A

MAN MOHAN TULI

v.

MUNICIPAL CORPORATION OF DELHI & ORS.

February 18, 1981

B [S. MURTAZA FAZAL ALI, A. D. KOSHAL AND A. VARADARAJAN, JJ.]

Delhi Municipal Corporation Act, 1957, section 158 and rule 26 of the Terminal Tax Rule framed under the Act, interpretation of—Exigibility of Terminal Tax, explained.

C Man Mohan Tuli, appellant in C.A. 2004/80, is the owner of a piece of land situate on the Grand Trunk Road near the sixth milestone as one goes from Delhi to Ghaziabad. Appellant Tuli has constructed various buildings on his land for use as godowns and has rented them out to various transport companies engaged in bringing goods from other States and storing them before their transhipment to Delhi and other States beyond Delhi. The trucks carrying the goods for various destinations pass along the G.T. Road and move D into Tuli's land. After the trucks enter the land, the goods are unloaded into the godowns, sorted out and reloaded into the respective trucks meant for various destinations. Thereafter, the trucks move out of the land and, passing through the Union Territory of Delhi after crossing the border line, proceed to their destinations. The Municipal Corporation of Delhi by its Orders dated May 23, 1975 and July 7, 1975 directed that a Terminal Tax post be set up at the entrance to Tuli's land in order to collect terminal tax on goods carried E into that land. A writ was filed before the High Court by the owners of transport companies as also by Tuli for quashing the orders of the Corporation seeking to levy Terminal Tax on the goods which were not meant for Delhi but for places beyond Delhi. The High Court held that the Corporation was legally entitled to levy Terminal Tax at the point of territory of the Union Territory of Delhi even though the goods were sorted out in the godown of Tuli, resorted out and re-loaded since as they while passing through the F territory of Delhi undoubtedly entered the said territory. Hence the appeals by special leave by appellant Tuli and others.

Allowing the appeal in part, the Court

HELD : 1. It is well settled that taxing statutes must be strictly interpreted giving every benefit of doubt to the tax-payer. A Terminal Tax could be G levied only by the Corporation or the State which is the final destination of the goods sent from any other area. A Terminal Tax signifies that there must be a terminus for the journey of the goods. Terminus means the point to which main action tends, goal, end, finishing point, the point at which some thing comes to an end. [899 D, 901 B-D]

2.1. From a consideration of the decided cases of the Supreme Court, the H following propositions emerge :—

(i) Terminal tax and octroi are similar kinds of levies which are closely interlinked with (a) destination of the goods (b) 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 transhipment 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. [803 A-C]

(ii) 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. [903 D-E]

(iii) 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 dicerent area is frustrated or defeated, they may be exigible to terminal tax. [903 E-F]

(iv) 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 rebooks 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 reosonable time. In such a case terminal tax would not be exigible. [903 G-H, 904 A-C]

Punjab Flour & General Mills v. *Lahore Corporation,* A.I.R. 1947 F.C. 14; *The Central India Spinning & Weaving & Manufacturing Co. Ltd., The Empress Mills, Nagpur* v. *The Municipal Committee, Wardha,* [1958] SCR 1102; *Bangalore Woollen, Cotton & Silk Mills Co. Ltd. Bangalore* v. *Corporation of the City of Bangalore,* [1961] 3 SCR 707; *Diamond Sugar Mills Ltd. & Anr.* v. *The State of Uttar Pradesh,* [1961] 3 S.C.R. 242; *Burmah Shell Oil Storage & Distributing Co. India Ltd.* v. *The Belgaum Borough Municipality,* [1963] Supp. 2 SCR 216; *Khyerbari Tea Co. Ltd. & Anr.* v. *The State of Assam,* [1964] 5 SCR 975, followed.

Champlain Realty Co. v. *Town of Brattleboro,* 67 L. Ed. U.S. 309, quoted with approval.

