

- (9) Exemption from sales-tax (subject to the conditions, if any, mentioned therein) under section 6 and 15 read with Schedule 'B' to HGST Act, 1973, is with reference to goods as such goods. The exemption does not apply if any case falls in any of the sub-clauses of clause (ii).

We accordingly dispose of these petitions in the aforesaid terms, leaving the parties to bear their own costs.

R.N.R.

(FULL BENCH)

Before A. L. Bahri, N. C. Jain & N. K. Sodhi, JJ.

BIRLA CEMENT WORKS, KOTKAPURA,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4582 of 1980.

2nd February, 1993.

Punjab Municipal Act, 1911—S. 232—Constitution of India, 1950—7th Schedule List II, Item 52—Punjab Municipal Code, 1930—Rls. 13, 14, 15, 15(1-A)), (2), (b) & (c)—Chapter II—Levy of Octroi by Municipal Committee—Goods brought within Municipal limits for export to places outside—Goods not meant for consumption, use or sale within Municipal limits cannot be subjected to octroi duty—Charge of Octroi duty—Municipal Committee cannot withhold issuance of transit passes for goods intended to be exported within a specified time—It is immaterial that sale takes place before or after such goods are brought within limits of Municipality—Octroi illegally collected—Direction given for refund after determination of quantum of duty.

Held, that it is immaterial whether transaction of sale in fact had earlier taken place or yet to take place. Such goods are intended not to be consumed, used or sold within such Municipal limits. As such goods are to be exported out of the Municipal limits, they are not to be subjected to charge of octroi. A declaration is required to be made at the entry barrier and a transit pass is required to be obtained. At the entry barrier on such transit pass reasonable time is mentioned during which such goods are expected to be exported

out of Municipal limits. Likewise, if immediately such goods are not to be exported and temporarily they are to be detained within the Municipal limits, similar transit pass is required to be obtained for keeping such goods in the warehouse and such goods are expected to be exported out of the Municipal limits within the time specified. In both these cases of transit passes if such goods are not actually exported out of the Municipal limits, within the time prescribed a presumption is to be drawn that such goods were meant for consumption, use or sale within the Municipal limits and such goods would be subjected to charge of octroi duty.

(Para 8)

Held further, that the petitioner-company would be entitled to refund of octroi duty, already collected by the Municipal Committee in respect of cement bags which were intended to be exported outside the municipal limits for which transit passes were not issued by the Municipal Committee. The matter is, thus, referred back to the Executive Officer, Municipal Committee, to determine the quantum of such octroi duty, which was illegally collected either by the impugned orders or thereafter and to refund the same to the petitioner company. (Para 12)

PETITION Under Articles 226/227 of the Constitution of India, praying that :—

- (i) *That the order dated 23rd August, 1976 of respondent No. 1 directing respondent No. 4, that octroi duty be charged on the cement that is brought by the petitioners through their factory within the municipal limits of Kot Kapura, be quashed ;*
- (ii) *order of respondent No. 4, dated 1st April, 1977 by which the petitioner were asked to deposit a sum of Rs. 2,27,810.80; as octroi duty for the period from 21st August, 1975 to 31st July, 1976 be quashed;*
- (iii) *the order dated 9th December, 1980 of respondent No. 2, be quashed.*
- (iv) *A writ in the nature of Mandamus be issued directing the respondents not to levy any octroi duty on the cement that is carried at Kotkapura at the petitioners depot and then re-exported to other places in Punjab.*
- (v) *It is further prayed that during the pendency of the writ petition, the recovery of Rs. 2,27,810.80 be stayed and the respondents be restrained from charging any octroi duty from the petitioners on the cement that is exported out of the municipal limits of Kot Kapura.*
- (vi) *Notices of motion and the production of certified copies of the annexures may be dispensed with.*
- (vii) *Costs of this petition be allowed to the petitioners.*

(This case referred by the Divisional Bench consisting of Hon'ble Mr. Justice N. C. Jain and Hon'ble Mr. Justice J. L. Gupta, on 8th June, 1991 to a larger Bench for deciding an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice A. L. Bahri, Hon'ble Mr. Justice N. C. Jain and Hon'ble Mr. Justice N. K. Sodhi, finally decided the case on 2nd February, 1993).

