
(1999) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : L.P.A. No's. 374 and 375 of 1998

Chief Municipal Officer, Nagar Panchayat, Kymore (MP)

APPELLANT

Vs

Eternit Everest Ltd. and Another etc.

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127, 127(1), 127(2), 129

Citation : AIR 2000 MP 129 : (2001) ILR (MP) 1867 : (2000) 1 MPHT 33 : (2000) 2 MPLJ 291

Hon'ble Judges : A.K. Mathur, C.J;S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : R.S. Jha, Dy. Advocate General, V.S. Dabir and Yogesh Dhande, for the Appellant; Abhay Sapre, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

Both the aforesaid appeals arise out of the common order; therefore, they are disposed of by this common order.

For convenient disposal of both the aforesaid appeals, the facts given in the case of Chief Municipal Officer v. Eternit Everest Ltd. (L.P.A. No. 374/98) are taken into consideration.

The respondent No. 1, a company, registered under the Indian Companies Act, 1956, has its head office at Bombay and is engaged in business of manufacture of various kinds of cement. It has one cement manufacturing plant at Kymore known as "Kymore Cement Works". On 22-5-1991 Kymore Municipality in exercise of powers conferred u/s 127(1) read with Clause (16) of the M.P. Municipalities Act, 1961 (hereinafter referred to as the "1961 Act" for brevity), resolved to impose the export tax on cement and other commodities which are exported from the limit of Kymore Municipality. A notification dated 2-5-1991 was issued, which was published in M. P. Rajpatra dated 12-7-1991, levying

terminal tax on cement at the rate of half per cent of the price of the cement.

Aggrieved by the aforesaid Notification dated 2-5-1991 published in M.P. Rajpatra dated 12-7-1991, a writ petition (W.P. No. 2438/91) was filed before this Court questioning the legality of the same. This Court upheld the validity of the said Notification and levy of the export tax on cement exported out of the limits of Kymore Municipal Area. The matter was taken up before the Apex Court and the same was affirmed by the Apex Court. Notification dated 2-5-1991 published in M.P. Rajpatra dated 12-7-1991 reads as under :--

^^e/;izns"k jkti= fnukad 12 tqykbZ 1991

Hkksiky fnukad 2 ebZ 1991

?- ,Q~ 6163 vBkjg nks 88 e/;izns"k uxj ikfydk vf/kfu;e 1961 ??ekad 37 lu~ 1961? dh /kkjk 120 dh mi/kkjk ?5? rFkk ?? ?kj iznRr "kfDr;ksa dks iz;ksx es ykrs gq, jkT; "kklu] ,rn~ }kjk tcyiqj ftys dh dSeksj uxj ikfydk ifj"kn }kjk mDr vf/kfu;e dh /kkjk 127 dh mi/kkjk ?1? ds [k.M ?lksyg? ds v/khu mDr uxj ikfydk lhekvsas ds Hkhrj lhekadj vkjksi.k ds fuEufyf[kr izLrko dks Loh?r djrk gS rFkk vkxs ;g funsZ"k nsrk gS fd mDr dj dk vkjksi.k ,sls fnukad ls izHkko"khys gksxk tks bl vf/kWpuk ds e/;izns"k jkti= esa izdk"kh r gksus ds fnukadls rhl fnu ds i"pkr dk gks %

izLrko

lEiw.kZ dSeksj uxj ikfydk esa fuEu fcUnqvksa ds fu;kZr ij lhek dj vkjksfir fd;k tk;sxk rFkk fuEua vuqlwph esa vafdr dj ds vuqlkj uxjikfydk dSeksj dks pqdk;k tkosxk %

