
(1979) 04 CAL CK 0014
In the Calcutta High Court

Durgapur Truck Owners" Association	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 05-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 04 CAL CK 0014

Hon'ble Judges : Sabysachi Mukharji, J

Bench : Single Bench

Advocate : R.N. Bajoria, S.N. Dutta, Tapas Kr. Bandyopadhyay and Samir Chakraborty, for the Appellant; N.N. Gooptu and A. Dutta, for the Respondent

Judgement

Sabysachi Mukharji, J.—The petitioners, in this case, are 16 in number of which the first one is the Association of Durgapur Truck Owners and the others are different truck owners. In this petition, the petitioners are challenging imposition of taxes under the West Bengal Act V of 1972 being The taxes of Entry of Goods into Calcutta Metropolitan Area Act, 1972, hereinafter referred to as the said Act. The petitioners' challenge is mainly directed to the notification issued on the 1st April 1972 as well as to the notification dated 21st March, 1978. I shall refer to these notifications presently.

2. The petitioners state that they are operators of trucks and carrying on business of carriers of goods. They bring goods to and take out goods from the Calcutta Metropolitan Area. As I have mentioned, the challenge is to the imposition of taxes on vehicles which operate as carriers of goods brought into the Calcutta Metropolitan area. It would, therefore, be relevant to refer to some of the important provisions of the Act. Section 6 of the said act which deals with the levy and collection of taxes is as follows:

6. (1) Save as otherwise provided in this Chapter, there shall be levied and collected, for the purposes of this Act, a tax on the entry of every specified goods into Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that Area, at such rate, not exceeding the rate specified in the

corresponding entry in column 3 of the Schedule, as the State Government may, by notification, specify.

(2) Subject to such rules as may be made by the State Government in this behalf, no tax shall be levied and collected under this Act on the entry of any specified goods into the Calcutta Metropolitan Area if such goods are brought into that area -

(a) as personal luggage by a passenger and the value or the number or quantity thereof does not exceed the prescribed amount or limit, as the case may be, or

(b) in such circumstances and subject to such conditions and restrictions as may be prescribed.

3. Section 2 provides the definitions and under clause (c) of S. 2, a dealer is defined as follows:

(c) "Dealer in relation to any specified goods entering the Calcutta Metropolitan Area, means a person, -

(i) who either on his own account or on account of a principal causes such entry, or

(ii) who takes delivery, or is entitled to take delivery, of such goods on such entry.

Explanation I : When the consignor or consignee of any specified goods entering the Calcutta Metropolitan Area nominates, according to such rules as may be prescribed, a person to be the dealer for the purpose of this Act, such person shall be deemed to be a dealer in relation to such specified goods.

Explanation II : When the consignee of any specified goods entering the Calcutta Metropolitan Area, dispatched to such Metropolitan Area by rail, road, water, air or post, does not take delivery of such goods upon such entry and the goods are sold under the provisions of any law, the buyer, who takes delivery of such goods upon the goods being so sold, shall be deemed to be the dealer thereof:

Export has also been defined under clause (d) of S. 2 as follows:

(d) "Export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

4. Specified goods as defined under clause (i) of Section 2, means the goods specified in column 2 of the Schedule. The prescription, as indicated in the Act, means the prescription by rules made under this Act. Section 9 deals with exemption from tax on goods meant for export. I do not think, for my present purpose, it is relevant to refer to that section in view of the definition of export provided in the Act. A reference to that section, however, was made by the learned senior Government Pleader appearing for the State Government. The other material section to which my attention was drawn is S. 21 which permits transport pass where no tax is leviable. The said section is as follows:

21. (1) Where the prescribed authority has found from the evidence adduced before it by the dealer that no tax is leviable under this Act on the entry of any specified goods into the Calcutta Metropolitan Area on the ground that such goods are not intended to be consumed, used or sold in such Metropolitan Area, the prescribed authority shall grant a transport pass certifying that no tax is leviable under this Act on such specified goods and every specified goods, to which such transport pass relates may be taken from one place to another throughout the Calcutta Metropolitan Area on production of such transport pass.

