

(1975) 07 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 2649, 2650, 3020, 3168, 3245, 3247, 3315, 3521, 3949, 4244, 4245 and 4375 of 1973

Elgin Mills Co. Ltd.

APPELLANT

Vs

The Nagar Mahapalika, Kanpur and Others

RESPONDENT

Date of Decision : 22-07-1975

Acts Referred:

Constitution of India, 1950 — Article 301

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 172, 172(2), 203

Citation : AIR 1976 All 274

Hon'ble Judges : K.B. Asthana, C.J.; Satish Chandra, J

Bench : Division Bench

Advocate : V.B. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This and the companion writ petitions raise the same points. They can conveniently, be decided by a common judgment.

2. Mr. S. C. Khare, who led the various counsel appearing in the different writ petitions, treated the writ petition filed by Messrs. Elgin Mills Co. Ltd., Kanpur, as the leading case.

3. This group of writ petitions challenges the validity of the notification dated 1st April, 1973, whereby the Nagar Mahapalika, Kanpur, imposed octroi duty on a large number of goods. The Elgin Mills Co's, case is that it imported mineral oils, steam coal and spare parts of machinery amongst a large number of other things for manufacturing cotton textiles and cotton piece goods at its factory. The aforesaid commodities were exempt from octroi duty under a notification dated 24th October, 1925, issued by the State Government u/s 128 of the U. P. Municipalities Act. This notification was continued in force by Section 577 (a) of the Nagar Mahapalika Adhiniyam 1959, and so, in any event, the Nagar Mahapalika, Kanpur, could not validly levy the octroi on mineral oil, steam coal and spare parts of machinery. The imposition of octroi was challenged on the

following main grounds:--

(a) That the procedure prescribed by the Nagar Mahapalika Adhiniyam for imposition of such a tax was not followed.

(b) That the petitioner company did not import goods and commodities either for use, consumption or sale within the territorial limits of the Nagar Mahapalika, Kanpur. It was hence not liable to pay octroi.

(c) That the levy of octroi violated the freedom of trade guaranteed by Articles 301 and 304(a) of the Constitution. Since the requirements of Article 304(b) of the Constitution were not complied with, the levy was unconstitutional.

4. The first contention raised by Sri S. C. Khare, learned counsel for the petitioner, was that in the exercise of power u/s 172 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, by its Sub-section (2) (b) octroi can be levied on goods or animals brought within the city for consumption, use or sale therein, which is co-extensive with the legislative power of the State under Entry 52, List II, of Seventh Schedule of the Constitution, conferring power on a State Government to levy taxes on the entry of goods into a local area for consumption, use or sale therein. It was submitted that the Mill does not import any of the raw materials in the local limits of Kanpur Nagar Mahapalika for consumption, use or sale therein. The contention was that the Mill in its manufacturing process uses raw materials so imported which undergo a process of conversion only, they being neither used, consumed or sold by the Mill. There is no tenability in this contention. The raw materials like steam coal, dyes and chemical cotton yarn are all used by the Mill in manufacturing cotton textiles and cotton piece goods. The argument that these materials only undergo a process of conversion and, therefore, do not get consumed by use but simply undergo transformation is devoid of force. Steam coal is burnt away in the process of producing steam for supplying energy for movement of the machinery or for supplying heat to other manufacturing process and is thus consumed. It does not transform itself into some other material. Likewise, the machinery or spare parts of the machinery are all used and consumed in course of time. Similarly, dyes and other chemicals are consumed. Even for a moment if it were assumed that they merely transform themselves by a process of conversion and they become an ingredient of final product, meant for sale, then such material in a transformed form is sold along with the product. There is no escape from the conclusion that the raw materials imported by the Mill in the limits of Nagar Mahapalika, Kanpur, are consumed, used or sold. The legality of the imposition of octroi on this ground cannot be questioned.

