

(2010) 01 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1729 of 2003 and 1588 of 2006

Northern Coal Fields Limited

APPELLANT

Vs

State of Madhya Pradesh and Another
 Hindalco
Industries Ltd. and Another Vs State of Madhya Pradesh and
Others

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 66
Central Sales Tax Act, 1956 — Section 5(1)
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 11
Constitution of India, 1950 — Article 243X, 286, 286(1)
Madhya Pradesh Municipalities Act, 1961 — Section 113, 127(1), 127A(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 9
Municipal Corporation Act, 1956 — Section 132, 132(1), 132(6), 133
Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya
Pradesh Municipal Limits Rules, 1996 — Rule 3

Citation : (2010) ILR (MP) 1304 : (2010) 2 MPHT 202 : (2010) 1 MPJR 196 :
(2010) 2 MPLJ 202 : (2010) 35 VST 158

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J

In these writ petitions, the Petitioners, Northern Coal Fields Ltd. and M/s. Hindalco Industries Limited and another, assailed the constitutional validity of the Rules known as the Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules, 1996, inasmuch as Corporation is collecting the terminal tax at Rs. 5 per ton.

It is averred in W. P. No. 1729 of 2003 filed by the Northern Coal Field Limited that the company is engaged in extraction and sale of coal, mainly to the core sectors for production and generation of electrical energy. Coal is extracted from the coal bearing areas acquired under the Coal Bearing Areas (Acquisition and

Development) Act, 1957. Section 11 of the Coal Bearing Areas Act empowers the Central Government to direct vesting of land or rights in Government Company. Section 9 of the Mines and Mineral (Development and Regulation) Act, 1956 (hereinafter referred to as, the MMRD Act) provides for payment of royalty. The Petitioner submitted that the MMRD Act occupies the entire field and the State Legislature is denuded of legislative competence to enact any law on the subject in view of declaration made in Section 2 of the MMRD Act. Union List, i.e., List I, entry 54 which provides regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest. Entry 97 of List I of the Seventh Schedule has also been relied upon which provides any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. Entry 23 of List II of the State List contained in the Seventh Schedule has also been relied upon which provides regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union. The Municipal Corporation has passed a resolution on April 30, 2002 by proposal No. 13 and decided to impose terminal tax on coal at Rs. 5 per ton. A letter (P/2) dated August 30, 2002 was sent to the Petitioner. The Petitioner wrote a letter (P/3) requesting to clarify whether the same is applicable to the Petitioner-company or not. In reply Municipal Corporation sent a letter (P/4) enclosing the copy of notification dated May 27, 1995 in which map was published showing the boundaries of Municipal Corporation, Singrauli. The Petitioner objected to the action and sent a letter (P/5). Vide demand letter (P/6) dated November 18, 2002 Petitioner was required to submit the details regarding export of coal and deposit money at the rate prescribed by the Corporation. The Petitioner submits that the State Legislature is denuded of legislative competence under entry 23 of List II of the Seventh Schedule to the Constitution of India to impose any tax on minerals. With reference to Rule 3 of the Rules of 1996 it is submitted that Petitioner is neither engaged in export of the coal nor it sells coal for purpose of export. Purchasers are not obliged to export coal. The object of sale is not to export of coal outside the municipal limit. It is also submitted that Section 132(6) (n) of the Municipal Corporation Act, 1956 authorizes the Corporation to impose a terminal tax on goods or animals exported from the limits of the Corporation. As no export of coal is taking place tax cannot be collected. Rule 3 of the Rules of 1996 is arbitrary. Sections 132, 133 of the Municipal Corporation Act so far as gives power to Municipal Corporation, Singrauli to collect any tax on coal are arbitrary and in direct conflicts with MMRD Act. Entry 89 of Union List provides for imposition of terminal tax on goods or passengers carried by railways, sea or air, taxes on railway fares and freights. It is submitted that entry 56 has to be read with entry 52 of the List II. Hence, the petition has been preferred.