H. L. Sibal, Sr. Advocate with R. C. Setia, Advocate, for the Petitioner.

M. C. Bery, DAG, (Pb.), for the Respondents No. 1 & 2.

J. R. Mittal Sr. Advocate with Baldev Singh, Advocate, for the Respondents No. 3 & 4.

JUDGMENT

A. L. Bahri, J.

Correctness of the Division Bench judgment in *Indian Oil Corporation v. Municipal Corporation Jullundur and others* (1), having been doubted, the matter has been referred to the Full Bench.

(2) The Division Bench held that the Municipal Committee was entitled to levy octroi on all the goods brought within the Municipal limits which were to be sold to consumers outside the Municipal limits. This was so held as the title in the goods passed within the jurisdiction of the Municipal Committee. It is not necessary to refer to the aforesaid decision in detail as the aforesaid judgment was set aside by the Supreme Court subsequently. Since the entire matter stands referred to the Full Bench, brief narration of the facts of the claim made by the petitioner is necessary.

(3) Birla Cement Works is a Proprietary Concern of M/s Birla Jute Manufacturing Company Ltd., Calcutta. This Company has a manufacturing unit known as 'Birla Cement Works' located in Chittorgarh in Rajasthan State. Its office is located in Punjab at Kotkapura and that office is also registered as a dealer under the Punjab General Sales Tax Act and also under the Central Sales Tax Act. Its godown is also situated within the Municipal limits of Kotkapura. The unit of manufacturing cement started functioning in August 1972. From Chittorgarh the cement used to be brought in railway

(1) A.I.R. 1990 (P&H) 99.

racks upto Kotkapura. The distributor of the petitioner's firm at Amritsar used to receive orders from the dealers in the State of Punjab. Thus Amritsar office used to inform Kotkapura office about the demand of the dealers in different towns in the State of Punjab. On arrival of the cement at the railway station, Kotkapura, the information used to be supplied to the Municipal Committee, Kotkapura, about its arrival and the number of cement bags which were to be brought within the Municipal limits of Kotkapura for consumption, use or sale and on such bags octroi duty used to be paid whereas transit pass used to be obtained from the Municipal Committee with respect to the cement bags which were to be sent straight to other towns in the State of Punjab. For about 8 years this system continued to work. On July 10, 1973 the Municipal Committee, Kotkapura, passed resolution No. 733 to charge octroi on all consignments of goods where destination station was Kotkapura. It was also decided not to issue transit passes in respect of such consignments. The Executive Officer of the Municipal Committee also passed an order in pursuance of the resolution aforesaid. The matter was taken before the Deputy Commissioner, Faridkot, challenging the aforesaid order of the Executive Officer dated July 10, 1973, as well as the resolution. The Deputy Commissioner,—vide his order dated August 29, 1973 suspended the execution of the resolution as well as the order aforesaid. The State of Punjab,—vide order dated August 2, 1974, decided that the Municipal Committee, Kotkapura, could charge octroi if there was change in the consignee at Kotkapura, otherwise the cement brought by the petitioner-company was to be cleared from Kotkapura by transit pass system. Copy of the order is Annexure P-11. The Sub-Divisional Officer (Civil), Faridkot, exercising powers of the Deputy Commissioner under Section 232 of the Punjab Municipal Act, passed the order dated August 8, 1974, that the decision was to be taken in accordance with the direction of the Secretary to Government, Punjab. On August 14, 1975, the Municipal Committee all of a sudden refused to issue transit passes and insisted on payment of octroi duty on cement which was to be exported to other towns from Railway Station, Kotkapura. A representation was made to the Deputy Commissioner and a direction was issued thereon to the Municipal Committee to issue transit passes. Copy of the order of the Deputy Commissioner is Annexure P-12. The State also directed issuance of transit passes. Copy of the order is Annexure P-13. On August 23, 1976, the State again passed an order that octroi be charged on cement sent by the petitioner to different places outside