5. The second contention raised was that the mandatory provision for imposition of the octroi as laid down under Sections 199 and 203 of the Adhiniyam having not been complied with, the imposition was bad. It was pointed out that no special resolution directing the imposition of the octroi with effect from a specified date was ever passed by the Nagar Mahapalika as required by Section

203 (2) of which previous publication was necessary. From the counter-affidavit it clearly appears that the Government duly sanctioned the proposals, forwarded by the Nagar Mahapalika, and after taking into consideration the draft rules submitted by the Nagar Mahapalika, the State Government proceeded to frame rules and communicated the sanction vide its letter dated 7-3-1973, which was received by the Nagar Mahapalika on 8-3-1973. The Nagar Mahapalika on receipt of the said letter passed a special resolution No. 380 in its meeting dated 21-3-1973 directing the imposition of tax with effect from 1-4-1973. A copy of the said resolution is Annexure 22 to the counter-affidavit. The said resolution was submitted to the State Government which duly notified the imposition of octroi with effect from 1-4-1973. Vide U. P. Gazette Extraordinary, dated 1-4-1973. The learned counsel for the petitioner tried to make an argument on the basis of a letter from the Under Secretary of the State Government to the Mukhya Nagar Adhikari, Kanpur, dated 7-3-1973, that the State Government had sanctioned the imposition even before the special resolution was passed by the Nagar Mahapalika, and the Government without waiting for such a resolution had issued the Gazette Extraordinary dated 1-4-1973. In this letter there is mention of the Rules having already been framed and ready to be gazetted and directs the Nagar Mahapalika to follow the procedure laid down under Sections 202 and 203 of the Adhiniyam and send its proposal to the Government about the date from which the imposition of octroi be made effective. The Nagar Mahapalika, as already said, on 23-3-1973 passed the necessary resolution and intimated the Government the effective date as 1-4-1973. The preparation of the draft of the rules in advance would not affect the validity of the procedure adopted which conforms to the requirement of the law. It was only after the special resolution had been passed by the Nagar Mahapalika, fixing the date of the imposition of octroi, that the State Government published the Rules in the Gazette Extraordinary dated 1-4-1973. The contention that publication should have been earlier and not on 1-4-1973 itself, the date fixed for imposition of the octroi, has no tenability as there is nothing in Section 203 of the Adhiniyam to show that the notification must be prior and not contemporaneous with the date on which the imposition is made effective. It is clear from the own affidavit of the Mill that the proposals were published in local news papers and Government Gazette inviting objections. In fact the objections by the Mill were made through Merchant's Chamber, of which the Mill was a member. After the objections had been considered by the Nagar Mahapalika, its proposals along with the objections were submitted by the Mukhya Nagar Adhikari to the State Government.

6. There had thus been substantial compliance of the procedure. The attack on this ground also fails.

7. The third but the principal point was that this levy violated Article 301. Entry 52 of list II of the Seventh Schedule of the Constitution of India authorises the State Legislature to make laws imposing taxes on the entry of goods into a local area for consumption, use or sale therein.

8. The Legislature of the State of U.P. passed the U. P. Nagar Mahapalika Adhiniyam, 2 of 1959, on or about the 17th September, 1958. The Government had reserved this Bill for consideration of the President under Article 200 of the Constitution. The President gave his assent on 22nd January, 1959, whereafter the Act was published in the U.P. Gazette Extraordinary, dated 24th January, 1959. Chapter I of the Act came into force immediately on its publication. The Nagar Mahapalika, Kanpur, was constituted with effect from 1st February, 1960, by a notification issued u/s 3 of the Act.