(2) If the whole or any part of the goods referred to in sub-s. (1) is consumed, used or sold in the Calcutta Metropolitan Area, tax shall be levied and collected under this Act on so much of such goods as is consumed, used or sold in the Calcutta Metropolitan Area.

5. Section 35 of the said Act deals with power to exempt and is in the following terms:

35. The State Government may, if it is satisfied that it is necessary so to do in the interests of the general public, exempt any specified goods or class of specified goods from any tax leviable under this Act.

6. As I have indicated, Schedule to the Act indicates the goods which are taxable under the Act. It also indicates the rates at which such taxes can be imposed. Item 71, which is material for my present purpose, of the Schedule is as follows:

71. Vehicles:

(a) motor cars, motor cycles, chasis, lorries, tractor, trailer 3 per cent ad valorem

(b) bicycles, carriages, perambulators, all other kinds of 2 per cent ad valorem vehicles, their components and spares.

7. As I have indicated before, S. 6 of the Act, which is really the charging section, authorises the State Government to levy a tax on the entry of every specified goods into the Calcutta Metropolitan Area for consumption, use and sale therein from any place outside that area at such rate, not exceeding the rate specified in the corresponding entry in column 3 of the Schedule, as the State Government may, by notification specify. In 1972, by a notification dated 4th May, 1972, the rates were specified in respect of item No. 7, as indicated below:

71. Vehicles -

(1) All motor vehicles registered with registering authority having Nil jurisdiction over Calcutta Metropolitan Area or part of it provided the owner has place of residence or place of business in Calcutta Metropolitan Area or in the case of motor transport vehicle, the recorded garage address is in Calcutta Metropolitan Area.

(2) All motor vehicles other than those referred to in sub-item 91) above and other than buses and taxis -

(a) for first entry into Calcutta Metropolitan Area for Regis-1/2 per cent tration in Calcutta Metropolitan Area. ad valorem

(b) for each entry other than those referred to in paragraph

(a) above:

(i) motor cycle, scooter Re.1 per vehicle

(ii) motor, car, tempo, station wagon, small vans & Rs. 5 per chasis thereof. - vehicle

(iii) lorries, trucks, large vans and chasis thereof, tractor, Rs.10/- per trailers vehicle

(3) Buses and taxis for a period of one year and six months - Nil from the commencement of Taxes on Entry of Goods into Calcutta Metropolitan Area, 1970.

(4) All motor vehicles (Not including lorries, trucks, chasis, - Nil tempos, vans, tractor, trailer), motor cycles, scooters brought into Calcutta Metropolitan Area by tourists for a short stay within that Area for a period not exceeding 15 days for which permission has been accorded by the assessing Officer at the checkpoint, subject to such conditions and terms as may be stipulated by such Officer.

(5) Bicycles, carriages, perambulators all other kinds of 1 per cent other than those falling in the cases referred to ad valorem in sub-items (1) to (4) above, their components and spares.

8. It appears that subsequently in 1978, by a notification issued on the 21st March, 1978, inter alia, in respect of item No. 71, there was an amendment, which was as follows:

6. for paragraph (b) of clause (2) of serial No. 71 and the entries relating thereto in columns 2 & 3 respectively:

(b) for each entry other than those referred to in paragraph (a) above -

(i) Motor cycle, scooter - Rs. 2 per vehicle.

(ii) Motor car, tempo, station wagon, small vans and chasis thereof - Rs. 10 per vehicle.

(iii) Lorries, trucks, large vans and chassis thereof, tractor, trailer - Rs. 20 per vehicle.