A 2.2. What would be a reasonable time for interpretation of the goods or halting, in the instant case, at the godown of Tuli, will naturally depend upon the special features or circumstances of each case, namely, the nature of the goods, the time taken in loading, sorting and unloading, the obstacles or difficulties which may be faced by the transporters and similar other factors. Normally, a time of two to three days or even a week should be sufficient to clear the goods for its journey to the ultimate destination. It may sometimes happen B that goods may have to be kept in the godowns in the territory of Delhi for circumstances beyond the control of the consignee or the consignor, for example, a garnishee order. In considering what is reasonable time these circumstances would have to be taken into consideration. [906 H, 907 A-C]

2.3. Rule 26 of the Terminal Tax Rules will have to be interpreted on the footing that section 178 of the Delhi Municipal Corporation Act, 1957 does C not contemplate levy of terminal tax for goods meant for destinations other than Delhi. The word "immediately" appearing in Rule 26 has to be liberally construed so as to imply a reasonable period and if the export is delayed the rules may apply if a reasonable explanation has been given. So far as rules regarding taking of passes, etc., at the barrier are concerned they would, of course, apply but subject to the conditions under which terminal tax can be imposed under section 178 of the Act which is the main charging section. [907 D C-E]

Amtit Banaspati Co. Ltd. v. *The Union of India* I.L.R. 1973(1) Delhi 237, distinguished.

3.1. Section 178 of the Delhi Municipal Corporation Act, cannot be interpreted so as to justify imposition of terminal tax even on goods which merely passed through the territory of Delhi, although their destination is not Delhi E but places beyond Delhi. [908 F-G]

3.2. Merely because the goods after having been unloaded in the godown of appellant Tuli are sorted, reloaded in different trucks and thereafter pass through the territory of Delhi, they do not become exigible to terminal tax. [908 G-H]

3.3. Rule 26 of the Terminal Tax cannot be interpreted so that exemption F could be granted only if the goods are exported immediately which means within a very short time irrespective of any other consideration. Terminal tax can be leviable only if it is proved that the goods remained at the godown for an indefinite and unexplained period which could not be said to be reasonable in the circumstances. [908 H, 909 A-B]

3.4. Where the goods are carried by trucks into the territory of Delhi and G unloaded there and are also meant for Delhi and soon thereafter may be rebooked by the receiver of the goods to some other place, terminal tax would be levieble because in this case there are two separate transactions—(i) by which the goods are meant for Delhi and (ii) by which after having reached and having been unloaded at Delhi they are rebooked and reloaded for some other place and which therefore is a fresh and different transaction. In such a case, terminal tax would be leviable at the entry point in the territory of Delhi. [909 H B-C]

3.5. The direction given by the High Court to the Terminal Tax Officer to fix a reasonable time for unloading, sorting and reloading the goods which are

meant for different destinations taking into consideration the quantity of the goods. the time for unloading, sorting etc. and for further reloading and transhipment should be done within a time to be fixed by a Terminal Tax Officer is correct. [909 E-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2004—2005 of 1980. B

Appeals by Special Leave from the Judgment and Order dated 13-10-1978 of the Delhi High Court in LPA Nos. 73/77 and 103/77.

Madan Bhatia and *Sushil Kumar* for the Appellant in both the appeals.

R. B. Datar, Lalit Bhardwaj and *Miss Madhu Mulchandani* for Respondent Nos. 1—3. C

P. R. Rao, S. R. Venkataraman, P. C. Kapur, R. C. Bhatia and *S. L. Sharma* for Respondent No. 5 in Civil Appeal No. 2004/80.

N. B. Sinha and *S. K. Sinha* for Respondent No. 4. D

The Judgment of the Court was delivered by

FAZAL ALI, J. These appeals by special leave are directed against a Division Bench common judgment dated October 13, 1978 of the High Court of Delhi by which the Letters Patent Appeals were allowed and the impugned Orders dated May 23, 1975 and July 7, 1975 passed by the Terminal Tax Officer, Municipal Corporation of Delhi were quashed. E