9. Section 114 of the Adhiniyam lays down several and diverse statutory duties and functions, such as construction and maintenance and repairs of the roads, lighting of streets, provision of water facilities of conservancy and sanitation maintenance of market etc. In order to raise funds and revenue to carry on the administration of its statutory duties Section 172 of the Adhiniyam authorises the Nagar Mahapalika to impose a variety of taxes mentioned in it. Clause (b) of Sub-section (2) thereof provides for an octroi on goods or animals brought within the city for consumption, use or sale therein. Sub-section (3) provides that the Mahapalika taxes shall be assessed and levied in accordance with the provisions of the Act and the rules and bye-laws framed thereunder. Sections 199 to 203 of the Adhiniyam lay down the procedure that has to be followed by the Mahapalika in imposing taxes specified in Sub-section (2) of Section 172. Section 205 provides that whenever it appears, on complaint made or otherwise to the State Government, that the levy of any tax is contrary to the public interests, or that any tax is unfair in its incidence, the State Government may, after considering the explanation of the Mahapalika concerned, by order require such Mahapalika to take measures within a time to be specified in the order, for the removal of any defect which it considers to exist in the tax or in the method of assessing or collecting the tax. Under Sub-section (2) if the Mahapalika fails to comply the State Government can suspend the levy of the tax or may abolish or reduce the tax.

10. On March 30, 1973, the Governor of U. P. issued a notification, in exercise of the powers under Sub-section (2) of Section 203 of the Nagar Mahapalika, Adhiniyam notifying that the Nagar Mahapalika, Kanpur, has, in exercise of the powers conferred by Clause (b) of Sub-section (2) of Section 172 of the Adhiniyam, imposed the following tax with effect, from April 1, 1973, namely, an octroi on goods and animals brought within the octroi limits of the Nagar Mahapalika, Kanpur, for consumption, use or sale therein to be levied at the rates shown in the Schedule and subject to the exemptions given therein. The Schedule prescribes the rates for a large variety of goods. Thereafter the notification gives a list of articles which are exempt from octroi. Simultaneously with this notification the Nagar Mahapalika Kanpur Octroi Rules, 1973, also came into force with effect from 1st April, 1973. Under Rule 5 goods imported into the octroi limits of the Mahapalika, which are liable to the payment of octroi are to be dealt with in one of the following ways:--

- (a) The goods may be assessed at the barrier;
- (b) all goods or part thereof may be taken to the head office and assessed there.
- (c) they may be assessed under the rules applicable to goods imported by railway;
- (d) the octroi may be compounded.
- (e) where a mill or an establishment has the facility of railway siding, an agreement for payment of octroi may be entered into in the form given in Appendix Kha;
- (f) in case of the mills or factories which have their own railway sidings, they shall submit statements regarding the import of goods at their sidings within a week of such import and the octroi thereon shall be paid within a week of the expiry of the month in which the goods have been so imported.
- (g) the octroi may be charged by the Mahapalika in the following manner--
 - (i) through the railway; or
 - (ii) by setting up a barrier near the gate of the mill railway siding;
 - (iii) by entering into an agreement with the mills as in appendix Kha.

Rule 15 provides that no octroi shall be levied on goods which are sent out of the octroi limits without being taken delivery of or without being taken out of the railway yard. Rule 18 provides that if the goods are declared to be imported for consumption, use or sale within the octroi limits, the moharrir shall assess the octroi according to the rates mentioned in the schedule. If the goods are declared to have been imported for immediate export, the moharrir shall deal with them in accordance with the procedure laid down in the Transit Pass Rules framed by the State Government from time to time.

11. Appendix kha to these Rules pro-vides the form of agreement between the Mahapalika and a mill having a railway mill siding for providing facility to pay octroi realisable on the import of goods in the mill siding on a monthly basis. The mill has to furnish to the Mahapalika a fortnightly statement of account in respect of the goods imported by the mill, and payment of the octroi has to be made within seven days from the date of the receipt of the account. The mill has to make an initial deposit as a sort of security.

12. Mr. Khare, learned counsel for the petitioner, submitted that the octroi in question is the levy of a tax on the entry or movement of goods into the local limits of the Nagar Mahapalika. It directly hampers the free flow of trade between the traders situate within the Nagar Mahapalika of Kanpur and the rest of the country. In this way, the levy contravenes Article 301 of the Constitution, which guarantees freedom of trade, commerce and intercourse by providing that subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free.