vuqlwph

vuq?ekad oLrqvksa dk uke dj dh nj

1- lc izdkj dh lhasaV 1@2 izfr"kr eqY; ij

2- lhasaV ls cuh lkexzh 1 izfr"kr ewY; ij

3- jk[kM+ ?dksy,s"k? :0 1 izfr Vu

4- pwus dk iRFkj ,oa [knku ls fudys lHkh izdkj ds iRFkj :0 1-00 izfr Vu

5- bZV :0 2-00 izfr gtkj

e/;izns"k ds jkT;iky ds uke ls rFkk vkns"kkuqlkj ?,e- ,e- nkfgek? vij lfpo

The State Government thereafter issued a general circular/directions on 15-12-1995 in exercise of powers u/s 127 read with Section 129 of the 1961 Act, laying down a uniformity in the rates of export taxes all over the State of M.P. The rate prescribed was 0.20% export tax on the price of the cement. The respondent No. 1 received a notice on 6-8-1996 followed by a letter dated 23-8-1996 requiring him to pay the export tax at the rate of 0.50% on the price of the cement, which was prescribed rate as per the earlier Notification dated

2-5-1991 published in M.P. Rajpatra dated 12-7-1991. The respondent No. 1 was also directed to pay the differential amount between the two rates. The respondent No. 1 filed a writ petition (W.P. No. 5166/96) challenging the demand raised by the Municipality and it was contended that the Municipality cannot impose tax on Its own as impost is always subject to the approval of the State Government and the State Government in order to bring a uniformity all over the State of M.P., has issued a notification dated 15-12-1995 @ 0.20% of price of cement. Therefore, the Kymore Municipality cannot recover the tax at the old rate.

The said writ petition (W.P. No. 5166/ 96) was contested by the Municipality and it was alleged that the Municipality is competent to recover the export tax on cement at the rate prescribed by the Notification dated 2-5-1991 published in M.P. Rajpatra dated 12-7-1991, and the order passed by the State Government in exercise of powers conferred u/s 127 of the 1961 Act, cannot override that Notification.

The learned single Judge after considering the matter, came to the conclusion that the Municipality cannot recover the tax at the old rates as prescribed by the Notification dated 2-5-1991, as published in M.P. Rajpatra dated 12-7-1991 and they can only recover the tax in pursuance of the rates prescribed by the State Government by Notification dated 15-12-1995 and accordingly allowed the petition and directed the Municipality to recover the tax at the rate of 0.20% as fixed by the State Government.

Aggrieved by the order of the learned single Judge dated 29-9-1998 passed in Writ Petitions (W.P. No. 5166/96 and W.P. No. 4998/96), both the aforesaid appeals have been preferred by the Municipality Kymore.

We have heard the learned Counsel for the parties and perused the records.

In order to appreciate the controversy involved in the matter, it would be relevant to refer some of the provisions of the M.P. Municipalities Act, 1961, as amended in. 1997. When the first notification was Issued on 2-5-1991 published in M.P. Rajpatra on 12-7-1991 (hereinafter referred to as "Notification dated 12-7-1991"), Section 127(1) read with Clause (xvi) of the 1961 Act, as it stood at that time, which is relevant for our purposes, read as under :

"S. 127 : Taxes which may be Imposed :

(1) A council may, from time to time, and subject to the provisions of this Chapter, and any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of the Act, namely :--

xxxxx Clause (xvi) : a terminal tax on goods or animals imported into or exported from the limits of the Municipality."

Therefore, at that time, it was open for the Municipal Council to levy the tax on

various items mentioned in Section 127 Including Clause (xvi) which lays down the terminal tax on goods or animals imported into or exported from the limits of the Municipality.

The Municipal Council, Kymore, passed a resolution and sent it to the Government for its approval. u/s 129 of the 1961 Act as it stood at that time, it required an approval of the Government. Section 129 of the Act lays down the procedure for levying the tax. Section 129 as it stood at that time, reads as under :

"Section 129. Procedure in imposing taxes.-- (1) A Council may pass a resolution to propose the imposition of any tax u/s 127. The proposal shall define the class of persons or description of property proposed to be taxed, the amount or rate of tax to be Imposed and the system of assessment and collection to be adopted :

Provided that no such resolution shall be passed by the Council for the imposition of tax coming under Clause (xxiii) of Sub-section (1) of Section 127 unless the Government shall have first given their approval to the collection of the tax by the Council.

