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**(1980) 11 GUJ CK 0006**  
**In the Gujarat High Court**

Wood Polymor Ltd.

APPELLANT

Vs

Billimora Nagar Palika

RESPONDENT

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**Date of Decision :** 28-11-1980

**Acts Referred:**

Billimora Municipal Octroi Rules — Rule 7

Central Excise Rules, 1944 — Rule 56A

Gujarat Municipalities Act, 1963 — Section 27(1)(1), 27(1)(1), 275(1)(1), 99(1)(iv)

**Citation :** (1980) 2 GLR 502

**Hon'ble Judges :** S.H. Sheth, J;G.T. Nanavati, J

**Bench :** Division Bench

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## Judgement

S.H. Sheth, J.—The petitioner is a company incorporated under the Indian Companies Act, 1956, and is engaged in manufacturing laminated sheets. It has got its factory at Billimora. IN order to manufacture laminated sheets, it has been importing paper which is used as one of the raw materials for the manufacture of its product. Billimora Municipality, which is the respondent, charges the petitioner octroi duty on the paper which it imports for the purpose of manufacturing its product. It is charged on the price of the imported paper as well as on the excise duty which the petitioner pays to the manufacturer of that imported commodity.

2. It is the case of the petitioner that, after laminated sheets are manufactured, it exports them out of Billimora. The petitioner claims that the Billimora Municipality is unlawfully refusing to refund to it the octroi duty paid by it on imported paper which is used by it as raw material for manufacturing laminated sheets which, in their turn, are exported out of Billimora octroi limits. Rule 7 of the Octroi rules of Billimora Municipality requires an importer to produce the original invoice and to make a declaration. It does not provide for refund of octroi duty paid on raw materials imported by a manufacturer into Billimora for manufacturing some other product which it exports out of Billimora. Therefore, the first contention which Mrs. Mehta who appears on behalf of the petitioner has raised is that Rule 7 of the Billimora Municipal Octroi Rules and Bye-laws is ultra

vires Section 99(1)(iv) and Section 27 (1)(1) of the Gujarat Municipalities Act, 1963.

3. In order to examine the contention raised by Mrs. Mehta, it is necessary to find out whether there is an obligation on the municipality to refund octroi duty paid under the circumstances under which the petitioner is required to pay it. Unless there is an absolute obligation, the petitioner cannot claim the refund of the octroi duty. Section 99 empowers a municipality to impose taxes specified therein. Clause(iv) of sub-sec.(1) of Section 99 which is material for the present purpose reads as follows:

Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely:

(iv) an octroi on animals or goods or both, brought within the octroi limits for consumption, use or sale therein.

Section 2(16) defines "octroi" in the following terms:

"octroi" means a tax on the entry of goods into the limits of a municipal borough for consumption, use or sale therein.

When Section 99(1)(iv) is read with Section 2(16), it clearly emerges that the municipality has the power to levy octroi on entry of animals and goods or both provided they have been imported within the octroi limits for consumption, use or sale therein.

4. In exercise of the power conferred upon the municipality by Section 99(1)(iv) read with Section 101 and Section 102 which lay down procedure for imposing the octroi duty, paper which the petitioner imports into Billimora octroi limits for the manufacture of laminated sheets has been subjected to octroi duty. There is no dispute about this fact. The combined reading of the relevant provisions also makes it clear that paper which the petitioner imports into Billimora octroi limits can be subjected to payment of octroi duty only if it is imported by the petitioner for consumption, use or sale within the municipal limits. It is not necessary in the instant case for us to expound the connotation of the expression "consumption, use or sale therein". After having clothed the municipality initially with the power to tax goods on their entry into the municipal limits, the Legislature has provided in Section 275(1)(1) circumstances under which octroi duty so collected shall be refunded to those who have paid it.

5. Section 275 in so far as it is material for the purpose of the present case reads thus:

A municipality may from time to time, make, alter or rescind by-laws not inconsistent with this Act:

... ..