Kotkapura and also to recover the arrears of octroi from the petitioner. Copy of this order is Annexure P-14. Thus the Municipal Committee raised a demand on August 31, 1976 to the tune of Rs. 2,27,810.80 Paise as octroi on cement sent outside Kotkapura during the period from August 21, 1975 to July 31, 1976,—*vide* letter dated April 1, 1977—Annexure P.15. Against this order of the Executive Officer, the matter was taken before the Deputy Commissioner Faridkot, in appeal under section 84 of the Punjab Municipal Act. The appeal was dismissed in view of the instructions issued by the State Government,—*vide* order dated March 28, 1978—Annexure P.16. Likewise another appeal was decided by the Additional Deputy Commissioner, Faridkot on December 9, 1980, dismissing the same holding that since the goods were sold by the Company through its dealers or by its inspector the octroi limits of Kotkapura to other persons but were consumed outside the Municipal limits, octroi could be levied. In this writ petition filed by the petitioner orders dated August 23, 1976 passed by the State of Punjab directing the Municipal Committee to charge octroi on the cement sent outside the Municipal limits of Kotkapura and orders of the Executive Officer dated April 1, 1977 demanding octroi duty of Rs. 2,27,810.80 Paise for the period August 21, 1975 to July 31, 1976 and order dated December 9, 1980 passed by the Additional Deputy Commissioner, Faridkot, are under challenge.

(4) In order to appreciate the question debated a brief reference to Annexure P.1 and intimation given by the petitioner-Company to the Executive Officer of the Municipal Committee, Kotkapura, on arrival of different wagons of cement at Railway Station, Kotkapura, on August 22, 1975, is considered necessary. Full details of the number of cement bags contained in different wagon numbers along with Railway Receipt Numbers were given in Annexure P.1 indicating arrival of 8,554 cement bags. Out of the same 8,000 cement bags were to be exported to different destinations as mentioned therein. The remaining 554 bags of cement weighing 279.77 Qtls. were to be taken in Municipal limits for which octroi was being paid. Similar information of sending the cement in 8,000 bags to different towns was supplied to the District Food and Supplies Controller, Faridkot,—*vide* letter dated August 23, 1975—Annexure P.2. The case of the petitioners is that transit passes were required to be issued for the export of 8,000 bags of cement which were not meant to be consumed, used or sold within the Municipal limits of Kotkapura. The

Municipal Committee subsequently,—*vide* the impugned orders charged octroi on such cement bags which were exported straight-away from Railway Station, Kotkapura, to different stations in the State of Punjab.

(5) The stand of the respondents—State, as well as the Municipal Committee is that on arrival of the cement within the Municipal limits of Kotkapura the octroi was leviable. The cement was sold within the Municipal limits of Kotkapura and thereafter exported to other towns, the action of the authorities in charging and collecting octroi on such cement was valid.

(6) Item 52 in List II-State List of VII Schedule to the Constitution reads as under :—

“52. Taxes on the entry of goods into a local area for consumption, use or sale therein.”

(7) Punjab Municipal Corporation Act and Punjab Municipal Act have been framed by the State Legislature and the provisions contained therein for imposing octroi on entry of goods into the local limits of respective Municipal Committees in the State of Punjab have been provided in view of the power contained in item 52 of List-II of the Schedule attached to the Constitution. The Punjab Municipal Account Code, 1930 provides a detailed procedure with respect to the imposition of octroi in Chapter V as amended from time to time. Rule 13(1)(c) of Chapter V defines “import” to mean import within the octroi limits and clause (d) defines export to mean export from the octroi limits. Chapter V Rule 15 sub-rule (3) provides for establishment of barriers. Rule 12(2) provides for the importers to present at the barrier an invoice or a cash memo or a declaration in the form prescribed showing the price of articles liable to octroi to be assessed *ad valorem*. Chapter V Rules 13, 14, 15, 15(1-A), (2), (b) and (c) read as under :—

“V. 13 Declaration to be made of destination of goods at time of import :—

(1) When goods liable to octroi are brought to a barrier for import, the officer-in-charge of the barrier shall call upon the person-in-charge of such goods to declare, and such person shall declare, whether such goods are intended :—

(a) for immediate export; or

(b) for consumption, use or sale within the octroi limits;
or

(c) in municipalities in which a trade warehouse is maintained, for temporary detention within the octroi limits and eventual export, or

(d) where there is no trade warehouse, for temporary, retention within the octroi limits and re-export under the Re-export Pass System prescribed in Rule V. 32A.