(2) When such a resolution has been passed, the Council shall publish the notice continuously for two days in such two daily news papers which are in the approved list of Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be affixed in a conspicuous place in the office of the Collector, in the office of the Municipality and in the area to be affected by such resolution and announcement of such resolution shall also be made on loud speaker in such area."

(3) Any inhabitant of the Municipality objecting to the proposed tax may, within thirty days from the publication of the notice, submit his objection, in writing to the Council.

(4) The Council shall take the proposal and all objections received thereto into consideration at a special meeting, and may modify the proposal so as to affect their substance and may then forward them to the State Government, along with all objections received: its decisions thereon and its reasons therefor. If the Council decides to modify the proposals so as to affect their substance, it shall publish them again in the manner prescribed in Sub-section (2) along with a notice indicating that they are in modification of those previously published for objection.

(5) The State Government may, on receiving such proposal either refuse to sanction them or sanction them-

(i) without modification or with such modifications not involving increase of the proposed rate as it thinks fit; or

(ii) subject to such condition as to the application within the Municipality to any purpose or purposes of this Act as may be specified, of the whole or any part of

the proceeds of such tax as it may deem fit.

(6) No modification affecting the substance shall be made under Sub-section (5), unless and until the modification has been accepted by the Council at a special meeting.

(7) If any proposal for taxation has been sanctioned under Sub-section (5), the State Government may, by notification, direct the imposition of the tax as sanctioned from such date which shall not be earlier than thirty days from the date of publication of such notification as may be specified therein, and thereupon the tax shall come into affect as from the date so specified :

Provided that where the tax so imposed is payable annually-

(i) the tax shall become payable with effect from the 1st day of April, 1st day of July, 1st day of October or 1st day of January, as the case may be, next following such imposition;

(ii) and becomes payable on a date other than the 1st day of April, it shall be payable quarterly till the 1st day of April next following.

(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act."

As per Sub-section (5) of Section 129 of the Act, approval of the Government for tax was a must and accordingly, the resolution was passed by the Municipal Council and the same was sent to the State Government and it was approved by the State Government and, therefore, the aforesaid Notification was issued.

Thereafter, the provision of the M. P. Municipality Act, 1961, was amended in 1997. According to the amended Section 127, two classes of tax were made -- one was necessarily to be imposed by the Municipality and other was optional. The amended Section 127, which is relevant for our purposes, reads as under :

"Section 127. Taxes to be imposed under this Act. -

(1) For the purpose of this Act, the Council shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely :--

(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 126. 127-A and 129.

(b) a water tax, in respect of land and buildings to which a water supply is furnished from or which are connected by means of pipe with municipal water works.

(c) a general sanitary cess, for the construction and maintenance of public latrine of refuse and general cleanliness of the city.

(d) a general lighting tax, where the lighting of public streets and places is undertaken by council.

(e) a general fire tax, for the conduct and management of the fire service and for the protection of life and property in the case of fire.

(i) a local body tax on the entry of such goods as may be declared by the State Government by notification in Official Gazette into the municipal area for consumption, use or sale therein at a rate not exceeding four per cent of the value of goods ;

Provided that no local body tax shall be levied on the goods :--

(i) brought by a person into the Municipal area for his personal use or consumption : or

(ii) brought by a registered dealer within the municipal area and transmitted within 15 days thereof -

(a) to a registered dealer in any other local body; or

(b) In the course of export out of the territory of India; or

(c) in the course of inter State trade outside the State.

(iii) specified in the Schedule to the Madhya Pradesh Sthaniya Kshetron Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976).

(2) Notwithstanding anything contained in Clause (f), if in the opinion of the State Government it is expedient to do so, it may delegate the power to the Council to declare the goods on which local body tax shall be levied and the rates thereof.

(3) The mode of assessment and collection of the local body tax shall be such as may be prescribed.

(4) The water tax under Clause (b) of Sub-section (1) shall be charged, --

(a) on buildings and lands which are exempted from property tax, at a rate as shall be determined by the Council subject to a minimum rate as may be prescribed by the State Government.