13. The respondent Nagar Mahapalika as well as the State have contested the petition. On their behalf it was urged that the impost of octroi does not hamper or impede the free flow or movement of trade. It slightly adds to the burden of the trader, who, in his turn is fully competent to pass it on to the consumer. The levy hence does not contravene Article 301 of the Constitution.

14. In the next place it was submitted that the octroi is a compensatory tax and is hence outside the purview of Article 301.

15. Lastly, it was argued that, in any event, the provisions of Article 304(b) of the Constitution have been complied with and the levy is constitutionally valid.

16. Article 301 along with other provisions of Part XIII of the Constitution came up for consideration before the Supreme Court in *Atiabari Tea Co., Ltd. v. The State of Assam*, AIR 1961 SC 232, Gajendragadkar, J. (as he then was) stated the majority view:--

"Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. Our conclusion, therefore, is that when Article 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Article 301, and its validity can be sustained only if it satisfied the requirements of Article 302 or Article 304 of Part XIII".

17. The decision in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, was reconsidered by the Supreme Court in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . The majority judgment of Das, J., stated that the interpretation which was accepted by the majority in the *Atiabari Tea Co.* case is correct, but subject to this clarification that regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301. Earlier in the judgment it was observed:--

"Such regulatory measures as do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Article 301. They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper trade, commerce and intercourse but rather facilitate them."

Subba Rao, J., concurred in this view and said:--

"(1) Article 301 declares a right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State, or other impediments operating as such barriers.

(2) The said freedom is not impeded, but, on the other hand, promoted by regulations creating conditions for the free movement of trade, such as, police regulations, provisions for services, maintenance of roads, provision for aerodromes, wharfs etc., with or without compensation."

18. After referring to these decisions, Raghubar Dayal, J., in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, held that it is now well settled that taxing laws can be restrictions of trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures. The same view was taken in a number of other decisions of the Supreme Court, see *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, . *Kalyani Stores Vs. The State of Orissa and Others*, ; *State of Madras v. N. K. Nataraja Mudaliar* AIR 1969 SC 147 ; *S. Kodar Vs. State of Kerala*, and *Shaik Madar Saheb and Others Vs. The State of Andhra Pradesh and Others*, .

19. In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, the Supreme Court, after referring to *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, held that the decision in *Automobile Transport (Rajasthan) Ltd. case* practically overruled the decision in *Atiabari's case* in so far as it held that if a State Legislature wanted to impose tax to raise moneys necessary in order to maintain roads, that could only be done after obtaining the sanction of the President as provided under Article 304(b). The law was declared to be that regulatory measures or compensatory taxes did not come within the purview of Article 301 and that such measures need not comply with the requirements of Article 304(b), because such compensatory taxes are not restrictions upon the movement part of trade and commerce.

20. Elaborating the concept of compensatory taxes, S. K. Das, J., in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, observed:--

"The taxes are compensatory taxes which instead of hampering trade, commerce and intercourse facilitate them by providing roads and maintaining the roads in a good state of repairs. Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor* do we think that it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test and in the nature of things

that cannot be done."

21. The question whether imposition of a particular tax violates the freedom of trade, commerce and intercourse and whether it is a compensatory tax is not a matter of doctrinaire approach or textual interpretation. It is a mixed question, the answer to which largely depends upon the substance of the matter and the reality of its impact on the trade or its movements and whether it, in its true nature and character, is a levy primarily as a recompense for providing facilities. This is the effect of the Supreme Court decision in *The State of Kerala Vs. A.B. Abdul Kadir and Others*, . It was held in that case that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so. Every case must be judged on its own facts and in its own setting of time and circumstance. Referring to its decision in *Kalyani Stores Vs. The State of Orissa and Others*, it was observed that the Court did not intend to lay down the proposition that the imposition of a duty or tax in every case would be tantamount per se to an infringement of Article 301.