9. Upon this notification being issued, the petitioners moved this Court challenging the imposition of the enhanced taxes pursuant to the notification dated 21st March, 1978 and a Rule nisi was issued by me on 21st August, 1978. As I found that the challenge was in respect of the imposition of taxes, which were sought to be made by the notification issued in 1972 as amended in 1978, I was reluctant to entertain this application because of the delay. But, then, it was submitted to me that inasmuch as the imposition, in 1972, was not very heavy,

the petitioner did not seek the remedy or redress by this Court. But, as the imposition of taxes had enhanced in 1978, the petitioner felt aggrieved and thereafter moved this Court. Upon this, a Rule Nisi was issued by me asking the State Government to show cause as to why the imposition of taxes under the said Act on vehicles which enter into the Calcutta Metropolitan Area for carriage of goods only should not be held to be illegal or in excess of the powers under the Act. I thereupon issued an interim order of injunction restraining the respondents only from realizing the enhanced taxes but not the taxes that have been imposed by the notification issued in 1972. It appears that during the pendency of this Rule, on the 16th January, 1979, the Government has issued a further notification, the effect whereof is to restore the position as was prevailing before the introduction of the notification issued in 1978. Therefore, the validity of otherwise of the notification issued on 21st March, 1978 is no longer of any relevance. The amended notification dated 16th January, 1979, a copy whereof was handed over to me, so far as item No. 71 is concerned, reads as follows:

In the Table appended to the said notification, for paragraph (b) of clause (2) of serial No. 71 and the entries relating thereto in columns 2 & 3, substitute the following paragraph and entries in column 2 & 3 respectively:

(b) for each entry other than those referred to in paragraph

(a) above -

(i) motor cycle, scooter - Nil

(ii) motor car, tempo, station wagon, small vans and chasis - Nil thereof.

(iii) lorries, trucks and large van loaded partly or fully with Rs. 10/- per goods and chasis thereof, tractor and trailer vehicle.

By order of the Governor.

Sd/- T.N. Mookerji. Dy. Secy. to the Govt. of West Bengal.

10. In this application, the petitioners have challenged the imposition on three main grounds. The petitioners contend that under S. 6 of the Act, the State Government has only power to impose entry taxes in respect of specified goods into the Calcutta Metropolitan Area which enter the Calcutta Metropolitan Area for "consumption", use or sale therein." Therefore the tax must be in respect of the goods that enter into the Calcutta Metropolitan Area "for consumption or for use or for sale" in the Calcutta Metropolitan Area. In the instant case, I am not concerned with the question whether the State Government has any power to impose taxes in respect of the vehicles that enter for sale nor directly which enter for consumption. If a vehicle enters into the Area, as described in Item 71 of the Schedule for being used or consumed undoubtedly the vehicles being one of items of the specified goods would come within the purview of the Act. But, the main contention urged on behalf of the petitioners, is, that when a vehicle belonging to the carrier enters into the Calcutta Metropolitan Area for carrying

goods either for unloading into the Calcutta Metropolitan Area or for a passage through the Calcutta Metropolitan Area, such vehicle is not entering into the Calcutta Metropolitan Area for use in the Calcutta Metropolitan Area. This imposition under S. 6 is based on the power given to the State legislature under entry 52 of List II of the Seventh Schedule of the Constitution. It authorizes the State Legislature to impose taxes on the entry of goods into a local area for consumption, use or sale therein. It may, in this connection not be inappropriate to refer to entry 56 of List II also authorizes the State Legislature to impose taxes on goods and passengers carried by road on inland waterways. Entry 57 of List II of Seventh Schedule authorizes the State Legislature to impose taxes on vehicles whether mechanically propelled or not suitable for use on road, including tramcars subject to the provisions of entry 35 of List III. Entry 58 of List II of Seventh Schedule deals with taxes on animals and boats. Entry 89 of List I envisages terminal taxes on goods or passengers, carried by railway, sea or air, taxes on railway fares and freights.