(b) on buildings and lands which are not exempted from property tax, at a minimum rate as determined in Clause (a) plus such percentage of the property tax, as shall be determined by the Council.

(5) The taxes under Clauses (c), (d) and (e) of Sub-section (1) shall be levied at a consolidated rate as under :

(a) on buildings and lands which are exempted from property tax at a rate as determined by the Council subject to a minimum and maximum rate as may be prescribed by the State Government;

(b) on buildings and lands which are not exempted from property tax at a minimum rate prescribed under Clause (a) plus such percentage of the property tax as may be determined by the Council.

(6) In addition to the taxes specified in Sub-section (1), the Council may, for the purposes of this Act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely :--

(a) a latrine or conservancy tax payable by the occupier or owner upon private latrines, privates or cesspools or open premises or compounds cleansed by Council agency ;

(b) a drainage tax, where a system of drainage has been introduced;

(c) a tax on persons exercising any profession or art or carrying on any trade or calling within the city:

(d) a tax payable by the owners on all or any vehicles or any vehicles or animals used for riding, driving draught or burden or on dogs, where such vehicles, animals or dogs are used within the city, whether they are actually kept within the city or not ;

(e) a toll on vehicles and animals used as aforesaid entering the city but not liable to taxation under Clause (d);

(f) fees on the registration of cattle sold within the city;

(g) market dues on persons exposing goods for sale in any market or in any place belonging to or under the control of the Government or of the council;

(h) a betterment tax on properties whose value may have improved as result of town planning scheme undertaken by the Council;

(i) a tax on pilgrims resorting periodically to a shrine within the limits of the Council;

(j) a tax on persons occupying houses, buildings or lands within the limits of the Council according to their circumstances and property;

(k) a toll on new bridge constructed by the Council;

(l) a tax on advertisements other than advertisements published in newspapers;

(m) a tax on theatres, theatrical performances and other shows for public amusement;

(n) a terminal tax on goods or animals exported from the limits of the Council ;
and

(o) any other tax which the State Government has power to impose under the Constitution of India, with the prior approval of the State Government,

(7) Subject to the provisions of Article 277 of the Constitution of India, any tax which immediately before the commencement of this Act was being lawfully levied by the Council, may, notwithstanding that such tax is not specified in Sub-section (1) or (6), continue to be levied by the Council.

(8) The imposition of any tax under this Section shall be subject to the provisions of this Act and of any other enactment for the time being In force.

(9) The State Government may, by notification, in the Official Gazette, prescribe the maximum and minimum rate of any tax specified in this Section, subject to which the Council shall determine the rate of such tax.

(10) Notwithstanding anything contained in this Chapter, the Council may impose upon properties specified in Clause (a) of Section 136, all or any of the taxes specified in Clauses (b), (c) and (d) of Sub-section (1) and Clause (b) of Sub-section (6) at a rate, in excess of the rate at which such tax is imposed, on other properties under the respective clauses, as the State Government may, by notification, specify."

The amended Section 127 of the Act says that subject to any general or special order of the State Government, the Municipality can levy the tax on the items mentioned in Sub-section (1) (a) to 0). But Sub-section (6) of Section 127 says that in addition to the taxes specified in Sub-section (1), the Council may subject to any general or special order of the State Government, impose any of the taxes enumerated thereunder and one of the taxes is at (n) i.e. a terminal tax on goods or animals exported from the limits of the Council. This clause is an analogous to Clause (xvi) of Sub-section (1) of Section 127 of the old Act.

It may be relevant to mention that another significant change, which was brought about under amended Section 127 of the Act, was Sub-section (9), which lays down that the State Government may, by notification, in the Official Gazette, prescribed the maximum and minimum rate of any tax specified in this Section, subject to which the Council shall determine the rate of such tax. Therefore, by virtue of Sub-section (9), the State Government was given a power to fix maximum and minimum rate of tax to limit the power of the Municipality as to the rate of tax.