22 In paragraph 15 of the supplementary counter-affidavit of Gorakh Nath Pandey filed on behalf of the Nagar Mahapalika it has been stated:--

15. That in the alternative it is submitted that the octroi is compensatory in nature. The Nagar Mahapalika, Kanpur, has provided for a large area known as Transport Nagar, where facility for parking of trucks loading and unloading of goods has been provided for. Besides trucks provision for the loading of goods from the thelas and other conveyances for taking and bringing the goods to and from the city have been provided for. Provision for additional wider roads has been made in this area. The Nagar Mahapalika has also provided for additional water, lighting and facilities for conservancy sanitation to meet the rush of trucks, thelas, bullockcarts etc., which brings goods in the city. The corporation spends several lakhs of rupees for providing the above facilities and also for maintenance and repairs of roads of this area."

23. Paragraphs 16 and 17 of this affidavit are also, relevant. They state:--

"16. That besides the above the Nagar Mahapalika has provided for large markets for sale of grain, fruit market, potato market, vegetable market, timber market etc., where the corporation has provided similar facilities as in the Transport Nagar mentioned above.

17. That Kanpur is a big business centre and huge quantities of goods are imported and exported every day. The corporation has to provide for additional facilities for handling of this import and export of goods every day and a large portion of octroi which is realised is spent to make provision for the facilities mentioned above. The octroi is therefore compensatory in nature."

24. We have carefully looked into the paper book, but find that the petitioners have not filed any reply to this supplementary counter affidavit. There is no denial of the facts stated in paragraphs 15, 16 and 17 mentioned above. From

these averments it is clear that the money derived from octroi is being largely spent on the Transport Nagar and on providing additional facilities to the trade and tradesmen who bring goods into the local limits of the Nagar Mahapalika of Kanpur. The assertion that the octroi is compensatory in nature is clearly brought out by these factual averments.

25. In *The Orissa Ceramic Industries Ltd. and Others Vs. Executive Officer, Jharsuguda Municipality and Others*, Narasimham, C. J., held that:

"There can be no doubt that an octroi duty levied by the Municipality is essentially a compensatory tax. The Municipality is required to provide certain amenities not only for the permanent residents within the Municipality but also even for casual visitors who may on occasions enter the limits of the Municipality. The entry of large quantities of goods within the Municipality almost daily from outside necessarily creates innumerable problems, such as provision of water, supply of lightening facilities and facilities for conservancy, sanitation etc., maintenance of good roads and markets etc. These are all within the well-defined purposes of a Municipality and u/s 117 any tax collected must be utilised for those purposes.

Hence if with a view to meet the extra expenditure involved in solving the problems created by the daily influx of people carrying goods within Municipal limits the Municipality imposes an octroi duty with a view to increase its income, it must be held that such an octroi duty is essentially a compensatory tax."

26. In the present case the Nagar Mahapalika, Kanpur, is providing extra and additional facilities to the trade and has imposed octroi in order to recoup itself. Clearly there is a rational nexus between the levy of octroi and the furnishing of facilities to the trade, commerce and intercourse in the local limits of the Nagar Mahapalika, Kanpur. The imposition being compensatory in nature is outside the purview of Article 301 of the Constitution and is a valid impost.

27. As already seen, Article 301 secures freedom from obstruction to the free movement or transport of goods from one place to another in the country. It seeks to ensure what is called commercial or economic unity of the country, Article 301 covers and safeguards the movement or transport from the time it commences till it terminates. It guarantees unhampered movement within these two termini. It does not concern itself with the fate of the goods or the trade in general before the movement is commenced or at or after their movement has in the normal course come to an end. The aim of Article 301 is to prevent restrictions or barriers on the way, that is, in between the two termini. Taxation has now been recognised to be one way in which the movement of trade can be restricted. If the levy of a tax directly impedes or hampers this movement, it will contravene Article 301.