The facts of the case lie within a very narrow compass and may be summarised as follows. Manmohan Tuli, appellant in C.A. No. 2004/80, is the owner of a piece of land situate on the Grand Trunk Road near the sixth milestone as one goes from Delhi to Ghaziabad. F Appellant Tuli has constructed various buildings on his land for use as godowns and has rented them out to various transport companies engaged in bringing good from other States and storing them before their transhipment to Delhi and other States beyond Delhi. The trucks carrying the goods for various destinations pass along the G.T. Road and move into Tuli's land. It is not disputed that after the trucks enter G the land, the goods are unloaded into the godowns, sorted out and reloaded into the respective trucks meant for various destinations. Thereafter the trucks move out of the land and passing through the Union Territory of Delhi after crossing the border line, proceed to their destinations. The Municipal Corporation of Delhi (hereinafter referred to as the 'Corporation') by its Orders dated May 23, 1975 and July 7, 1975 H (hereinafter referred to as the 'inpugned orders') directed that a Terminal Tax post be set up at the entrance to Tuli's land in order to collect

terminal tax on goods carried into that land. The Ghaziabad Nagar Palika also purported to levy terminal tax on such goods but this levy was neither assailed before the High Court nor has been challenged before us and is therefore left out of consideration. A writ was filed before the High Court by the owners of transport companies as also by Tuli for quashing the orders of the Corporation seeking to levy terminal tax on the goods which were not meant for Delhi but for places beyond Delhi. Further details are not necessary for the decision of these appeals and both the appeals (C.A. Nos. 2004 and 2005 of 1980) will be disposed of by a common judgment.

The High Court vide the impugned judgment was of the opinion that even though the goods were stored in the godown of Tuli, sorted out and reloaded but as they while passing through the territory of Delhi undoubtedly entered the said territory, the Corporation was legally entitled to levy terminal tax at the point of entry into the Union Territory of Delhi. The case of the appellant was that the goods were not meant either to be used or consumed in Delhi nor was Delhi the final destination of the goods. It was a different matter that as the goods were to be sent to destination beyond Delhi the transport carrying the goods had perforce to pass through the territory of Delhi. It was thus contended that the goods were not carried into the territory of Delhi but were merely carried through the territory of Delhi to other destinations which were beyond Delhi. It was argued that s. 178 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'Act') had in terms no application to the case and that therefore the terminal tax imposed by the impugned orders was legally invalid.

The counsel for the respondent, however, submitted that even though the goods may have been meant for other destinations but as they were unloaded in the godown and reloaded in various trucks and actually entered into the territory of Delhi, they were factually carried into the Delhi territory and that was sufficient to empower the Corporation to levy the terminal tax. According to the argument of the counsel for the Corporation, the question of destination was not at all germane for the purpose of adjudicating the competency of the Corporation to levy terminal tax at the point of entry into Delhi.

Thus, the entire question turns upon the interpretation of s. 178 of the Act and some Rules framed under the Act. Relevant portion of section 178 runs thus :

> "178(1). On and from the date of the establishment of the Corporation under section 3, there shall be levied on all goods *carried by* railway or road into the Union Territory of Delhi

from any place outside thereof, a *terminal tax* at the rates specified in the Tenth Schedule."

(Emphasis supplied)

The crucial words which have to be interpreted are: 'goods carried by railway or road into the Union Territory of Delhi from any place outside Delhi'. The contention of the appellant is that the words 'goods carried into the Union Territory' clearly indicate that the final destination of the goods must be Delhi and by virtue of this fact, the natural consequence would be that the goods should be carried from other places either by rail or by road into the territory of Delhi. This argument was reinforced by the words 'terminal tax' used in s. 178 which imply that the terminus of the journey of the goods must be Delhi and only in that event the Corporation would be competent to levy a terminal tax. This argument was sought to be rebutted by the respondents on the ground that the words 'carried into the Union Territory of Delhi' should be interpreted independently and literally so as to indicate that even if the goods passed through Delhi, the moment they entered into the territory of Delhi terminal tax became exigible. So far as this aspect of the argument is concerned, we are unable to accept the same because it is well settled that taxing statutes must be strictly interpreted giving every benefit of doubt to the tax payer.