Section 129 of the 1961 Act lays down the procedure for imposition of taxes, which was also subsequently amended in 1995 (M.P. Act No. 12/95) and the amended Section 129, which is relevant for our purposes, reads as under :--

Section 129. Imposition of Taxes and Fees. -

(1) The Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf :

(a) impose any of the taxes or fees specified in this Act : or

(b) increase the rates of taxes or fees already imposed.

(2) The resolution as referred to in Sub-section (1) shall contain -

(a) in case of imposition of any tax or fee, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take effect ;

(b) in case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed Increased rate of such tax or fee and the date from which increase of rate or such tax or fee shall take effect.

(3) The resolution, as passed shall be conclusive evidence of the imposition of a new tax or fee, or increase of rate of any tax or fee, as the case may be. Provided that if the Council decided to have supplementary taxation during the financial year, it may do so from such date as the Council may resolve, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government In this behalf.

(4) Nothing contained in this section shall apply to tax mentioned in Clause (i) of Sub-section (1) of Section 127 which shall be charged and levied in accordance with Section 127-A.

The aforesaid amendment in the M.P. Municipalities Act, 1961, was brought about by the M.P. Act No. 18/97 from 21-4-1997. Meanwhile, a Circular was issued on 15-12-1995 by the State Government with regard to the levy of export tax and in that the rate was prescribed at the rate of 0.20%. The Circular dated 15-12-1995, reads as under :

e;/izns"k "kklu LFkkuh; "kklu foHkkx ea=ky;] cYyHk Hkou] Hkksiky

?- ,Q 4@1@1 v 3@95 Hkksiky] fn- 15@12@95-

izfr]

leLr vk;qDr uxjikyfydk fuxe] e;/izns"kA

leLr eq[; uxjikyfydk vf/kdkjh] uxj ikfydk ifj"kn@uxj iapk;r] e;/izns"kA

fo"k; % fu;frdj vkjksfir djus laca/khA

&00&

e;/izns"k uxj ikfydk vf/kfu;e] 1961 dh /kkjk 127 dh mi/kkjk ?1? ds [k.M ?lksyg? ds varxZr fu;frdj vkjksfir djus dk izko/kku gS vkSj djkjksi.k dh izf?;k /kkjk 129 esa fn xbZ gSA mDr nksuksa /kkjvkksa esa oSf"Br "kfDr;ksa dk iz;ksx esa ykrs gq, vkSj bl fo"k; ij iwoZ esa tkjh leLr funs"kksZa dks fu"iHkkoh djrs gq,] jkT; ljdkj] ,rn~ }kjk ;g funsZ"khr djrh gS fd fu;frdj dk vkjksi.k fuEu "krksZa vkSj lhekksa ds jgrs gq, gh fd;k tkos %

?1? fu;frdj dh olwyh ds fy, dksbZ ukds LFkkfir ugha fd, tk,xsa vkSj u gh Bsds dh iz.kkyh viukbZ tk,xhA tgk? ukds LFkkfir gks] mUgsa rRdky izHkko ls lekIr fd;k tkosaA fu;kZr dj dh olwyh dh izf?;k mlh izdkj dh viukbZ tkuh pkfg;s fti izdkj dh okf.kfT;ddj ds fy, ykxw gS rFkk ?"kh mit eaMh dh fLFkfr esa muds yk;lsal gksYMj dh dj dh olwyh ds fy, mRrjnk;h cuk;k tkosa bls fy;s ;fn mifof/k;ksa esa la"kks/ku dh vko";drk gks rc rn~uqlkj la"kks/ku dh dk;Zokgh dh tkuh pkfg,A

?2? izsn"k esa lHkh LFkkuksa ij ,d:irk dh n`f"V ls fu;frdj dh nj layXu vuqlwph esa vafdr vuqlkj izLrkfor gSA

?3? ,slh oLrq, ftudk ns"k ls ckgj fu;kZr gksrk gS fu;frdj ls eqDr j[kh tk,A

?+4? lkoZtfud forj.k iz.kkyh ds varxZr forfjr dh tkus okyh oLrq,sa tks Hkkjrh; [kkn~; fuxe~@ukxfjd vkiwfrZ fuxe@ jkT; "kklu dk vU; ,tsfU;ksa }kjk izns"k esa ,d LFkku ls nwljsa LFkku Hksth tkrh gS vFkok ys tkbZ tkrh gS os Hkh fu;frdj ls eqDr ls eqDr j[kh tk,A