In the return filed on behalf of the State of M. P. it is contended that as per the provisions of Article 243X, Constitution of India, State is empowered to authorize municipalities to levy, collect and impose tax for the purpose of augmenting their

revenue so that they can function as the unit of self-governance. Entry 56 of List II of the Seventh Schedule to the Constitution of India empowers the State Legislature to make laws with respect to imposition of export/terminal tax on goods exported from the limits of the municipal corporation. Entry 5 of List II of the Seventh Schedule empowers the State Legislature to make laws in respect of local Government, their Constitution and power, etc. Thus, the State has rightly authorized the Municipalities to impose levy and collect export/terminal tax on goods exported from the limit of the municipal corporation area. The imposition of terminal tax on goods operates in a totally different field than imposition of tax on the mining of minerals. In *The Associated Cement Companies Ltd. Vs. State of M.P. and Others*, , the imposition of entry tax on mineral has been upheld. Entry tax is imposed by the State Legislature by enacting laws under entry 54 of List II of the Seventh Schedule to the Constitution of India and is a sister tax to export or terminal tax which the State Legislature has power to impose under entry 56 of List II of the Seventh Schedule. It is a tax on the export of goods from the local limits of the municipalities.

In the return and the additional return filed by the Municipal Corporation, Singrauli, entry 56 of List II of the Seventh Schedule has been relied upon and decision in M. P. No. 4139 of 1988 dated January 18, 1999 rendered by the Division Bench has been relied upon. The stand taken by the State has been supported. It is also submitted that taxing event is movement of goods beyond the limits of Corporation and tax is payable by who causes or who is responsible for such a movement. The Petitioner-company has been directed only to collect tax on behalf of the Corporation.

In W. P. No. 1588 of 2006 filed by M/s. Hindalco Industries Limited and another in addition it is averred in para 5.9 that the Municipal Corporation is also demanding the tax on the coal purchased by Petitioner No. 1 from the collieries situate outside the local limits of Municipal Corporation of Singrauli and being transported/transshipped through Singrauli. The Municipal Corporation is not authorized to levy and collect the tax on such coal since the resolution dated April 30, 2002 clearly imposes tax on the coal mine by NCL from the mines situated in Singrauli. It is also averred that the provisions of Section 132(6)(n) of the said Act, 1956 do not empower the Municipal Corporation to levy any such tax on export of coal bought by it from NCL and exported by Petitioner No. 1 to its captive power plant situated at Renusagar, District Sonbhadra in the State of Uttar Pradesh. Earlier on the coal so purchased by Petitioner No. 1 from the collieries of NCL, CCL and BCCL terminal tax was never charged by the Municipal Corporation, Singrauli on the transportation of coal. The trucks were stopped at the check-post/barrier put on by Municipal Corporation, Singrauli for recovery of terminal tax levied on coal by it. Section 132(6) (n) of Act of 1956 has no application in respect of coal in transit, thus demand of terminal tax on the check-post and barriers on NH-75E is without jurisdiction and in excess of the power conferred u/s 132 of the Act on Respondent No. 2. Vires of Section 132(6)(n) of the Act of 1956 have been also assailed by way of incorporating amendment in

the petition. In the reply-filed by Respondent Nos. 1 and 3 return filed in W. P. No. 1729 of 2003 has been adopted.

In the return filed by the Municipal Corporation, Singrauli, in W. P. No. 1588 of 2006, inter alia, it is contended that the tax has been imposed on different field. Reliance has been placed on the decision of the apex court in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, . With respect to coal purchased by the Petitioner from collieries situated outside the local limit of the answering Respondent, it is submitted that the terminal tax is leviable by the answering Respondent on any coal being taken out of the municipal limits of the answering Respondent. The Petitioner dumps the coal on the railway siding, or in its vicinity, having unloaded the same from the railway wagons. Thereafter the coal remains dumped for a considerable length of time and is later picked up by the Petitioner by getting it loaded onto trucks for its transport to its captive power plant situated at Renusagar, Sonbhadra, U. P. The Petitioner cannot avoid its liability to pay terminal tax on such coal inasmuch as the same is exigible to terminal tax having been dumped inside municipal limits for a long and uncertain periods of time. Thus, submission deserves to be rejected.