(1) fixing octroi limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system, under which the refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not to be intended for consumption, use or sale within the municipal borough; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum amount for which any claim to refund may be made.

Clause (1) of Sub-section (1) of Section 275 enables a municipality to make bye-laws in respect of several matters relating to octroi. We are not concerned with all of them. Amongst others, Clause (1) enables a municipality to make bye-laws in respect of two matters with which we are concerned in the instant case:

(i) "regulating the system under which refunds are to be made on account thereof when the animals or goods" on which the octroi has been paid are again exported and (ii) "regulating the system under which refunds are to be made on account thereof when articles manufactured wholly or in part from such animals or goods, are again exported.

6. The question which has been canvassed before us is whether it is obligatory on the part of the municipality to provide in its bye-laws or a system regulating the refund of octroi paid on goods and articles out of which wholly or in part some other articles have been manufactured and which other articles have been exported out of the octroi limits. Whereas Mrs. Mehta has argued that Clause (1) of Sub-section (1) of Section 275 casts upon every municipality a mandatory obligation to provide for a system of refund in respect of these two subjects, Mr. Trivedi who appears on behalf of the municipality has argued that it is only an enabling provision and that, therefore, it is optional for the municipality to make the bye-laws if it so chooses. It is difficult to uphold the argument which has been raised by Mr. Trivedi. Merely because Sub-section (1) of Section 275 provides that "A municipality may... make...", it does not mean that it is within the discretion of the municipality to make bye-laws or not to make them in respect of the two subjects which have been specified above. Payment of octroi by an importer of goods confers upon him a right to obtain refund under the circumstances specified in Clause (1). Therefore, the power of making bye-laws conferred upon a municipality u/s 27(1)(1) projects itself into the rights of third parties. When such a power has been conferred upon a municipality in a language which purports to be directory, it is well settled that it should be construed to be mandatory. It is not an internal administrative power conferred upon a municipality to do or not to do a certain thing. If a municipality is empowered to constitute a committee, it may or may not constitute that committee unless there is compulsion to do so. It may be not exercise that power because it does not touch the rights of others. In the instant case, what is

termed by Mr. Trivedi as an enabling power touched the area of rights of citizens and, therefore, that power must be exercised. Secondly, it is difficult to uphold the argument raised by Mr. Trivedi because to do so is to hold that the entire power conferred upon a municipality under Clause (1) of Sub-section (1) of Section 275 is only an enabling or directory power. If we take that view, it may mean that even though a municipality may impose octroi on particular articles, it may or may not fix the octroi limits or stations. So also, it will have the direction or option to exhibit tables of octroi. It cannot be gainsaid that it is within the discretion of the municipality to levy octroi. But once a municipality decides to levy octroi it is bound the obligations which have been inscribed in Clause (1) of Sub-section (1) of Section 275. In other words, it cannot levy octroi without fixing octroi limits and stations or without providing for exhibition of tables of octroi or without regulating a system of refunds in respect of matters specified in Clause (1) of Sub-section (1) of Section 275. In our opinion, therefore, once a municipality exercises the power to levy octroi, it is under a strict obligation by virtue of the provisions of Clause (1) of Sub-section (1) of Section 275 to make bye-laws regulating the system under which refunds shall be made, indeed in respect of two matters specified above. We say so because we are concerned in this case with those two subjects only.

7. It has next been argued by Mr. Trivedi that the use of the expression "or" in the following expression which forms a part of Clause (1) of Sub-section (1) of Section 275 confers upon every municipality an option to regulate the system of refunds in respect of any one of the two matters, specified therein.

regulating... the system, under which refunds are to be made on account thereof when animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported." (We have underlined the "or" to which we are referring).