Before, however, examining the respective contentions of the parties it may be necessary to refer to the authorities dealing with the history of terminal tax or octroi duty. To begin with, it is not disputed that the power to subject the goods either to octroi or to terminal tax squarely falls within entries numbers 52 and 56 of List II to the Seventh Schedule of the Constitution. In *Punjab Flour & General Mills* v. *Lahore Corporation*(1) the Court while drawing a distinction between the type of taxes referred to as terminal taxes in Entry No. 58 of List I of Schedule 7 to the Government of India Act, and those described as cesses in Entry No. 49 of List II thereof observed as follows:

"There appears to us a definite distinction between the type of taxes referred to as terminal taxes in Entry No. 58 of List I of Sch. 7 and the type of taxes referred to as cesses on the entry of goods into a local area in Entry No. 49 of List II. The former taxes must be (a) terminal (b) confined to goods and passengers carried by railway or air. They must be chargeable at a rail or air terminus and be

(1) AIR 1947 F.C. 14.

A referable to services (whether of carriage or otherwise) rendered or to be rendered by some rail or air transport organisation. The essential features of the cesses referred to in Entry No. 49 of List II are on the other hand simply (a) the entry of goods into a definite local area and (b) the requirement that the goods should enter for the purpose B of consumption, use or sale therein.... The grounds of taxation under the two entries are, as indicated above, radically different, and there is no case for suggesting that taxation under the one entry limits or interferes in any way with taxation under the other."

C In *The Central India Spinning & Weaving & Manufacturing Co. Ltd., The Empress Mills, Nagpur* v. *The Municipal Committee, Wardha*(1) this Court examined the entire matter exhaustively and after giving the history of terminal tax or octroi observed as follows :

"If 'terminal' besides the above meaning has an additional meaning also and that meaning signifies the termini D or the jurisdictional limits of the municipal area even then the construction to be placed on the term should be the one that favours the tax-payer, in accordance with the principle of construction of taxing statutes, which must be strictly construed and in case of doubt must be construed against E the taxing authorities and doubt resolved in favour of the tax-payer."

... ...

"The legislative history of this tax thus shows that octroi was leviable on the entry of goods in a local area when the F goods were for consumption, use or sale therein. The substituted tax was terminal tax on goods imported into or exported from a local area and by rules this tax in the case of Wardha Municipal Committee was imposed on certain class of goods imported and on others exported by railway or road."

G

... ...

"That by the substitution of terminal tax on goods imported into a local area the nature of the tax had not been altered from what it was when octroi was in force or when instead of "terminal tax" octroi (without refund) was substituted ..... Therefore terminal tax on goods imported H or exported is similar in its incidence and is payable on

(1) [1958] S.C.R. 112

goods on their journey ending within the municipal limits or commencing therefrom and not where the goods were merely in transit through the municipal limits and had their terminus elsewhere."

. . . . . .

"Therefore, according to the Federal Court "terminal" has reference to the terminus of the railway or air, i.e., the end of journey."

A close analysis of this decision, therefore clearly discloses that a terminal tax signified that there must be a terminus for the journey of the goods. The word 'terminus' according to Oxford Dictionary means—a point situated at or forming the end or extremity of something, situated at the end of a line of railway. In other words, terminus means the point to which main action tends, goal, end, finishing point, the point at which something comes to an end. In Corpus Juris Vol. 62 at p. 729 the word 'terminal' in connection with transportation means the fixed beginning or ending point of a given run. It would thus appear that a terminal tax could be levied only by the Corporation or the State which is the final destination of the goods sent from any other area.

A similar view was taken by a later decision of this Court in *Bangalore Woollen, Cotton & Silk Mills Co. Ltd. Bangalore* v. *Corporation of the City of Bangalore*(1) where Kapur, J., speaking for the Court observed as follows :

"The history of these taxes therefore shows that in the Devolution Rules under the Government of India Act, 1915 octroi, terminal tax and taxes on professions and callings were three distinct heads of taxation... Therefore, when s. 142-A was added in the Government of India Act, 1935, its operation was limited to entry 46 of List II and had no reference to entry 49 which deals with cesses on entry of goods. The position under the Constitution is exactly the same and therefore neither s. 142-A of the Government of India Act, 1935 nor Art. 276 has any effect on entry 49 in the Government of India Act, 1935 or entry 52 in the Constitution."

In this case also a distinction between a terminal tax and octroi was clearly brought out. In *Diamond Sugar Mills Ltd. & Anr.* v. *The State of Uttar Pradesh & Anr.*(2) while defining a local area within

(1) [1961] 3 S.C.R. 707.
(2) [1961] 3 S.C.R. 242.