Shri Rohit Arya, learned senior counsel appearing on behalf of the Petitioners, has submitted that within the purview of Section 132(6) (n) and 132(6)(o) of the Act of 1956 the State is not empowered to levy the tax on the coal. M/s. Hindalco Industries Limited purchases coal from NCL collieries situate within the municipal corporation limit at Singrauli and also from the other States and transport it to Renusagar. State Legislature or Municipal Corporation are not empowered to levy tax on coal. No entry in the Seventh Schedule empowers to impose such tax by Corporation or State. Field is covered by entry 89 of List I, i.e., Union List, terminal tax on goods or passengers can be imposed by the Central Government. Entry 52 of List II, i.e., State List, authorizes the State Government to levy tax on entry of goods for consumption use or sale. As the goods are not consumed, used or sold within the corporation area, it is not permissible to impose the tax within the purview of entry 54. Counsel has also submitted that entry 56 which provides for taxes on goods and passengers carried by road, inland water ways cannot be used so as to impose the tax on coal. Entry 54 of List II which provides taxes on sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I cannot be invoked for imposition of such a tax. Entry 92A of List I provides taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce. Counsel has also submitted that the Division Bench of this Court in *Monji Kalyanji v. State of Madhya Pradesh* [1987] MPLJ 643 has not taken the correct view inasmuch as it is held that imposition of terminal tax on import and export of goods by road is covered by entry 56 of List II of Schedule VII to the Constitution of India and the State Legislature has the power to impose it. The aforesaid view taken by the Division Bench of this Court deserves to be reconsidered. The decision in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, does not come in

the way of the Petitioner as in the instant case different entries are involved. It was laid down in the said decision that it was tax on the land and was covered under entries 49 and 50 of List II.

Shri R. D. Jain, learned Advocate-General, appearing with Shri Purushendra Kaurav, Deputy Advocate-General, has submitted that by virtue of entries 5, 23 and 56 of List II, the State/Corporation is to frame the rules and consequently the Corporation could have imposed the tax, the field is not covered under entry 89 of List I. The imposition of the export tax in question is not covered under any of the entry in the Union List. Reliance is also placed on Article 243W and Article 243X of the Constitution. The decision in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, has been relied upon. Besides, it is submitted that u/s 132(6)(n) and 132(6) (o) of the Municipal Corporation Act, the rules have been framed and the aforesaid entries 5, 23 and 56 of List II have the different field to operate. Counsel has also submitted that there is no overlapping of legislation when pith and substance of legislation is seen.

Shri Anshuman Singh, learned Counsel appearing on behalf of the Municipal Corporation, Singrauli, has submitted that the rules have been framed in exercise of power u/s 132(6)(o) not u/s 132(6) (n), on the basis of Section 132(6)(n) which the petitions have been preferred. The aforesaid provision gives wider power for imposition of the tax. Rules are within the contemplation of provisions of Section 132(6)(o) and entries 50 and 56 of the List II.

Entry 54 of List I of the Union List contained in the Seventh Schedule of the Constitution provides thus:

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

In the aforesaid entry the regulation and development of mines and minerals is covered. Under entry 89 of List I terminal taxes on goods or passengers, carried by railway, sea or air, taxes on railway fares and freights are covered. Entry 89 of List I reads thus:

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

Entry 5 of List II reads as under:

5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.

Article 243W specifies the powers, authority and responsibilities of municipalities, etc., it intends to confer municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such

law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein. Article 243X provides power to impose taxes by, and funds, of the municipalities, the Legislature of a State may by law levy, collect and appropriate such taxes, duties, tolls and fees in accordance with, such procedure and subject to such limits. State may also assign to a municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits. The State has also power to provide for making, such grants-in-aid to the municipalities from the consolidated fund for the purpose specified in Article 243X(d).