The argument which Mr. Trivedi has raised is indeed ingenious. However, on a closure scrutiny, it does not appear to us to be sound because by using the expression "or" which we have underlined, the Legislature has not left to the municipality to choose one of the two subjects. If the Legislature wanted to leave to the choice of municipality one of the two subjects for refund, the Legislature could as well have said that the municipality may make bye-laws regulating the system of refunds in respect of octroi duty paid on such articles as it thinks fit. The very fact that the Legislature has specified two subjects in relation to the refunds, though they are joined by the expression "or", shows that the Legislature wants the municipality to make bye-laws for the purpose of regulating the refunds in respect of those two matters.

8. The third argument which Mr. Trivedi has raised is that it is not obligatory on the part of a municipality to refund whole of the octroi duty collected by it in respect of articles out of which other articles are manufactured which other articles in their turn, are exported. A municipality, according to him, may as well provide for refund of a part of octroi duty in such case. It is not necessary for us,

strictly speaking to express any opinion on this aspect because Billimora municipality has not made any such bye-law. Therefore, the question of examining the validity of any such contention does not arise before us. Suffice it to say for the purpose of the present case that the expression "wholly or in part" used in the larger expression "articles" manufactured wholly or in part from such animals or goods" goes with the words "articles manufactured" and not with refund of octroi. In our opinion, the expression "wholly or in part" qualifies the expression "manufactured". Therefore, for the purpose of Clause (I) of Sub-section (1) of Section 275, it is immaterial whether goods which have been manufactured out of certain raw materials have been wholly manufactured out of them or have been partly manufactured out of them. In either case, octroi duty paid on such raw materials is refundable. The expression "wholly or in part" has been used to embrace the entire process of entry of the raw materials into the manufacture of a finished product. It does not have, in our opinion, any other connotation.

9. Indeed, Mr. Trivedi has tried to argue that it is within the discretion of every municipality to make a bye-law to provide for the refund of the whole of the octroi duty or a part thereof and that, therefore, no writ of mandamus can be issued. We are unable to uphold this argument for the simple reason that failure on the part of a municipality to make bye-laws to regulate the system of refund of octroi duty paid on dutiable goods cannot visit upon an importer or a citizen and deprive him of the benefit which the Legislature has conferred upon him under Clause (1) of Sub-section (1) of Section 275. We are, therefore, of the opinion that, though there is no substantive provision in regard to the refund of octroi duty, the provision contained in Clause (1) of Sub-section (1) of Section 275 casts upon every municipality a mandatory obligation to make bye-laws regulating the system of refunds in respect of two matters which have been specified therein.

10. Mr. Trivedi who appears on behalf of Billimora Municipality has invited our attention to Section 271 which, according to him, provides for the same situation. Section 271 requires a municipality to make rules and enables it to alter or rescind them from time to time. It is not necessary to state that u/s 271 no rule can be framed by a municipality which is inconsistent with the Act and the rules or orders made by the State Government under the Act. In the instant case, the expression "not inconsistent with this Act and the rules or orders made by the State Government under this Act" has no relevance. We are, therefore, omitting it from our consideration. Section 271 opens with the expression: "A municipality shall make rules...." One of the subjects which has been prescribed for the purpose of making rules by the municipality is specified in Clause (1) upon which Mr. Trivedi has placed great reliance. Clause (1) in Section 271 in so far as it is relevant for the present purpose reads as follows: "prescribing the taxes to be levied is the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the condition on which and the extent to which remissions will be granted, and the system on which refunds

will be allowed and paid, in respect of such taxes . "The rest of Clause (I) is not material for the purpose of the present case. Mr. Trivedi has argued that the system under which refunds may be allowed is not only the subject-matter of Clause (1) of Sub-section (1) of Section 275 but is also a subject-matter of Clause (1) of Section 271. According to him, Section 27 (1) very much applies to the instant case because octroi is also a tax. In support of his argument, he has looked back at Section 99 and certain other sections. There is no doubt about the fact that in a general sense octroi is a tax. Section 99 occurs in Chapter VIII. Its heading is "Municipal Taxation." Its subheading is "Imposition of taxes". Under this head, octroi has been specified as one of the taxes. Sub-section (1) opens with the following expression "Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes." In several clauses which follow Sub-section (1) of Section 99, it is clear that, in a general sense, octroi is a tax. However, does it mean that reference to taxes in Clause (1) of Section 271 also makes a reference to octroi?