11. Learned advocate for the petitioners submitted before me that the vehicles belonging to carriers carrying goods for transit to the Calcutta Metropolitan Area or for loading do not enter into the Calcutta Metropolitan Area for use or for consumption. Therefore the imposition of taxes on vehicles which are used for carriage of goods to the Calcutta Metropolitan Area cannot come within the ambit of entry 52 of List II of the Seventh Schedule and that is not envisaged by S. 6 of the said Act. From one point of view, when a vehicle enters, into the Calcutta Metropolitan Area and passes through the Calcutta Metropolitan Area or passes through a part the Calcutta Metropolitan Area for carriage of goods, can be said to have entered to be used in the Calcutta Metropolitan Area and if such vehicles enter into the Calcutta Metropolitan Area or any part of the Calcutta Metropolitan Area for the purpose of transit through the entirety of the Metropolitan Area or for loading at a particular point into that Metropolitan Area can be said to be entering into Metropolitan area for the purpose of use. But this expression entering into for the purpose of use, consumption and sale, has to be understood in the context in which this expression has been used in the Constitution. In understanding this aspect it may not be inappropriate to examine this question from one aspect of the Constitution of the United States which inter alia, declares that no State shall without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws. Under this prohibition same difficulty was experienced in indicating with sufficient accuracy for practical purposes the point of time at which articles brought into the country from abroad cease to be regarded as imports in the sense of constitutional protection and became liable to State taxation but it has been said generally that when an importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country it has perhaps lost its distinctive character as an import and has become subject to the taxing power of the State but while remaining the property of the importer, in this warehouse, in the

original form or package in which it was imported, a tax upon it is plainly a duty on imports to escape the prohibition in the Constitution - See *Cooley Constitutional Limitations* (1972 Ed. P. 485 -86). This aspect may be important in understanding the idea of "repose" which the Supreme Court in India has suggested in understanding the fiscal measures of this type.

12. The Supreme Court had occasions to deal with this aspect of the matter in greater detail in several decisions to which I shall presently refer. The first relevant decision on this aspect to which my attention was drawn is the decision of the Supreme Court in the case of *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, . There the Supreme Court was dealing with the C.P. & Berar Municipalities Act, 1922 and terminal tax on goods imported and exported under that Act and the question, was, whether the goods in transit without either loading or unloading within the municipal limits would come within the terminal tax. The Supreme Court observed that the words, "imported into or exported from" which were the expressions used in that particular statute, derived their meaning with reference to the context and giving these expressions derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, some of the decided cases in India have ascribed too general a meaning to these words which from the setting, context and history of the clause was not intended. To construe the words "import" and "export" as meaning "bring in" or "take out of away from" and cover the goods in transit by the words "imported into" or "exported from", would make rail borne goods passing through a railway station within the limits of a municipality liable to the imposition of tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion and would also result in inordinate delays and unbearable burden on trade both inter State and intra State. It was hardly likely, the Supreme Court observed, that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided. "Import" according to the Supreme Court, was not merely bringing into but comprised something more that is "incorporating and mixing up of the goods imported with the mass of the property". Learned Advocate for the petitioners emphasized that the expression used under S. 6 was "entry into" and, therefore, the expression "into" signified coming to rest there, if not permanently at least for some time and then must fulfill the other requirement, that is to say, it must enter and must enter there for either use or consumption or sale. Similarly, the word "export" had reference according to the Supreme Court in the judgment, to taking out of goods which had become part and parcel of the mass of the property of the local area and would not apply to goods in transit. The Supreme Court in that decision discussed the history of the terminal taxes and observed in paragraph 8 of the judgment that the word "transit" in the Oxford Dictionary meant action of fact of passing across or through; passage or journey from one place or point to another; passage or carriage of persons or goods from one