Local self-Government is contemplated under entry 5 of List II of the Seventh Schedule. Entry 23 of List II provides for regulation of mines and mineral development subject to the provisions, of List I with respect to regulation and development under the control of the Union. Under entry 23 in case field is occupied by Central legislation power can be exercised in the field of regulation of mines and mineral development subject to such legislation not otherwise. In the instant case we are not concerned with regulation of mines and mineral development, but, we are concerned with the tax being levied on goods carried by road outside the municipal limit. Entry 89 of List I does not cover the situation when the goods are carried out by road. Entry 89 of List I covers the terminal tax on goods or passengers, carried by railway, sea or air. Thus, entry 56 has the different field to operate when tax is imposed on goods and passengers carried by roads.

Under Section 132 (6) (n) of Act 1956 the Municipal Corporation has been authorized to impose terminal tax on goods or animals exported from the limits of the Corporation. u/s 132(6) (o) of the Act 1956 the corporation as authorized to impose any other tax which the State Government has power to impose under the Constitution of India, with the prior approval of the State Government. Section 132(6)(n) and 132(6)(o) of Act 1956 are quoted below:

132. Taxes to be imposed under this Act.

(6) In addition to the taxes specified in Sub-section (1), the Corporation may, for the purpose 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:

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

Rule 3 of the Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules of 1996 vires of which have been questioned is quoted below:

3. Every person, businessman, establishment and the licence holder under the

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1971 (No. 24 of 1973), shall be responsible to collect the terminal tax on the goods at the rate specified in the Schedule, if he himself exports any goods as shown in the Schedule or sale for the purpose of export.

On the export of the goods terminal tax has been imposed which is to be collected by every person, businessman, establishment and the licence holder under the M. P. Krishi Upaj Mandi Adhiniyam, 1971 at the rate specified in the Schedule in case of export of goods outside the municipal limits. Coming to the instant case the Union has not imposed any restriction by enacting any law on the power of the State with respect to imposition of such tax. There is no provision in the MMRD Act which expressly or by implication deals with such tax as imposed by the Corporation or by the State. It is also settled even if two legislations under two different entries provide for imposition of two kind of taxes there would be no conflict as scope of entry 89 of List I is different from the scope of entry 56 of List II of the Seventh Schedule to the Constitution, thus, there can be two different legislations in the field under the aforesaid entries, and there is no overlapping as they operate in two different fields. The power to impose tax can be delegated by the State Legislature to local authority has not been disputed.

It is clear that the tax which has been imposed clearly falls within entry 56 of List II of the Seventh Schedule and no conflict is created by imposition of such tax with the power of the Union conferred under entry 89 of List I of the Seventh Schedule to the Constitution. In *Monji Kalyanji v. State of Madhya Pradesh* [1987] MPLJ 643 the Division Bench of this Court has opined while considering *pari materia* Section 127(1) (xvi) of the M. P. Municipalities Act which empowers a municipal council to impose terminal tax both on import and export covered by entry 56 of List II of the Seventh Schedule to the Constitution. That the terminal tax on export of goods by road from within municipal limits, imposed by the Municipal Committee, u/s 127(1) (xvi) of the M. P. Municipalities Act is valid. Such tax cannot fall under entry 89 of List I inasmuch as the said entry contemplates only such goods or passengers which are carried by railway, sea or air. It does not contemplate any terminal tax on goods or passengers carried by road or on inland waterways.

In *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, it has been held by the apex court that the taxes on mineral rights lie within the legislative competence of the State Legislature "subject to" any limitation imposed by Parliament by law relating to mineral development. The Central legislation has not placed any limitation on the power of the States to legislate in the field of taxation on mineral rights. The challenge to Constitutional validity of State legislation is founded on non-availability of legislative field to the State; it has not been the case of any of the writ Petitioners that there are limitations enacted by the Central legislation and the State of West Bengal has breached or crossed those limits. The apex court has laid down the principles that power of