11. In order to appreciate the argument which Mr. Trivedi has raised, it is necessary to recapitulate what Section 99(1) provides. It provides for levy of several taxes. As for example, (i) a tax on buildings or lands, (ii) a tax on all vehicles, boats or animals, (iii) a toll on vehicles and animals, (iv) an octroi on animals or goods or both, (v) a tax on dogs, (vi) a special sanitary cess, (vii) a general sanitary cess for the construction and maintenance of public latrines, (viii) a drainage tax, (ix) a general water-rate or a special water-rate or both, (x) a lighting tax, (xi) a fee on pilgrims, (xii) a special educational cess, (xiii) a tax on sale of cattle (xiv) a betterment levy on lands or buildings and (xv) any other tax. It is clear, therefore, that taxes, octroi, cesses and fees have all been referred to in the opening part of Sub-section (1) of Section 99 as taxes. Therefore, in Section 99, Legislature has made a clear distinction between a tax, a cess, a fee and octroi. Now, wherever there is special provision in relation to octroi, it is that provision which must be brought into play. There are two provisos to Sub-section (1) of Section 99. Clause (b) in second proviso makes a special reference to octroi. It reads as follows:

Provided that....

subject to such exceptions and conditions as the State Government may prescribe by rules, no octroi shall be leviable on agricultural produce brought within the octroi limits for sale in accordance with the provisions of the Gujarat Agricultural Produce Markets Act, 1963, in market established in such limits under that Act.

Other clauses in that proviso such as Clauses (a) and (c) refer to exceptions made in respect of taxes while Clause (d) makes exception in respect of special sanitary cess. Section 100 is not important for the purpose of present case. Section 101 lays down procedure which is necessary to be followed before imposing a tax. It appears that the procedure laid down therein must be followed

before levying octroi as well. Section 102 deals with the power of the State Government to refuse to sanction the rules and to deal with the matters connected therewith. Section 103 provides for publication of the sanctioned rules. Similarly, Section 104 empowers the State Government to enable a municipality to levy tax or vary its amount within specified maximum and minimum limits. Sections 105 to 117 provide for assessment of taxes on buildings or lands. We are not concerned in this case with those taxes. Sections 118 to 120 confer power upon the municipalities to charge fees. Sections 121 to 129 deal with octroi and tolls. We are not concerned in the instant case with tolls. Tolls are dealt with by Section 126 onwards. Section 121 enables a municipality to adopt such effectual measures at the octroi limits of the municipal borough as may be necessary for preventing any person from carrying any vehicles or goods entry of which is liable to payment of octroi, passing into the municipal borough without payment of octroi. It is in the context of this substantive provision that under Clause (1) of Sub-section (1) of Section 275 power has been given to a municipality to fix octroi limits and stations. Clause (1) of Sub-section (1) of Section 275 has, therefore, direct reference to Section 121. Section 122 is very material for our purpose. It provides as follows:

A municipality when submitting for sanction a proposal for the imposition of octroi, shall submit therewith for sanction a draft of by-laws for the purpose of Clause (1) of Sub-section (1) of Section 275, after observing the requirements of Sub-section (3), (4) and (5) of that section.