28. The question, however, is whether a tax, which is imposed on goods or commodities before they commence their movement in the course of trade or commerce, like excise duty, which generally is imposed on the event of

manufacture or production of an article, will attract Article 301. Normally, and unless it be proved that in reality the levy of excise duty is not on manufacture but really on the movement, the levy of excise duty would be outside the purview of Article 301 for the simple reason that it is an imposition on manufacture, an event which takes place prior to the commencement of the movement of the commodity in the course of trade or commerce.

29. In our opinion the same principle would apply to the levy of a tax at a place where the movement or transport of goods or commodities terminates. If a particular commodity is ordered by a tradesman of Kanpur from any place outside the Municipal limits of Kanpur, the movement or transport of such goods comes to an end at Kanpur. Such goods - cannot be said to be in the course of movement when they have reached Kanpur. Their movement or transport has ended. If a tax is imposed at a place where the movement has come to an end, could it be said that the levy is directly and immediately on the movement or transport as such and simpliciter?

30. In the present case the octroi has been imposed on "import within the local limits of the Nagar Mahapalika of goods for the purpose of consumption, use or sale therein. This tax is not imposable on goods which are imported into the territories of Nagar Mahapalika, Kanpur, for a purpose other than consumption, use or sale within it. Under the rules framed by the Nagar Mahapalika for the assessment and collection of the octroi it has been made clear that no octroi is leviable on goods which are exported in the same form or which are in the course of transit through the territories of Nagar Mahapalika, Kanpur. The levy is confined to those goods which are brought for the purpose of being used, consumed or sold within the Mahapalika limits. Since the movement of goods which are brought for the purpose of consumption, use or sale in the city has in its very nature to terminate in the city, because after being brought here they are to be consumed, used or sold here and not to be subjected to any further movement or transport in the course of trade, the imposition of octroi is, under the circumstances, not directly upon the movement or transport but on the event of the goods being brought for consumption, use or sale inside the local area. The tax is directly on the proclaimed event of consumption, use or sale of goods which are not locally produced inside the territories of the Mahapalika, but are brought from outside it for that purpose. In our opinion the levy of octroi is, on facts and in its true nature and character, not an imposition of tax on the free flow or movement of goods in the course of trade and commerce.

31. In *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, Hidayatullah, J. (as he then was) observed that 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 were leviable in respect of goods brought into a Municipal area for

consumption or use or sale. This would suggest that octroi was not a tax directly on the traffic or movement of goods but is primarily on their consumption or use or sale within a local area.

32. The fact that the tax is payable at the barrier which is usually placed at the territorial boundary of the Nagar Mahapalika is, in our opinion, not decisive. A perusal of the rules shows that the Nagar Mahapalika has evolved several methods for collecting this tax, depending on the convenience of the Mahapalika as well as the tax payer. Tax is payable at the railway barrier in respect of goods which are imported through rail. Admittedly the rail barrier is placed at a point which is inside the boundary of the territories of the Nagar Mahapalika. Mills which have a railway siding can pay tax on a monthly basis. It is not in every case necessary that a tax must be paid before the goods can be brought into the Nagar Mahapalika limits,

33. In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, Gajendragadkar, J., speaking for the majority held that--

"If the transport of the movement of goods is taxed solely on the basis that the goods are thus carried or transported that in our opinion, directly affects the freedom of trade as contemplated by Article 301."

34. As already seen, the octroi is not a tax solely or simpliciter on the carriage or transport of goods. The levy of octroi in the present case does not, in our opinion, violate the guarantee of Article 301. In this view it is unnecessary to consider if the levy satisfies Article 304(b) of the Constitution.

35. It was then urged that the State Government had u/s 128 of the U. P. Municipalities Act issued a notification dated 24th October, 1925, debarring Municipal Boards from levying octroi on mineral oil, machinery of the kind mentioned in it and coal, excepting coke and cinder. It was urged that the aforesaid notification was continued by Section 577 (a) of the Adhiniyam. The Nagar Mahapalika hence was not entitled to levy octroi on these commodities.