2 e;/izns"k uxjikydk fu;e vf/kfu;e] 1956 esa fu;frdj dk izko/kku ugha gS] ijUrq uxjikydk fuxe jkT; ljdkj dh Loh?fr ls ;g dj vkjksfir dj ldrs gSA pw?fd vusd uxjikydk fuxe esa us fu;kZr dj vkjksfir djus dh bPNk O;Dr dh gS] vr,o jkT; ljdkj] ,rn~ }kjk lHkh uxjikydk fuxe esa dks fu;frdj ds vkjksi.k dh lkekU; Loh?fr iznku djrh gSA uxjikydk fuxe esa es alaca/kesa Hkh mfYyf[kr "krsZ ykxw jgsaxhA

gLrk@&

?lh- ,l- pM~<k? izeq[k lfpo e;/izns"k "kklu LFkkuh; "kklu foHkkx

The relevant rate is at Entry No. 11 of the Schedule, which reads as under :

11 lhesaV] jsr] bZaV] lHkh izdkj dh gkMZos;j lkexzh] lHkh izdkj ds iRFkj] Q"khZ] VkbYl vkfnA 0-20 izfr"kr

The aforesaid Circular dated 15-12- 1995 was subsequently withdrawn by the State Government on 2-5-1997. Meanwhile, the State Government also framed Rules in exercise of powers conferred under Section 355 read with Clause (XVI) of Sub-section (1) of Sections 127 and 129 of the M.P. Municipalities Act, 1961, known as "Terminal Tax (Assessment and Collection) on the Goods exported from Madhya Pradesh Municipal Limits Rules, 1996 (hereinafter referred to as the "1996 Rules" for short), by virtue of these Rules, the State Government laid down the proposed schedule of the terminal tax on goods exported from the Municipal limits and in that, the rate on cement, sand, bricks all sorts of hardware goods, all sorts of stone, farshi, tiles etc., was fixed at 0.20% on the price. In this connection, a reference may be made to Rule 9 of 1996 Rules, which has repealed the earlier Rules of 1991. The Rules 9 of 1996 Rules, which is relevant for our purpose, reads as under :

"Rule 9 : As from the date of commencement of these rules, the Madhya Pradesh Municipalities Terminal Tax on the Goods and Animals Imported into or Exported from the Municipal Limits (Assessment and Collection) Rules, 1991, shall stand repealed."

Now, in the backdrop of the scheme of the Rules and the Notification issued by the State Government, we have to examine the view taken by the learned single Judge and the arguments raised by the learned counsel for the appellants. The Notification dated 12-7-1991 issued by the Municipality Kymore, to recover the export tax and levy thereof has not been disputed in the petition. But, the contention of the learned counsel for the petitioner (respondent No. 1 herein) before the learned single Judge was that once the State Government has issued a notification on 15-12-1995 reducing the rate of levy of export tax to 0.20% on cement and this has been made uniformly applicable all over the State of M.P., the Municipal Council could not have recovered the tax at the old rate as prescribed by Notification dated 12-7-1991. The learned single Judge accepted the submission of the learned counsel for the petitioner (respondent No. 1) and accordingly, set aside the demand notices raised by the Municipal Council.