A the meaning of Entry 52 of List II of Seventh Schedule to the Constitution, the Court observed as follows :

> "We are of opinion that the proper meaning to be attached to the words 'local area' in Entry 52 of the Constitution, (when the area is a part of the State imposing the
B law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like."

In *Burmah Shell Oil Storage & Distributing Co. India Ltd.* v. *The Belgaum Borough Municipality*(1) this Court again fully discussed the matter and Hidayatullah, J., speaking for the Court stressed the essen-
C tial distinction between octroi and terminal tax in the following words :

> "Octrois and terminal taxes were different taxes though they resembled in one respect, namely, that they were leviable in respect of goods brought into a local area. While terminal
D taxes were leviable on goods 'imported or exported' from the Municipal limits denoting thereby that they were connected with the traffic of goods, octrois, according to the legislative practice then obtaining were, leviable in respect of goods brought into a Municipal area for consumption or use or sale.
>
E . . . . . .
>
> The history of these two taxes clearly shows that while terminal taxes were a kind of octroi which were concerned only with the entry of goods in a local area irrespective of whether they would be used there or not; octrois were taxes on goods brought into the area for consumption, use or sale.
F They were leviable in respect of goods put to some use or other in the area but only if they were meant for such user."

In *Khyerbari Tea Co. Ltd. & Anr.* v. *The State of Assam*(2) Gajendragadkar, J. speaking for the Court drew a very apt distinction regarding the concept of import and observed as follows :—

G "In that connection, the legislative history of the octroi duty was examined and it was held that the concept of import requires that the goods which are brought into must mix up with the mass of the property in the local area where the goods are alleged to have been imported. If the goods are *just carried and not mixed with the mass* of the property in
H the area through which they are carried, they cannot be said

(1) [1963] Supp. 2 S.C.R. 216.
(2) [1964] 5 S.C.R. 975.

to have been imported into that area..... The word "carried" is of much wider denotation, and it would be unreasonable to limit its scope by introducing considerations which are relevant in dealing with the question of import."

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 transhipment 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 rebooks 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

A 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 B 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.

C These principles are also spelt out by the American law on the subject which deals with inter-state transport of goods. In American Jurisprudence (2d. Vol. 15. p. 689, para 49) the following statement is made, which is spelt out from various American decisions including those of the U.S. Supreme Court :

D "In the determination of whether a transportation of persons or property constitutes interstate or intrastate commerce, the essential character or unity of the movement is the decisive factor. While the intention of the shipper or passenger is probably the most important single factor in determining whether transportation is interstate or intra- E state intention alone has been said not to be a controlling factor in making such determination. Inter-state journeys are to be measured by the commonly accepted sense of the transportation concept.....The parties cannot, by descriptive terms of contract, convert a local business, F serving as an agency of a transportation company, into an interstate commerce business, nor, conversely, may a through shipment be transformed into intrastate commerce by separating the rate into its component parts, charging local rates, and issuing local waybills".

G Similar observations are to be found in the same volume of American Jurisprudence (p. 697, para 56) which relate to the continuity of transit of goods and may be extracted thus :

"The crucial question to be settled in determining whether personal property moving in interstate commerce is subject to local taxation is that of its continuity of H transit and this question is to be determined by various factors, among which are the intention of the owner, the control he retains to change destination, the agency by

which the transit is effected, and the occasion or purpose of the interruption during which the tax is sought to be levied. Intent, while not alone conclusive, is probably the most important single determinant of continuous carriage.

If a break in the interstate journey is caused by the exigencies or conveniences of the chosen means of transportation, consideration of the safety of the goods during transit, or natural causes over which the taxpayer has no control, the continuity of the transit remains unimpaired".

The following statement of law occurs in the same volume (para 57, p. 698) :—

"If during transit, property is stored for an indefinite time for other than natural causes or for lack of facilities for immediate transportation, it is subject to state or local laws, including inspection laws.....On the other hand, if the entry of goods into a warehouse is a convenient intermediate step in the process of getting them to their final destination, they remain in interstate or foreign commerce until they reach those points".