This section makes it clear that whenever a municipality resolves to impose octroi, it must prepare a draft of bye-laws in that behalf and submit it to the State Government for sanction. Therefore, matters connected with octroi can be, by virtue of the provisions of Section 122, the subject matter only of bye-laws and not of rules. Sections 123, 124 and 125 contain provisions which make recovery and realization of octroi duty effectual. Similarly, Sections 127, 128 and 129 also deal with matters connected with octroi. We are not concerned in the instant cases with all these provisions. We are concerned only with the discovering whether the legislature has intended that a municipality should provide for refund of octroi duty paid on raw materials out of which finished goods are manufactured within octroi limits and which finished goods exported out of them. Several sections to which we have referred disclose a scheme in respect of octroi which is not consistent with the argument which Mr. Trivedi has raised. Once we read Section 122, no doubt is left in our minds that as soon as a municipality resolves to levy octroi, it must make bye-laws and get them sanctioned by the Government. When we read Section 122 with Section 271(1) (1), no doubt is left in our minds that all matters connected with the levy, collection and refund of octroi must be the subject-matter of bye-laws and not of rules. Therefore, to the instant case, Section 271(1) has no application. It refers to taxes in general other than those for which express reference has been made in the section which empowers a municipality to make bye-laws.

12. Mr. Trivedi has further argued that whereas it is obligatory on the part of the municipality to make rules u/s 271, it is discretionary on the part of the municipality to make bye-laws. Mr. Trivedi appears to be correct so far as this distinction is concerned. However, it does not make any difference in the conclusion which we are recording in this case. Section 271 opens with the following words: "A municipality shall make rules not inconsistent with this Act and the rules or orders made by the State Government under this Act, and may from time to time alter or rescind them ". The Legislature in the same section has at one place used the word "shall" and at another place has used the word "may". It is very clear, therefore, that whereas making of the rules is an obligation on the part of every municipality, their alteration or rescission is a matter of discretion to be exercised from time to time and it must be so because no municipality can be forced to alter or rescind its rules though it can be forced to make them. It appears to us from the scheme of Sections 271 and 275 that a mandatory obligation has been cast upon every municipality to make rules in the matter of levy of taxes because no municipality can survive without taxes. It has got to levy, if not all, some of the taxes. If, therefore, it is absolutely necessary for a municipality to levy some of the taxes, it must make the rules. Section 275 opens with the expression "A municipality may from time to time, make alter or rescind bye-laws not inconsistent with this Act ". Here, the Legislature has used the expression "may" apparently indicating that a municipality may or may not make the bye-laws. So far as octroi is concerned, the use of the expression "may" which empowers a municipality to make bye-laws is very much justified because a municipality which does not want to levy octroi may not make bye-laws. A municipality is under no obligation to levy octroi. However, once a municipality resolves to levy octroi, it is necessary for it to make bye-laws because, without bye-laws, octroi cannot be levied and matters connected therewith cannot be regulated. Therefore, depending upon the volition of a municipality to levy or not to levy octroi, a municipality has been discretion to make the bye-laws. The use of mandatory and directory expression in Sections 271 and 275, therefore, appears to us to be well-intentioned. However, it does not carry the argument further which Mr. Trivedi has tried to advance because even if Clause (1) of Section 271 is applicable to the instant case, a municipality is bound to make bye-laws providing for "the system on which refunds will be allowed and paid ". It is difficult to imagine that when the Legislature has intended that a system for the refund should be devised by a municipality by bye-laws, it may make a bye-law under which no refund shall be granted. However, it can be said in favour of the argument which Mr. Trivedi has raised that a municipality may provide in its bye-laws for partial refund under a certain set of circumstances and may provide for full refund under another set of circumstances. However, that argument is not required to be examined in details in this case because we have expressed the opinion that Section 275(1)(1) requires a municipality to provide for a system under which refunds may be made in two cases and that it does not enable a municipality to deny refund altogether.

13. Now, Billimora municipality made its Octroi Rules and Bye-laws as early as in 1951 when Bombay District Municipal Act, 1901 governed it. Those bye-laws are continued in force by virtue of Clause (vi) of Sub-section (2) of Section 279 of the Gujarat Municipalities Act, 1963. It provides as follows:

Notwithstanding the repeal of the said Acts.

any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, by-law, or form made, issued, imposed or granted in respect of the said boroughs or districts and in force immediately before the date of the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act be deemed to have been made, issued, imposed or granted under this Act in respect of the borough and shall continue in force until it is superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under this Act.