place to another; it also meant to pass across or through (something) to traverse, to cross. The Supreme Court, then, discussed the several decisions of the High Court which had taken the ordinary meaning of the expressions. In paragraph 11 of the judgment the Supreme Court noted the decision of the other High Courts and observed at page 347 of the report that even assuming that the words "import into" or "exported from" could be restricted only to their derivative meaning and thus construed to mean only "brought into or taken out or away from", this general meaning was qualified by the use of the prefix "terminal" used adjectively with the word "tax" which made it necessary to determine the meaning of the term "terminal tax" - The Supreme Court, then, noted the distinction between the terminal tax and the entry tax which the Government of India Act, 1935 had observed and the distinction which is preserved in the Constitution in its different Lists. This view of the Supreme Court was further explained in the decision in the case of *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, where the Supreme Court was again discussing the distinction between octroi and terminal tax and discussed the legislative history of the taxes and observed that octroi was always understood to be on goods brought for consumption, use or sale. The Supreme Court was dealing with the Bombay Municipal Boroughs Act, 1925. The Supreme Court at page 909 of the report after setting out the relevant provisions of the Act, referred at page 910 the report of the Taxation Enquiry Committee and it may be instructive to set out the extract from the observations of the Supreme Court dealing with the Taxation Enquiry Committee. The Supreme Court observed as follows:

After the Scheduled-tax Rules the collection of terminal tax was restricted to those areas in which octroi was levied on or before July 6, 1917. Most of the municipal laws allowed collection of terminal taxes only if octrois were not levied. As the Taxation Enquiry Commission observes : (Vol. III Ch. IV page 401)"...the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must only enter the area, but must be "for the purpose of consumption, use or sale therein". Usually, this requirement is sought to be satisfied by (a) the ab initio exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds, therefore, are the distinguishing features of the octroi system.

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

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

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

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

The Supreme Court went on to observe that history of these two cases clearly shows that while terminal taxes were a kind of octroi which were concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods brought into the area for consumption, use or sale. They were leviable in respect of goods put to some use or other in the area but only if they were meant for such user. In paragraph 21 the Supreme Court also emphasized that entry into a particular area for consumption therein in the octroi under item 52 of the List 2, which used the same expression as in S.6 of the present Act, indicated that the goods must come to repose and not merely for transit or passage. The Supreme Court observed at page 912 in paragraph 21 as follows:

Looking to the trade of the company, it is quite obvious that it brings in the goods (a) for consumption by itself - which of course is within the term "octroi" as described; (b) for re-export either by itself or through dealers outside the area - which as is admitted by the municipality, entitles the company to a refund of tax and (c) for sale by it directly to consumers or to dealers who distribute the goods within the area of ultimate consumers. So long as the goods are brought inside the area for sale within the area to an ultimate consumer, it makes no difference that the consumer does not consume them in the area but takes them out for consumption elsewhere. A motorist who buys petrol within the municipal area and goes outside it for a drive buys the petrol in the area for purpose of consumption and the person who keeps and stores the petrol for sale in such circumstances keeps it for consumption therein, The word "therein" does not mean that all the act of consumption must take place in the area of the municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the

area. Indeed, the consumer may never consume them as, for example, a motorist buys a tin of oil and finds that it does not suit his vehicle and leaves it lying on his shelf. The goods must be regarded as having been brought in for purpose of consumption when a person brings them either for his own use, or consumption, or to put them in the way of other in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier, stage the ultimate destination of the goods being "use or consumption". The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use. In other words, a sale of the goods brought inside, even though not expressly mentioned in the description of octroi as it stood formerly, was implicit, provided the goods were not re-exported out of the area but were brought inside for use or consumption by buyers inside the area. In this sense the amplification of the description both in the Government of India Act, 1935 and the Constitution did not make any addition to the true concept of "octroi" as explained above. The concept included the bringing in of goods in a local area so that the goods come to a repose there when the Government of India Act, 1935 was enacted, the word "octroi" was deliberately avoided and a description added to forestall any dispute of the nature which has been raised in this case. In other words, even without the description the tax was on goods brought for "consumption, use or sale". The word "octroi" was also avoided because terminal taxes are also a kind of octroi and the two were to be allocated to different legislatures.