In the case of *Champlain Realty Co.* v. *Town of Brattleboro*(1) one important aspect of the matter has been dealt with, viz., the fact that if the goods halt in an intermediate State whilst on their journey to their destination for a long period due to circumstances beyond the control of the owner, whether or not the goods lose the nature of the interstate transaction and could be free from the state taxation, was clearly highlighted by he following observations :—

"Longs of pulp wood which have been placed in a river to be floated into another state are in interstate commerce, so as to be free from state taxation, although, because of the high water in a connecting river into which they will ultimately pass, it is unsafe to permit them to enter that river, and they are temporarily held in a boom near the mouth of its tributary".

In the same case, C.J. Taft indicated the various aspects of interruptions in the journey and the incidence thereof and observed as follows :—

"The doubt arises when there are interruptions in the journey, and when the property, in its transportation, is

(1) 67 L Ed. US 309.

A under the complete control of the owner during the passage If the interruptions are only to promote the safe or convenient transit, then the continuity of the interstate trip is not broken.

. . . .

B

Chief among these are the intention of the owner, the control he retains to change destination, the agency by which the transit is effected, the actual continuity of the transportation, and the occasion or purpose of the interruption during which the tax is sought to be levied".

C

In Voume 78 L Ed at p. 138 the test laid down was that if the shipment was made in good faith to a destination and the interruption was not indefinite but reasonable the continuity of the journey cannot be said to be broken. It was also pointed out that where the interruption of the movement of commodities at an intermediate point D is not incidental to the transporation, the shipment loses the character of interstate commerce so as to be exigible to local taxation. In this connection, the following observations were made :

"If the shipment has been made in good faith to a destination the interruption is not indefinite, but is reason- E able and solely in furtherance of the intended transportation of the shipment to its ultimate destination, then the continuity of the journey is not broken by the delay nor by the mere power of the owner there to destroy its character as interstate commerce.....any interruption of the movement of commodities at an intermediate point between F origin and final destination that is not incidental to the transportation or the use of the means of transportation or, being so incidental, is used or extended for purposes of the owner not incidental to the transport transportation or the means used therefor, breaks the continuity in transit and subjects the shipment to local taxation at the point of G interruption".

We have laid special stress on the circumstances under which the terminal tax becomes leviable if the halt or interruption of the goods at an intermediate point is for an indefinite and unexplained period. The answer to the question as to what would be a reasonable H time for interruption of the goods or halting in the instant case at the godown of Tuli, will naturally depend on the special features or circumstances of each cases, viz., the nature of the goods,

the time taken in loading, sorting and unloading, the obstacles or difficulties which may be faced by the transporters and similar other factors. Normally, a time of two to three days or even a week should be sufficient to clear the goods for its journey to the ultimate destination. It may sometimes happen that goods may have to be kept in the godowns in the territory of Delhi for circumstances beyond the control of the consignee or the consignor, e.g., while the goods are lying in a godown at Delhi a dispute occurs between the concerned parties as a result of which an injunction is issued by a court restraining the transporters from moving the goods. In considering what is reasonable time these circumstances would have to be taken into consideration.

A

B

C

It, was, however, argued before us that according to the Terminal tax Rules framed under the Act, Rule 26 exempts goods from terminal tax if the same are exported immediately and are declared to be intended for immediate export. In view of the interpretation we have placed on s. 178 it is obvious that the word 'immediately' appearing in Rule 26 has to be liberally construed so as to imply a reasonable period and if the export is delayed the rules may apply if a reasonable explanation has been given. So far as rules regarding taking of passes, etc., at the barrier are concerned they would, of course, apply but subject to the conditions under which terminal tax can be imposed under s. 178 of the Act which is the main charging section.