"regulation and control" is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject-matter of two taxes by reference to the two Lists is different. Simply because the methodology of mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. There is a distinction between the subject of a tax and the measure of a tax. The apex court further laid down that the nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the Legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by the Legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax. The entries in Lists I and II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non obstante clause "subject to" does not arise. If there is conflict, effort has to be made to reconciliation and pith and substance has to be seen. After determining the field of legislation it has to be decided can an incidental trenching upon another field of legislation be ignored. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional. The apex court has emphasized that even if the methodology for working out the royalty payable and cess payable is the same, does not have any detrimental effect on the constitutional validity of the cess as one on mineral rights. As a tax the impugned levy of cess is clearly covered by entry 5 of List II read with entries 49 and 50 of List II. Central Legislation (MMRD Act, 1957) has not cast any limitation on the State Legislature's power to tax mineral rights, and the levy on mineral rights does not contravene any of the limitations imposed therein by the Parliament, the impugned cess is valid. Assuming the impugned cess to be a fee, it can equally be upheld by reference to List II, entry 66 read with entry 5. List II, entries 5, 23, 49, 50 and 66 provide adequate constitutional coverage to the impugned levy of cess. A tax on land would remain a tax on land and would not become a tax on the nature of its user. The West Bengal Taxation Laws (Amendment) Act, 1992 was held to be intra vires the Constitution.

In *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, it was held that the declaration contained in Section 2 of the MMRD Act

does not have the effect of bringing the powers, duties and functions of the local authority within the purview of occupied field. The aforesaid decision was approved in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, .

In *Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others*, it has been laid down that the properties of Union of India vesting in statutory corporations or Government companies are amenable to local authority as incidence of taxation is different and power of local authority conferred under different enactment. In *Western Coalfields Limited Vs. Municipal Council, Birsinghpur Pali and Another*, it was held that the property tax is leviable on buildings and lands owned by or vesting in Union Government u/s 127A(2) of the M.P. Municipalities Act, 1961. In *The Associated Cement Companies Ltd. Vs. State of M.P. and Others*, imposition of entry tax on lime which was brought to the factory was upheld as it was held that the factory is in local area.

M/s. Hindalco purchased the goods from Northern Coal Fields Ltd. Collieries situated in Singrauli and transport it to different destinations, thus, it is clearly an export, thus, imposition of terminal tax is attracted.

In *P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED]*, it has been laid down that taxes are raised for augmenting the general revenues of the State and not for any particular purpose, much less for rendering a particular service. In the instant case also for augmenting the revenue the aforesaid tax has been imposed. It cannot be said that it suffers with arbitrariness and Corporation is not rendering the service. Its purpose is to augment the Revenue.

Thus, in our view, Rule 3 of the Rules of 1996, Section 132(6)(n) and 132(6)(o) of Act of 1956 cannot be said to be ultra vires nor action of the Municipal Corporation, Singrauli of imposition of terminal tax on export of goods.

Coming to the submission made by Shri Rohit Arya, learned senior counsel, that the Corporation is also realizing the terminal tax on the goods which are brought from the outside and are taken out of the Municipal Corporation area immediately. He has submitted that in such event it is not permissible for the Municipal Corporation to exact terminal tax in the course of transit of goods. He has relied upon the decision of the apex court in *Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others*, in which the apex court has laid down the following proposition:

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

(1) Terminal tax and octroi are similar kinds of levies which are closely interlinked with (1) destination of the goods, (2) the user in the local area on arrival of the goods. Where the goods merely pass through a local area without being consumed therein the mere fact that the transport carrying the goods halt within the local area for transshipment or allied purposes would not justify the

levy of either the terminal tax or octroi duty. This is because the halting of the goods is only for an incidental purpose to effectuate the journey of the goods to the final destination by unloading, sorting and reloading them at a particular place.