13. It appears that an attempt was made before the Supreme Court to reconsider this view but the Supreme Court declined to reconsider this aspect as would be evident from the decision in the case of *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, . In the case between *The Town Municipal Council, Kalghatgi Vs. Urmilla Kothari*, the Supreme Court was dealing with Karnataka Municipalities Act, 1964 and there the question, was, whether trucks loaded with goods merely using State highways passing through municipal areas were liable to pay supervision fee. There the section imposed tax on any article or animal brought into the municipal limits for the purpose of immediate exportation, the Supreme Court found that goods which went out and did not rest or repose or used or got mixed up could not be considered to come within the purview of the said Act. It may be in this connection instructive to refer to the observations of the Supreme Court at page 875 of the report in paragraph 10 where the Supreme Court observed as follows:

The enunciation of law in the above case fully covers the present case. In the present case also, the iron ore which is in transit from Railyard at Hubli to Karwar and Belekeri harbours can hardly be characterized as goods brought into or exported from the municipal limits of Kalghatgi because they are neither imported into nor exported from any point within the municipal limits but are merely carried across a particular stretch of territory or across a particular area with the object of being transported to its ultimate destination. In *Brown v. State*

of Maryland, (1827) 12 wheat 419,442: (6 Law. Ed 678, 685). Chief Justice Marshall dealing with the word "importation" said as follows: -

The practice of most commercial nations conforms to this idea. Duties, according to that practice, are charged on those articles only which are intended for sale or consumption in the country. Thus sea-stores, goods imported and re-exported in the same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in my stress of weathes, and lande, but not for sale are exempted from the payment of duties. The whole course of legislation on the subject shows that in the opinion of the legislature the right to sell is connected with the payment of the duties.

14. In the case of Maganlal Chhotabhai Desai Vs. Chandrakant Motilal, , the Supreme Court had again to consider this aspect in respect of Punjab Municipal Tax Act, 1911. I was given a full copy of the judgment of the Supreme Court where Mr. Justice Shah, as the learned Chief Justice then was, observed as follows: -

It is common ground that the goods brought within the Notified Area Committee of Faridabad were not brought for consumption or sale. It was argued, however, that the goods were brought into the Notified Area Committee for use, and on that account octroi was leviable. The expression "use" is not defined in the Act. In its ordinary meaning the word "use" as a noun, is the act of employing a thing putting into action or service; employing for or applying to a given purpose. But the word "use" occurs in Entry 52 List II of the Seventh Schedule to the Constitution sandwiched between "consumption" and "sale", and it must take colour from the context in which it occurs. It is a settled rule of interpretation that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general : Maxwell on Interpretation of Statutes, 11th Edition, p. 321. The coupling of three words "consumption", "use" and "sale" connotes that the underlying common idea was that either the title of the owner is transferred to another, or the thing or commodity ceases to exist in its original form. Unless is proved that the wool brought within the limits of the Notified Area Committee, Faridabad, by the appellant was intended to be so employed that it was to cease to be the original commercial commodity and was to become a new commodity or a component of a new commodity, no octroi would be levied by the Notified Area Committee on the entry of wool.

The Supreme Court emphasised that the expression "use" was not defined in the Act. In its ordinary meaning the word "Use" as a noun, was the act of employing a thing; putting into action or service; employing for or applying to a given purpose.

15. In the light of the aforesaid principles, in my opinion, if the carrier carries the goods into the metropolitan area for transit either through the entirety of the

metropolitan area or for part of it, then it cannot be said that the said vehicle enters into the metropolitan area for user. If that is the position, then the imposition of tax in respect of vehicles of the carriers as has been done under clause (2)(b) of Entry 71 by the Notification issued in 1972 under the Act as amended by the Notification dated the 16th March, 1978, under item 71(2) in respect of carriers of goods is bad.