(2) If any person refuses to make a declaration as required by the provisions of sub-rule (1), he shall be deemed to have been guilty of a breach of that sub-rule, and it shall be deemed that the goods in respect of which the declaration should have been made have been declared to be intended for consumption use or sale within the octroi limits."

"V.14 Goods for immediate export to be dealt with under the Transit Pass System :—

(1) When goods liable to octroi are declared to be intended for immediate export under the provisions of sub-rule (1) rule V.13, they shall be dealt with under either the Transit Pass System.

V.15. The Transit Pass System :—

(1) In municipalities in which the Transit Pass System is in force, a person importing goods intended for immediate export after declaring them as such at the barrier of import, whether the railway barrier or any other barrier, shall specify the barrier through which they are to be exported, and the officer-in-charge of the barrier shall fill up a transit pass in Form 0.2 and shall on payment of such fee, if any, not exceeding (one rupee) as may be prescribed by the Committee send the goods under the escort of a peon to the barrier of export entered in column 9 of the pass,

handing the foil of the pass together with the acknowledgement coupons to the peon and the coupon to the person-in-charge of the goods, provided that, if no peon can be sent, the foil of the pass together with the acknowledgement coupon also shall be handed to such person after an acknowledgement of the receipt of the pass has been taken from such person on the reverse of the counter-foil; provided further that no such fee shall be levied if the amount of the tax calculable on such articles in respect of which the pass is granted is less than one rupee :

Provided further that transit pass for a loaded truck shall not be issued unless the driver thereon produces his driving licences before the officer-in-charge of the barrier for the purpose of recording.

“(1-A) In case a person intends to import goods for the purposes of immediate export or intends to take the goods through more than three Corporations, Committees or Notified Area Committees, as the case may be, he may instead of getting a transit pass referred to in sub-rule (1), get a State Transit Pass in Form C, 2-B, after declaring the Station in Form 0.2-C to which goods are to be ultimately exported. The Officer-in-Charge of the barrier thereon shall fill in the columns of the State Transit pass and also the name of the Station through which the goods would last pass for consumption, use or sale and the probable time by which the goods would be exported along with the details of the goods and vehicle and shall hand over the pass to such person on payment of prescribed fee and shall get acknowledgement of the receipt of the pass on the reverse of the counterfoil. The person shall be liable to produce such pass as and when demanded by the Inspectorate Staff of the Corporation, Municipal Committee or Notified Area Committee from which the passes are to ensure that the goods are not being imported without the payment of octroi or on the authority of transit pass.

(2) When such goods are brought to a barrier for export, the peon or person-in-charge of them shall present the

pass with the acknowledgement coupon attached issued to him under sub-rule (1) of this rule, and the office-in-charge of the barrier shall note in column 12 of the pass the time at which it was presented and shall check the goods with the particulars given in columns 5, 6 and 7 of the pass and then :

xxx

xx

xxx

xx

- (b) if the description or weight of the goods does not tally with the particulars entered to the pass, and there is any defect in the weight of any such goods as are ordinarily liable to octroi, or any of the goods are of a description different from the description of the goods entered in the pass and are ordinarily liable to octroi, shall make a note of the discrepancy in column 14 of the pass and shall then proceed as if goods to the extent of such defect in weight or of such description were being imported for consumption, use or sale within octroi limits; or
- (c) if the time entered in column 10 has passed before the pass is presented, shall proceed as if the consignment of goods was being imported for consumption, use or sale within octroi limits.
- (3) The committee shall fix in respect of every two barriers the period within which goods imported either of them for immediate export must be exported through the other, and a schedule of the periods so fixed shall be exhibited at every barrier, and the officer-in-charge of the barrier at which such goods are imported shall calculate and enter the time accordingly in column 10 of the Transit Pass in Form 0."