The only condition precedent to the continuance of the bye-laws made under the repealed Act is that they must not be inconsistent with the provisions of the Gujarat Municipalities Act, 1963.

14. The question which we are, therefore, required to consider is whether, bye-laws 7 and 14 of Billimora Municipality are inconsistent with any of the provisions of the Gujarat Municipalities Act, 1963. So far as bye-law 7 is concerned, it is innocuous and does not appear to us to be offending any provision of the Gujarat Municipalities Act, 1963. It inter alia provides for making a declaration by an importer of goods which are liable to ad-valorem octroi. The principal part of that bye-law reads as follows:

Every Importer of goods liable to Octroi ad valorem shall produce the original invoice showing the value of goods and shall give the Import Naka Karkun a declaration in writing and duly signed in the form in Schedule "G" hereto annexed.

There is nothing wrong with this bye-law. A person who imports goods within the octroi limits of the municipality must make declaration showing the nature of the goods in order to enable the person in charge to decide whether they are liable to payment of ad-valorem octroi or not. That is what is required to be done by every Municipality under Sections 121 and 123 of the Act. There is a very long explanation which is appended to bye-law 7. It is not necessary for us to refer it. In our opinion, challenge to bye-law 7 is a thoroughly misconceived challenge because it suffers from no infirmity whatsoever. Bye-law 7 has been made, by Billimora municipality for the benefit of one from whom octroi duty is demanded. He may as well show that he is not liable to pay any octroi on particular goods imported by him within the octroi limits. In our opinion, therefore, bye-law 7 is perfectly valid and suffers from no infirmity whatsoever.

15. We now turn to bye-law 14 to which challenge has been made by the

petitioner by making an amendment to the petition. Bye-law 14 provides as follows:

No refund shall be granted on of the export goods which have since their import changed their form by any process of manufacture or otherwise or has changed form.

The question which requires our consideration is whether bye-law 14 is ultra vires Section 27 (1)(1). We have already expressed the view, upon the interpretation of Clause (1) of Sub-section (1) of Section 275, that Legislature has clearly intended that a municipality which levies octroi on goods ought to provide for refund of octroi collected on such goods out of which other articles are manufactured within the octroi limits and which other articles are exported out of the octroi limits. We are not concerned in the instant case with the question whether under such a bye-law a municipality is under an obligation to provide for a partial refund or full refund. We have already expressed the view that power to make a bye-law providing for a system of refund in such cases does not enable a municipality to make a bye-law providing for no refund whatsoever. Bye-law 14 which provides for no refund at all therefore appears to us to be inconsistent with Clause (1) of Sub-section (1) of Section 275. To repeat, in our opinion, whereas a municipality is under an obligation under Clause (1) of Sub-section (1) of Section 275 to make a bye-law providing for a system of making refunds of octroi duty (whether it should be full or partial is not the question before us) collected on goods which are imported into the octroi limits and out of which other goods are manufactured within the octroi limits which other goods, in their turn, are exported out of the octroi limits, Billimora municipality has made bye-law 14 which altogether denies to such an importer refund of octroi duty. Therefore, in our opinion, bye-law 14 is inconsistent with Clause (1) of Sub-section (1) of Section 275 and is void. We declare accordingly.

16. The next contention which Mrs. Mehta has raised before us is whether price of goods on which octroi which is payable shall be the net price or shall be the price which is inclusive of excise duty paid by an importer. In view of the findings which we have recorded on the first contention, it is strictly not necessary for us now to express any opinion on this question. However, assuming that we are wrong in our view on the first contention, we must answer the second contention which Mrs. Mehta has raised. What happens in such a case can be stated as follows.