16. It may be mentioned that s. 6 provides the State Government with power to impose tax "at such rate not exceeding the rates specified in the corresponding entry in column 3 of the Schedule". Now, the corresponding entry in column 3 of the Schedule indicates power to impose tax ad valorem. By sub-clause (iii) of clause (b) of item 71(2) the imposition has been made at Rs. 10/- per vehicle. This was challenged by the learned Advocate for the petitioners on the ground that it was beyond the power. I shall deal with this aspect later. But I think the fact that the duty as specified in the Schedule ad valorem indicate that it could not be contemplated that there should be an imposition of tax for each entry ad valorem in respect of vehicles which operate as carriers of goods and enter into the Calcutta metropolitan area. In that view of the matter, for the reasons mentioned above this Notification as applicable to carriers on the first aspect of the matter cannot, in my opinion, be sustained.

17. It was then argued that the imposition as was done by the Notification issued in 1972 and as amended by the Notification of 1978 was bad because by the said Notification the items of goods have been expanded which the State Government was not competent to do, because tax could only be imposed on "specified goods" and the specified goods were those which were mentioned in the schedule. I am unable, however, to accept this contention urged on behalf of the petitioners. It appears to me that by the impugned Notification of 1972 as amended by the subsequent Notification of 1978, the specified goods were not being added or amended. What was done was to fix a rate and to sub-classify the items which included vehicles into sub-classes for fixation of rates. Therefore, this Notification on this ground cannot in my opinion, be challenged. It was, then, argued that the imposition was at a particular rate indicating Rs. 10/- per vehicle which, according to the learned Advocate for the petitioners, was unwarranted by S. 6 because duty could be levied ad valorem only and there was no jurisdiction to change basis of levy. I am also unable to accept this contention because what the S. 6 contemplated was to fix the upper limit of the power to impose the levy and if it could be demonstrated that the imposition done even on a different basis did not exceed the rate as contemplated by the Act, then the exercise of such power by the impugned Notification cannot be challenged. It was, then, urged that the classification of the different vehicle for the imposition of duties was bad and arbitrary and was therefore violative of Article 14 of the Constitution. It was argued that vehicles which are registered in the Calcutta Metropolitan Area or which have recorded garage addresses have been exempted while other vehicles have been subjected to duties. The principles applicable in judging the question of violation of Article 14 of the Constitution are well settled.

I may refer to the recent decision of the Supreme Court in the case of Avinder Singh and Others Vs. State of Punjab and Others, . The object of the Act is clear and keeping that object in view if the Legislature thought that vehicles which are registered in the Calcutta Metropolitan area or have recorded garage addresses form a separate class from other types of vehicles, then, in my opinion, the action cannot be condemned as violative of Article 14 of the Constitution. In this connection it was also urged that the State Government had not purported to exercise the power under S. 35. That question, in my opinion, does not arise because here there is no question of exempting any goods. But in the view I have taken on the main and the substantial aspect of the matter that is to say that when a carrier brings his vehicle into the Calcutta Metropolitan Area for carriage of goods to the Metropolitan Area, does not enter "into" the Metropolitan area for use of the vehicle in the Metropolitan Area, the imposition in respect of the vehicles belonging to the carriers is bad.

18. In the premises, the Notification dated the 1st April, 1972, in so far as it relates to Item 71(2) (b) (iii) as amended by the Notification dated the 16th January, 1979 is quashed so far as the same relates to the vehicles of carriers are set aside and the respondents are restrained from the realising any taxes in respect of the same. I must, however, make it quite clear that as the petitioners came at very belated stage I do not think it would be appropriate in this case to grant any order of refund in respect of the taxes that have been realized pursuant to the Notification issued in 1972. But future realization is restrained. The Rule is made absolute to the extent indicated above. There will, however, be no order as to costs.

19. For a period of four weeks from date the petitioner will not transfer the vehicles mentioned in the petition.