D

E

The High Court appears to have placed some reliance on *Amrit Banaspati Co. Ltd.* v. *The Union of India*(1) in coming to the conclusion that in the instant case the Corporation was legally entitled to levy terminal tax. With due respect to the Judges of the High Court who decided the Appeals, we would like to point out that the case just above referred to is clearly distinguishable from the present appeals. The most crucial fact in the Delhi decision was that the goods were being carried into the Union Territory of Delhi for the purpose of sale at Delhi. Thus, the case proceeded on the admitted position that the goods were carried from Ghaziabad into the Delhi territory for sale at Delhi. The final destination of the goods being Delhi, there can be no doubt that the Corporation was fully entitled to levy terminal tax on such goods. In this connection, the High Court observed as follows :—

F

G

> "The Petitioner-company was incorporated under the companies Act, 1956, and it had its registered office at G. T. Road, Ghaziabad, in the State of Uttar Pradesh....

H

(1) I.L.R. 1973 (1) Delhi 237.

A It has a factory, *inter alia*, at Ghaziabad for manufacturing the said Vanaspati products. In the course of its business, the company carried and still carries its products by railway and/or road into the Union Territory of Delhi from Ghaziabad for the purpose of sale at Delhi.

B . . . .

The words "shall be levied on all goods carried by railway or road" in sub-section (1) show clearly that the section imposes terminal tax on the carriage or movement of goods from outside the Union Territory of Delhi into the said Territory. In other words, the taxable event is the C carriage or movement of goods into the Union Territory of Delhi".

The observations last extracted must be understood in the light of the admitted facts in *Amrit Banaspati Company's* case (supra). We are unable to accept that case as an authority for the proposition D that even if the final destination of the goods was not Delhi but as the goods were carried through the territory of Delhi, they would still be exigible to terminal tax. In the impugned judgment the High Court, however, seems to have laid undue emphasis and special stress on the fact that the goods were carried into the Union territory of Delhi, the moment they passed through it even though the destina- E tion of the goods may be some other area. This appeared, according to the High Court, the real purport and intention of s. 178. We are, however, unable to agree with this view which is patently wrong and does not at all flow from the plain and unambiguous language of s. 178 of the Act nor does s. 178 warrant such an interF pretation. Thus, our conclusions are as follows :—

(1) The High Court was wrong in interpreting s. 178 of the Act so as to justify imposition of terminal tax even on goods which merely passed through the territory of Delhi, although their destination is not Delhi but places beyond Delhi.

G

(2) The High Court was wrong in holding that merely because the goods after having been unloaded in the godown of appellant Tuli are sorted, reloaded in different trucks and thereafter pass through the territory of Delhi, they become exigible to ter- H minal tax.

(3) The High Court was wrong in interpreting Rule 26 literally and holding that exemption could be grant-

ed only if the goods are exported immediately which means within a very short time irrespective of any other consideration. In view of our interpretation of s. 178, Rule 26 must be interpreted in the light of the object of s. 178 and terminal tax can be leviable only if it is proved that the goods remained at the godown for an indefinite and unexplained period which could not be said to be reasonable as discussed by us in the circumstances.

(4) Where the goods are carried by trucks into the territory of Delhi and unloaded there and are also meant for Delhi and soon thereafter may be rebooked by the receiver of the goods to some other place, terminal tax would be leviable because in this case there are two separate transactions—(1) by which the goods are meant for Delhi, and (2) by which after having reached and having been unloaded at Delhi they are rebooked and reloaded for some other place and which therefore is a fresh and different transaction. In such a case, terminal tax would be leviable at the entry in the territory of Delhi.

We might mention that the High Court while holding that terminal tax is exigible has construed the word 'immediately' in Rule 26 literally and directed the Terminal Tax Officer to fix a reasonable time for unloading, sorting and reloading the goods which are meant for different destinations taking into consideration the quantity of the goods, the time for unloading, sorting, etc., and has further directed that reloading or transhipment should be done within a time to be fixed by the Terminal Tax Officer. Though the directions given are correct but they will have to be construed in the light of the various factors which we have referred to. Rule 26 will have to be interpreted on the footing that s. 178 of the fact does not contemplate levy of terminal tax for goods meant for destinations other than Delhi.

For the reasons given above, we allow these appeals, set aside the impugned judgment except the portion quashing the impugned orders. That portion we uphold (though on grounds different from the ones given by the High Court) in the light of the decision given and the observations made by us regarding the interpretation of s. 178 of the Act. In the special circumstances of the case there will be no order as to costs.

V.D.K. *Appeal allowed*