(8) A perusal of the Rules aforesaid makes it abundantly clear that only such of the goods are to be subjected to payment of octroi which are to enter the Municipal limits for the purposes of consumption, use or sale therein. It is immaterial whether thereafter such goods are actually used or consumed or sold therein or not. The other category of goods are such which though are brought

within the Municipal limits, are meant to be exported out of the Municipal limits, either immediately or after a short interval. Obviously such goods are not meant for consumption, use or sale within such Municipal limits. In such a case again it is immaterial whether transaction of sale in fact had earlier taken place or yet to take place. Such goods are intended not to be consumed, used or sold within such Municipal limits. As such goods are to be exported out of the Municipal limits, they are not to be subjected to charge of octroi. A declaration is required to be made at the entry barrier and a transit pass is required to be obtained. At the entry barrier on such transit pass reasonable time is mentioned during which such goods are expected to be exported out of Municipal limits. Likewise, if immediately such goods are not to be exported and temporarily they are to be detained within the Municipal limits, similar transit pass is required to be obtained for keeping such goods in the warehouse and such goods are expected to be exported out of the Municipal limits within the time specified. In both these cases of transit passes if such goods are not actually exported out of the Municipal limits, within the time prescribed a presumption is to be drawn that such goods were meant for consumption, use or sale within the Municipal limits and such goods would be subjected to charge of octroi duty. It is in this context that judicial decisions cited may be noticed. *Burmah Shell Oil Storage and Distributing Co. of India Ltd., Belgaum v. Belgaum Borough Municipality, Belgaum* (2). The Supreme Court was dealing with the case of imposing octroi. It was observed as under :—

“The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being use or consumption. The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use.

Further, so long as the goods are brought inside the area for sale within the area of an ultimate consumer, it makes no

difference that the consumer does not consume them in the area but takes them out for consumption elsewhere. The word "therein" does not mean that all the act of consumption must take place in the area of municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area."

(9) Relying upon the decision of the Supreme Court in *Burmah-Shell's case* (supra), this Court in *The Municipal Committee, Mukerian, District Hoshiarpur v. The Sub-Division Officer (C) Dasuya, District Hoshiarpur, and another* (3), dealing with the Municipal Account Code (Octroi), held as under :—

"The crucial point for consideration is as to what actually octroi means and for this purpose, it is necessary to peruse Rule V-1 of Appendix V of the Municipal Account Code (Octroi). Wherein the term "octroi" has been defined to mean a cess on the entry into a municipality of goods for consumption, use or sale therein. In so far as the consumption or use of the goods in the municipal limits of the petitioner-Committee is concerned, it is the common case of the parties that the goods are neither consumed or used within the municipal limits. The argument on behalf of the petitioner committee, however, is the sale of the goods takes place within the municipal limits, i.e. at the Railway Station. We do not, however, agree with this contention. The use of the word "therein" after the words "consumption, use or sale" is indicative of the intention of the framers of the Code, this intention being that octroi is leviable only on the goods which enter into the municipal limits for the purpose of being consumed, used or sold within the said limits. For the purpose of interpreting the word 'sale' in regard to the chargeability of octroi, all that is necessary to appreciate is whether the goods taken delivery of at the Railway Station are liable to octroi duty, even if they are just to be transported through the municipal limit to a place outside the

municipal limits. The question as to whether the sale is complete at the Railway Station or not, is not relevant. What is required to be seen is not as to whether any sale has taken place at the Railway Station but whether the goods which enter into the municipal limits area meant for being sold, consumed or used within that limit."

In *Tata Engineering and Locomotive Company Limited and another v. The Municipal Corporation of the City of Thane and others* (4), the Supreme Court considered the provisions of Maharashtra Municipalities (Octroi) Rules. The case related to refund of the octroi duty initially charged, which was permissible under Rules 24 and 25 aforesaid in respect of goods which were intended to be exported out of the Municipal limits. Such provisions are almost similar to the provisions of Punjab Municipal Code (Octroi) Rules, already reproduced above. The Supreme Court in *Burmah-Shell's* case (*supra*) was referred to. It was held :—

"The sales were to persons who were carrying on business outside the limits of the corporation and the goods were also intended to be consumed or used outside such limits and in fact the goods were also exported. The ratio of the decisions above referred clearly, therefore, governs this case, even if it were to be assumed that the sale in the general sense took place inside the municipal limits."