The learned counsel for the Municipal Council submits that the notification issued by the State Government dated 15-12-1995 was withdrawn on 2-6-1997 and apart from that the Notification dated 15-12-1997 was issued by the State Government in exercise of the power u/s 127 of the Act. It was a statutory power laying down the uniform rates, but by that it will not have an effect of retrospectively taking away the power of the Municipal Council to levy tax at the rate of 0.50% by Notification dated 12-7-1991. It is submitted that the aforesaid Notification was issued by the Municipal Council in exercise of its legislative function as the impost is not an executive action and it is legislative function. The tax cannot be levied by the executive fiat, it has to be by legislation; therefore, the Municipal Council in exercise of power under Section 127 read with 129, proposed to levy the tax and the same was confirmed by the State Government as required under the unamended provision of law and thereafter, the Notification dated 12-7-1991 was issued. Therefore, it was a legislative function of the Municipality to levy the tax. Subsequently, the State Government on 15-12-1995 in exercise of powers conferred under Section 127, issued the circular laying down the reduced rate of export tax uniformly all over the State of M.P. The learned counsel submits that this notifications cannot have the effect to undo the legislation of the Municipal Council to levy the export tax. The submission of the learned counsel for the Municipal Council appears to be justified.

It is a settled proposition of law that the tax cannot be levied except under the authority of law and the Municipal Council in exercise of its, legislative function u/s 127 read with 129, levied the export tax by Notification dated 12-7-1991. Therefore, it was a legislative function of the Municipal Council and no legislative function can be undermined or be superseded by issuing of any circular or exercising the statutory power by any authority under the Rules. The legislative power can only be undone by the Legislative Act and not by the subordinate authority. u/s 127, the State Government has been given a power to Issue a circular of a general application and the Municipal Council has to levy the tax subject to these circulars issued by the State Government. At the time when the levy was Imposed on 12-7-1991, there was no such circular in existence. The

circular was issued subsequently on 15-12-1995 and it could not undo the legislative function already exercised by the Municipal Council by issuing a notification dated 12-7-1991.

In this connection, it may be relevant to mention here that u/s 127; if the State Government wanted to supersede notification dated 12-7-1991 then it could have framed the Rules in exercise of its general power to frame rules. Therefore, the State Government having realised that by executive fiat, they could not nullify the notification issued by the Municipalities, they withdrew the notification dated 15-12-1995 on 2-5-1997 and framed the Rules known as 1996 Rules, which were published in the gazette dated 7-3-1997 as aforesaid. Therefore, the contention of the learned counsel for the appellant is that the view taken by the learned single Judge on the facts of the present case that the notification dated 15-12-1995 amounts to reducing the rates of export tax from 15-12-1995 in the case of notification dated 12-7-1991, does not appear to be correct approach in the matter. The contention of learned counsel is correct. As we have already mentioned above, that the legislative enactments cannot be subjugated or superseded by exercise of power by the State Government under the statutory provision or by executive instructions, Once the legislative function has been exercised by the Municipal council and the levy has been imposed, the State Government could have only undone the levy by another legislative enactment as contemplated under Sub-section (2) of Section 127 of the Act as it stood at that time by framing proper Rules which they have now framed under Section 355 read with Section 127 (1) (xvi) of the Act, known as the Rules of 1996 (referred to above). The proviso to Sub-rule (2) of Rule 1 of the 1996 Rules, says that where the Corporaion or Council has already imposed the said tax then these rules shall come into force from the date of publication of these rules, in the "Madhya Pradesh Rajpatra". These rules were published in the M.P.Gazette on 7-3-1997; therefor, the rate of tax shall come Into force with effect from 7-3-1997 and the notification dated 15-12-1995 would not override the notification dated 12-7-1991. Therefore, the notification dated 12-7-1991 shall hold the field till it was lawfully superseded i.e. with effect fom 7-3-1997. The Municipality, Kymore, is entitled to charge export tax at the told rate upto 6-3-1997 and thereafter at [reduced rate w.e.f. 7-3-1997 i.e. at the rate of 0.20%. Thus, in this view of the matter, the view taken by the learned single Judge does not appear to be correct and we hereby set aside the order of the learned single Judge and dismiss both the writ petitions. It will be open for the Municipal Council to recover the tax at the rate prescribed by them as per Notification dated 12-7-1991 upto 6-3-1997 and thereafter from 7-3-1997, they will charge the export tax at the rate prescribed under the 1996 Rules, which have come into force with effect from 7-3-1997.

In the result, both the aforesaid appeals (L.P.A. No. 374/98 and L.P.A. No. 375/98) are allowed.