36. Under clause (a) of Section 577 of the Adhiniyam a notification issued under the U. P. Municipalities Act, 1916, continues in force until it is superseded by any notification, notice, tax-rule or bye-law issued under the Adhiniyam. The impugned notification as well as the rules framed by the Nagar Mahapalika along with it were, on the argument of learned counsel for the petitioner himself, inconsistent with the notification of 1925. In view of this inconsistency the notification of 1925 will cease to operate on the coming into force of the impugned notification. There is no substance in this plea.

37. The last submission of learned counsel for the petitioner was that items which are not produced in the State of Uttar Pradesh cannot be subjected to octroi tax levy. In the supplementary affidavit of B. C. Agarwal, filed on behalf of the petitioner, it has been stated that a large number of items which the petitioner is using such as steam coal, cotton, lubricant oil, dyes and chemicals

are not produced in the State of Uttar Pradesh. These items are imported from outside the State to Uttar Pradesh. It was also stated in this affidavit that octroi levy on the aforesaid goods infringes Article 304 of the Constitution. The Nagar Mahapalika filed an affidavit in reply, and averred that it is not admitted that the commodities mentioned by the petitioner are really used and consumed by the petitioner nor that they are imported from outside Uttar Pradesh. It was also stated that even the State or places from which the materials are imported have not been indicated and the averments are quite vague and indefinite. It was further stated that octroi is levied on import of goods in a local area irrespective of the fact whether they are imported from outside the State or are produced within the State, and that assuming that the said goods are imported, there is no discrimination inasmuch as the goods whether imported from outside the State or produced in Uttar Pradesh are subject to the same octroi duty.

38. An affidavit in reply was also filed by Sri Surendra Bahadur on behalf of the State of Uttar Pradesh. In this affidavit it was averred that the deponent of the affidavit had no knowledge as to from where the petitioner imports articles such as steam coal, lubricant oil, dyes and chemicals. It was also alleged that the octroi is levied irrespective of the place from which the goods are imported. Goods produced in the State are subjected to the same levy as goods imported from outside.

39. In our opinion the petitioner has not satisfactorily established the basic facts, namely, that the commodities mentioned in its affidavit are imported from outside the State of Uttar Pradesh, In spite of a query raised in the counter affidavit it has not been clarified as to from where do the petitioners import these commodities, so that the fact could be tested or verified. The petitioner has not given details or specification of the lubricant oil, dyes, chemicals mentioned its behalf as not being produced in the State of Uttar Pradesh. In the absence of proper details the respondents could not be expected to verify and give adequate reply on the question whether these commodities are manufactured or produced inside the State of Uttar Pradesh. Such vague allegations in our opinion, cannot form a safe foundation for resting the law point that the levy violates Article 304(a) by imposing discriminatory taxes on outside goods. The octroi levied under the impugned notification is a general Tax, chargeable on all goods brought within the local area of Nagar Mahapalika, Kanpur, irrespective of their origin. Goods, whether produced in the State of Uttar Pradesh or brought from outside the State of Uttar Pradesh, are treated equally. No discrimination has been practised against goods brought from outside the State. It cannot hence be said that Article 304(a) has been contravened.

40. Furthermore, as explained by the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, as well as *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, Article 304(a) is an exception to Article 301. It will not be attracted to levy of a tax which is not a restriction on the freedom of trade, commerce and intercourse within meaning of Article 301.

It was expressly held in Automobile Transport (Rajasthan) Ltd., case that if a tax is compensatory it does not hamper trade and so does not contravene Article 301, and, therefore, it need not comply with Article 304. The same position will obtain for taxes which though not compensatory, yet do not impede the free flow of trade within meaning of Article 301. The validity of such taxes cannot be adjudged under Article 304(a),

41. The various points urged in support of the writ petition having failed, this petition and the connected petitions are dismissed with costs.