In para 15 of the judgment, it was observed as under :—

"Since the goods were sold by the Company to outside purchasers and the goods under the transactions of sale, were intended to be exported and were in fact exported, for consumption or use outside the municipal limits no octroi duty was leviable and the octroi duty paid on entry into the municipal limits was, therefore, liable to be refunded."

The conclusion was drawn in para 29 of the judgment, as under :—

"Having regard to the nature and incidence of octroi unless the octroiable goods are consumed or used or are meant to reach an ultimate user or consumer in the octroi area no

octroi is leviable. The words "sale therein" in the words "consumption, use or sale therein" in the definition of octroi means sale of octroi goods to a person for the purpose of consumption or use by such person in the octroi area. If sale was intended for consumption or use in the octroi area whether the purchaser actually consumed inside or outside octroi area is irrelevant. Rules 24 to 30 and the forms in the system of levy of octroi are intended to regulate the procedure for collection, identification of dutiable goods and correlation of goods exported with the goods imported for the purpose of refunds of octroi collected. In view of constitutional bar, octroi is not leviable if the goods are not brought into the octroi area for purposes of consumption or use in the area but for export and in fact exported by the importer himself or the sale by him occasions the export. Compliance with the procedure prescribed in the rules for filing claims of refunds are not conditions precedent for the right or eligibility for refund or the liability to refund but are provisions regarding proof of export of the goods imported and not meant to be exhaustive either. They are to be interpreted and understood in that sense. The object of the rules fixing a period of limitation for export, however, is different. The export cannot be put in perpetual doubt and the goods may be considered to have come to a repose if they were not exported within a particular period provided in the rules."

Finally reference may be made to the decision of the Supreme Court in *Indian Oil Corporation v. Municipal Corporation, Jullundar, and others* (5). The decision of this Court in *Indian Oil Corporation's* case, referred to above, was set aside by the Supreme Court. Reference was made to the earlier decision of the Supreme Court in *Burmah-Shell's* case and *Municipal Council Joudhpur v. M/s Purekh Automobiles Ltd. and others* (6). The following four categories in the matter of charging octroi or its exemption were noticed :—

"(i) Either for use or consumption by the IOC within the limits of the Municipal Corporation; or

(5) Judgments Today 1992 (2) S.C. 71.

(6) A.I.R. 1990 (1) S.C. Cases 367,

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- (ii) for sale by IOC through its dealers or by itself for consumption within the octroi limits, by persons other than the IOC; or
 - (iii) for sale by the IOC through its dealers or by itself inside the octroi limits and the vendee, after completion of sale, take those products outside the octroi limits for sale, use or consumption; and
 - (iv) for export by the IOC from its depot inside the octroi limits to outside the municipal limits, to its dealers for sale, use and consumption by persons other than the IOC, outside the octroi limits."

In the first three categories of cases, it was held that the octroi was to be charged. However, with respect to the fourth category cases, the matter was examined in detail and it was held that the octroi was not to be charged as the goods were intended to be exported outside the municipal limits and were meant for sale, use and consumption by persons other than the Indian Oil Corporation outside the octroi limits.

(10) The present is a case which falls squarely under the fourth category, referred to above, and not the third category. As is apparent from Annexure P-1, the wagons of cement arrived in Kotkapura and intimation was given by the petitioner-Company to the Municipal Committee, Kotkapura with respect to the arrival of 8,554 bags of cement, out of which 8,000 bags were to be straight way exported out of the municipal limits of Kotkapura, as per details given in Annexure P-1. With respect to 554 bags of cement which were to be taken into the town of Kotkapura, within the municipal limits, octroi duty was being paid. Subsequently, since the Municipal Committee had charged octroi for 8,000 bags of cement, for which transit passes were not issued, the claim in the present petition is for refund of such duty and in view of the case law discussed above, under the provisions of Municipal Code, reproduced above, the Municipal Committee, Kotkapura, was not entitled to charge octroi on the cement bags which were not meant for consumption, sale or use within the Municipal limits. Rather such cement was meant to be exported from the Municipal limits for consumption, use or sale outside such municipal limits. The directions/instructions dated August 23, 1976. Annexure P-14 issued by the

State Government for charging octroi on the entire cement brought by the petitioner-Company to Kotkapura were against the provisions of the Statute and the Constitution and are, therefore, liable to be quashed.