17. An importer who imports goods into the octroi limits of municipality pays to the manufacturer of those goods not only the price but also the excise duty payable thereon under Central Excise and Salt Act, 1944. The bill specifies the price as well as the excise duty separately. It is upon the total price inclusive of excise duty that octroi is collected by this municipality. The importer manufactures excisable goods out of those goods within the octroi limits and exports the manufactured goods outside the octroi limits. When he manufactures excisable goods and pays excise thereon, he gets credit or rebate of excise duty

which he had paid on the goods which he imported into the octroi limits for the purpose of manufacturing the goods which he ultimately exports. That is the effect of Rule 56A of Central Excise Rules, 1944. The arrangement which Mrs. Mehta has raised is that since the importer has a right to get credit in respect of the excise duty paid by him on raw materials under circumstances specified above, it cannot be a component part of the price of raw materials for the purpose of assessing octroi duty payable on them. We are unable to accede to this argument which Mr. Mehta has raised. The price which an importer pays in respect of goods which he imports into the octroi limits is not the net price which he pays to his vendor or the manufacturer of those goods but is the price which consists both of the price as well as the excise duty. In other words, for an importer, the price of an imported article means the total value of that article. The municipality is entitled to collect octroi duty upon the total price which an importer has paid to the manufacturer of his raw materials. In economic terms we are unable to conceive of an idea that for such an importer total value minus excise duty which he pays is the price. The price which an importer pays for the goods which he imports is the total amount which he pays out of his pocket. How that price comes to be worked out and what are its component parts is immaterial. It may have several components. Irrespective of the number and nature of components of which it consists, the total amount paid by an importer in respect of raw materials is the price which he imports.

18. Now, is the municipality under an obligation to refund a part of octroi duty which he paid on that part of the price of imported goods which represented excise duty in respect of which he later gets credit under Rule 56A of the Central Excise Rules, 1944? Our answer to the question is in the negative. We have already given one reason in respect of the argument. The second reason is as follows. The right to get credit which such a purchaser or importer has under Rule 56A is against the Central Government. The right which he has not against the Central Government cannot be converted into a right against a municipality unless the statute so provides. We now look at the problem from another angle. It is the liability of the Central Government under Rule 56A to give him credit in respect of such excise duty. The liability of the Central Government to give credit cannot be converted into the liability of the municipality for refund of that part of the octroi duty which was paid on the excise duty part of the price of the goods imported by an importer. Nor can we say that liability of the Central Government to give credit under Rule 56A is equivalent to liability of the municipality to make such a refund in respect of octroi duty. The obligation of the Central Government is distinct from the obligation of the municipality. The obligation of the Central Government flows from Rule 56A of the Central Excise Rules, 1944. That obligation is not transferred in any manner or shape to the municipality. To accede to the argument which Mrs. Mehta has raised is to club the Central Government and the Municipality together and to treat them by one stick while Legislature has provided two sticks when there is no link between them. Rule 56A of the Central Excise Rules, 1944, has nothing to do whatsoever with a

Municipality's liability to refund octroi under certain circumstances. The second argument which Mrs. Mehta has raised is without any substance and is rejected.

19. In view of the finding which we have recorded on the first contention raised by Mrs. Mehtaj we declare that bye-law 14 made by Billimora Municipality in respect of refund of octroi duty is inconsistent with Clause (1) of Sub-section (1) Section 275 of the Gujarat Municipalities Act, 1963 and is void. A writ of mandamus shall issue directing Billimora Municipality not to enforce that bye-law. It is needless for us to say that, as a result of our striking down bye-law 14, every importer of such goods shall be entitled under the ordinary law of the land to the refund of octroi by virtue of the provisions of Clause (1) of Sub-section (1) of Section 275.

20 Mr. Mehta however, asks us to issue a writ of mandamus directing the municipality not to collect octroi duty on paper which the petitioner imports into the octroi limits of Billimora municipality and out of which it manufactures other goods and exports them out of Billimora octroi limits. No such writ can be issued because even in respect of such goods the municipality has a right initially to recover octroi. It is under an obligation to refund. Since the municipality has a right to recover the octroi duty, the writ for which Mrs. Mehta prays cannot be issued.

Rule is made absolute accordingly with no order as to costs.