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

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

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

The apex court has laid down in case goods are in course transit, halting of the goods in municipal area is only for an incidental purpose to effectuate the journey of the goods to the final destination, tax cannot be levied. The apex court has also laid down that there is very thin margin of difference between a terminal tax and octroi. In the case of the terminal tax the goods reach their final destination and their entry into the area of destination immediately attracts payment of terminal tax irrespective of their user. In the case of octroi, however, the tax is levied on goods for their use and consumption. The third preposition the apex court has laid down that the goods while halting at a local area should leave for their destination within a reasonable time which may depend on circumstances of each case and if the goods are kept within the area for such a long and indefinite period that the purpose of reaching the final destination lying in a different area is frustrated or defeated, they may be exigible to terminal tax. The stand of the Corporation is that the goods are dumped in the Municipal

Corporation area for long/indefinite time. Thus, it is a question of fact to be gone into each transaction. However, the decision of the apex court is clear when tax can be exacted. In case there is halting for a long indefinite period, the apex court has laid down terminal tax can be exacted. In case any dispute is raised, it is the function of the concerned authority to adjudicate upon the transaction. The proposition of law has been made clear by the apex court in *Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others*, .

The meaning of words "import and export" has been considered by the apex court in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, . In the said case *C. P. and Berar Municipalities Act and Terminal Tax Rules (Wardha)* were considered. The Municipal Committee was authorized by Section 66 to impose a terminal tax on goods or animals imported into or exported from the limits of the municipality. The question was whether the goods passing in transit through the municipal limits, without the municipal limits was liable to the terminal tax. It was held that by giving to the words "imported into or exported from", their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, 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 or 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 the 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 is hardly likely 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. The word "export" has reference to taking out of goods which had become part and parcel of the mass of the property of the local and will not apply to goods in transit for the purpose of being transported out of it. If the intention was to tax such goods then the word used should have been "re-exported" which means to export imported goods again. "Re-exportation" means the exportation of imported goods. *Shri Rohit Arya* has also relied upon the decision of the apex court in *Indian Oil Corporation Vs. Municipal Corporation, Jullundhar and others*, in which the apex court has laid down that entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature on the authority of entry 52 of List and Corporation obviously cannot have any authority more extensive than the authority of the State Legislature. Since the State Legislature in view of entry of goods for "consumption, use or sale" into a local area, the municipality cannot under a legislation, enacted in exercise of the powers conferred by entry 52 of List II cannot have the power to levy tax in respect of goods brought into the local area for purposes other than

consumption, use or sale. Section 113 of the Act has, therefore, reasonably to be read subject to the same limitation as are contained in entry 52 of List II of Schedule VII. The expression "imported into the city" used in Section 113 of the Act, as meaning "imported into the city for any purpose and without any limitation", would amount to attributing to the Legislature an intention to give a go-by to the restrictions contained in entry 52 of List II. That is not permissible. The expression "imported into the city" in Section 113, therefore, has to be interpreted as meaning "imported into the municipal limits for purpose of consumption, use or sale" only. Thus construed in the limited sense, Section 113 of the Municipal Act is not ultra vires entry 52 of List II of Schedule VII. There is no dispute with aforesaid proposition. In the instant case the entry attracted is different, i.e., entry 56 of List II of the Seventh Schedule to the Constitution.

The apex court in *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, has laid down that demand of tax from corporation not levied under a valid law can be challenged by the Corporation being a person. It has also been laid down by the apex court that in case demand of tax is not backed by valid law, is a threat to property. The apex court also dealt with Article 286(1) (b) of the Constitution read with Section 5(1) of the Central Sales Tax Act, restriction as to imposition of tax on sale or purchase of goods. The apex court in the context of sale in the course of export laid down that essential, tests of determine, first sale of coffee by Coffee Board to its registered exporter within Madras State, second sale by registered exporter to foreign buyer having no connection with first sale by Coffee Board, sale by Coffee Board was held to be not in course of export within Article 286. But, the factual situation in the instant case is totally different. It cannot be said that the tax has not been imposed in the course of export.

In view of the aforesaid discussion, we find no merit in these petitions and hold that Rule 3 of the Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules of 1996 and Section 132(6) (n) and 132 (6) (o) of the Municipal Corporation Act are intra vires to the Constitution. Petitions being devoid of merits deserve dismissal. Consequently, the petitions are hereby dismissed. No costs.