(11) Learned counsel for the respondents argued that the petitioners cannot be allowed to unlawful enrichment by refund of the octroi duty as the petitioners have already collected the same from their purchasers. This contention, in the facts and circumstances of the present case, cannot be accepted. One of the bills of sale by the petitioner-Company of such of the cement exported outside the Municipal limits of Kotkapura produced on the record may be referred to, which is Annexure P-6. This bill does not indicate that the petitioner-Company had collected any amount of octroi paid to the Municipal Committee, Kotkapura. As a matter of fact, at the time of such sales or export of the cement outside the limits of Kotkapura, octroi-duty was not charged by the Municipal Committee and there was no question of charging similar amount of octroi-duty by the petitioner-Company from its purchasers. It was much thereafter that the Municipal Committee framed the assessment in the matter of charging octroi on such cement bags which had earlier been exported outside the limits of the Municipal Committee.

(12) In view of the discussions aforesaid, order dated April 1, 1977, Annexure P-15, passed by Executive Officer of the Municipal Committee, claiming octroi of Rs. 2,27,810.80 on the entire cement bags brought by the petitioner-Company to Kotkapura and order of respondent No. 2, the appellate authority, dated December 9, 1980, affirming the order of the Executive Officer in this respect are quashed. The law as laid down by this Court in *Indian Oil Corporation's* case (supra) was not correct and the aforesaid decision was also set aside by the Supreme Court in the said case. The directions/instructions Annexure P-14 issued by the State Government for charging octroi on all the goods imported within the municipal limits, though intended to be exported outside the municipal limits, are quashed to that extent. As the impugned orders passed by the Municipal Committee and the appellate authority to that extent stand quashed, the petitioner-Company would be entitled to refund of octroi-duty, already collected by the Municipal Committee in respect of cement bags which were intended to be exported outside the municipal limits for which transit-passes were not issued by the

Municipal Committee. The matter is, thus, referred back to the Executive Officer, Municipal Committee, to determine the quantum of such octroi-duty, which was illegally collected either by the impugned orders or thereafter and to refund the same to the petitioner Company. These directions would be complied within a period of six months. Parties are left to bear their own costs.

R.N.R.

(FULL BENCH)

*Before : M. R. Agnihotri, J. S. Sekhon, A. L. Bahri, A. P. Chowdhri
and G. R. Majithia, JJ.*

SURESH KUMAR,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Writ Petition No. 2376 of 1993.

19th March, 1993.

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 151—Advocates on prolonged strike—Hardship caused to litigant public—Cause of strike being demand of lawyers for judicial probe into death of an Advocate and his family members under alleged mysterious circumstances—Public Interest Litigation filed for issuing mandamus to State to order judicial enquiry—Bar Council and Bar Association impleaded as parties by D. B. and matter admitted to larger bench—Written statements of impleaded respondents filed raising issues larger than those arising from the petition—Petitioner, thereafter, praying for withdrawal of petition—Prayer opposed by Bar bodies—Petition is liable to be dismissed as withdrawn—Public interest not made out for decision on merits in absence of petitioner—Mere admission of matter by D. B. does not convert petition into P.I.L.

Held, that the tone and tenor of the petition as framed by the petitioner is the hardship caused to the litigant public due to the strike by the members of the Bar. The real emphasis, in our view, is on the situation arising out of the lawyers' strike. While referring to the strike, the petitioner has no doubt mentioned about the disappearance of Mr. Kulwant Singh, his wife and their minor child in mysterious circumstances and demand of the members of the Bar that a judicial enquiry be ordered. This, in our view, is the background for the members of the Bar to go on strike. On the