under : --

"14. Thus, from a consideration of the cases cited above, the following propositions emerge:

(1) Terminal tax and octroi are similar kinds of levies which are closely interlinked with (1) destination of the goods, (2) the user in the local area on arrival of the goods. Where the goods merely pass through a local area without being consumed therein the mere fact that the transport carrying the goods halt within the local area for transshipment or allied purposes would not justify the levy of either the terminal tax or octroi duty. This is because the halting of the goods is only for an incidental purpose to effectuate the journey of the goods to the final destination by unloading, sorting and reloading them at a particular place.

(2) There is very thin margin of difference between a terminal tax and octroi. In the case of the former (terminal tax) the goods reach their final destination and their entry into the area of destination immediately attracts payment of terminal tax irrespective of their user. In the case of octroi, however the tax is levied on goods for their use and consumption.

(3) But, at the same time, the goods while halting at a local area should leave for their destination within a reasonable time which may depend on circumstances of each case and if the goods are kept within the area for such a long and indefinite period that the purpose of reaching the final destination lying in a different area is frustrated or defeated, they may be exigible to terminal tax.

(4) Where the goods enter into a local area which is also the destination of the goods either temporarily or otherwise, the terminal tax would be leviable. For instance, if A consigns goods from Patna in Bihar to Delhi in the name of X and X after having received the goods at Delhi rebooks or reloads the same on a transport for Chandigarh in the name of Y, terminal tax would be leviable by the Corporation at Delhi because the destination of the goods in the first instance was Delhi and that by itself would attract the imposition of terminal tax. The fact that X rebooks them to Chandigarh would not make any difference because the act of rebooking by X at Delhi would constitute a fresh transaction by which the goods after having been carried into Delhi are further exported to Chandigarh. On the other hand, when there is one continuous journey of the goods from Patna to Chandigarh without any break, the final destination would be Chandigarh even though the goods may have to be halted in Delhi for the purpose of unloading, sorting and reloading and may have to be kept in Delhi for a reasonable time. In such a case terminal tax would not be exigible."

Yet in another Division Bench decision rendered in the case of *Monji Kalyanji and Others Vs. State of Madhya Pradesh*, N.D.OJha learned Chief Justice (as his Lordship then was) interpreting Entry 89 of List-I of Union List and Entry 56 of List-II of State List expressed as under:--

"Section 127(1) (xvi) if the M.P. Municipalities Act which empowers a municipal council to impose terminal tax both on import and export is covered by Entry 56 of List -II of the Seventh Schedule of the Constitution. Terminal tax on export of goods by road from within municipal limits, imposed by the Municipal Committee,

Vidisha u/s 127 (!) (xvi) of the M.P.Municipalities Act is hence valid. Such tax cannot fall under Entry 89 of List I inasmuch as the said entry contemplates only such goods or passengers which are carried by railway, sea or air. It does not contemplate any terminal tax on goods or passengers carried by road or on inland waterways. The imposition of terminal tax could not be held discriminatory on the ground that other municipal councils had not imposed it, because the considerations for imposition of terminal tax may differ from municipal council to municipal council."

(Quoted from the placitum)

At this juncture I may refer to another unreported decision rendered on 29-10-88 in M.P.No. 2235/1988 wherein a Division Bench of this Court while considering the vires of Section 127 (1) (xvi) of the Act referred to the earlier Judgment rendered in the case of Monji Kalyaji (AIR 1988 Madh Pra 220) (supra) and opined as under :--

"We find no substance in the contention. In Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others, the supreme Court specifically held that the power to subject the goods either to octroi or to terminal tax squarely fell within entry numbers 52 and 56 of List II to the Seventh Schedule of the Constitution. We cannot, therefore, take a contrary view to the effect that terminal tax does not fall within the ambit of Entry No.56 of List II to the Seventh Schedule of the Constitution. We are of the further view that in view of the Supreme Court decision, it was not necessary for this Court to look into the decision of the Bombay High Court in Achalpur Municipality v. Nandkishore (supra) while considering the validity of the provisions of Section 127 (1) (xvi) of the Act in Monji v. State (supra). For all these reasons we find no case to take a decision contrary to the one taken by this Court in Monji v. State (supra)."

I have referred to the aforesaid order to show that their Lordships have placed heavy reliance on the case of Man Mohan Tulli (supra).

On a conspectus reading of the aforesaid decisions and understanding the ratio in proper perspective there remains no trace of doubt that transport by rail is not liable to terminal/export tax. Submission of Mr. V.K.Tankha is that as goods are manufactured in the municipal area at Kymore and the goods are transported by vehicle to the railway station they are liable to terminal tax and would be covered under Entries 52 and 56 of the List-II is not acceptable as such a submission is not in consonance with the law laid down by the Apex Court as well as by this Court. It is noteworthy to mention here that the manufacturing of goods within the Municipal area is not the acid test. The real test is export of goods or transport from the manufacturing unit outside the limits of municipal area. The submission of Mr. Tankha is acceptable inasmuch as if the goods are to be exported by the Rail or carried by the Railways they have to be carried to the Railway Station. By no stretch of imagination it can be said that because they are carried by some vehicle from the manufacturing unit to the Railway Station

terminal tax would be leviable. If such an interpretation is given acceptance, in my considered view Entry 89 would be frustrated and Entry 56 would be given the meaning beyond its comprehensive commotation. Entry 56 deals with goods "carried by road". In the case at hand, as has been stated above goods are taken out from the Municipal area by Rail. Hence, the terminal tax by the Municipality cannot be imposed.

Resultantly, the writ petition is allowed and municipal council is restrained from collecting the export tax/terminal tax from the company in respect of goods which were exported/despached by rail. It will be open to the council to make such demands as may be permissible in law as per the decisions rendered by this Court in the case of Eternit Everest Ltd. (supra) and Smt. Meera Khandelwal Vs. State of Madhya Pradesh and Others, . Considering the facts and circumstances of the case there shall be no order as to costs.