A MUNICIPAL CORPORATION OF CITY OF THANE

v.

M/S VIDYUT METALLICS LTD. AND ANR.

SEPTEMBER 14, 2007

B **[C.K. THAKKER AND TARUN CHATTERJEE, JJ.]**

Maharashtra Municipalities (Octroi) Rules, 1974—Schedule, Item 71 and 77—Stainless Steel Strips—Payment of Octroi on—Between 1968 to 1974 company paying the Octroi at the rate of 1% under Item 77—On realizing that liability was at the rate of 0.5% under Item 71 payment thereof accordingly—Demand of—At the rate of 1%—Demand confirmed by trial court—Revisional as well as High Court negating the demand on the basis of evidence of Quality Control Manager and Public Servant and also on the basis of judgment in an earlier litigation—On appeal, held: In the facts of the case, Company was right in paying 0.5% octroi—Though strict rule of res judicata is not applicable in taxation matters—But, a decision, on question directly in issue confirmed by superior courts would operate as **res-judicata**—*Hence benefit of previous litigation rightly given to the Company—Code of Civil Procedure, 1908—s. 11*—**Res-judicata.**

E **Respondent No. 1-Company was engaged in manufacture of safety razor blades. For this purpose it used to import stainless steel strips and bring them to its factory within the octroi limits of the appellant-Corporation. Between 1968 and 1974, the Company paid octroi at the rate of 1% under Item No. 77 of Schedule to Maharashtra Municipalities (Octroi) Rules, 1974. Thereafter,** F **the Company, on going through the Rules, realized that the correct Item was 71 and started paying octroi at the rate of 0.5%. The Corporation raised additional demand at the rate of 1%.**

Against the claim of the Corporation, the Company approached the Court. Trial Court confirmed the additional demand. Revisional Court reversed the G **order of trial Court holding that the Company was not liable to pay octroi under Item No. 77, relying on evidence of two witnesses i.e. a Quality Control Manager and another a Public Servant. It also relied on the judgment of Chief Judicial Magistrate to that effect in a previous case which was confirmed by Revisional as well as High Court. The judgment of Revisional Court was**

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confirmed by High Court in Writ Petition. Hence, the present appeal. A

Appellant *inter alia* contended that in taxation matters, rule of *res-judicata* has no application and in such matters each year is an independent unit.

Dismissing the appeal, the Court B

HELD: 1. The view taken by the Revisional Court as also by the High Court cannot be faulted. [Para 10] [1021-G]

2.1. In taxation-matters, the strict rule of res judicata as envisaged by Section 11 CPC has no application. As a general rule, each year's assessment C is final only for that year and does not govern later years, because it determines the tax for a particular period. It is, therefore, open to the Revenue/ Taxing Authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis in subsequent years. A decision taken by the authorities in the previous year would not estop or operate as *res judicata* for subsequent year. D

[Para 14] [1023-D, E]

2.2. It is necessary to distinguish a decision on question which directly and substantially arose in any dispute about the liability for a particular year, and question which arose incidentally or collaterally. If, for instance, the E validity of a taxing statute is impeached by an assessee who is called upon to pay a tax for a particular year and the matter is taken to a High Court or to this Court and it is held that the taxing statute is valid, it may not be easy to hold that the decision on this basic and material issue would not operate as *res judicata* against the assessee in a subsequent year.

[Para 18] [1024-H; 1025-A, B] F

2.3. In the present case, in earlier litigation, the Court considered the evidence of Quality Control Manager who was described as 'expert' on the point and accepting his evidence, the Court held that the goods imported by the Company was ferrous in nature and not non-ferrous and the Company was right in paying octroi under Item No. 71. It was thus a 'fundamental factor' G and the nature of goods imported by the Company was directly and substantially in issue, on the basis of which the decision was taken. It would indeed be very difficult to hold that such decision would not continue to operate in subsequent years unless it is shown that there are changed circumstances or the goods imported by the Company in subsequent years was different than the one which H

A **was imported earlier and in respect of which decision had been arrived at by the Court. No such contention has been raised by the Corporation nor any material has been placed on record. Therefore, the Revisional Court as well as the High Court were right in giving benefit of the decision in earlier litigation to the respondent-Company. [Para 22] [1026-D, E, F, G]**

B *Maharashtra Mills (P) Ltd.* **v.** *ITO,* **[1959] Supp 2 SCR 547;** *Visheshwar Singh* **v.** *CIT,* **[1961] 3 SCR 287;** *Instalment Supp (P) Ltd.* **v.** *Union of India,* **[1962] 2 SCR 644;** *New Jehangir Vakil Mills* **v.** *CIT,* **[1964] 2 SCR 971;** *Amalgamated Coalfields Ltd.* **v.** *Janapada Sabha,* **[1963] Supp 1 SCR 172;** *Devilal* **v.** *STO,* **[1965] 1 SCR 686;** *Udayan Chinubhai* **v.** *CIT,* **[1967] 1 SCR**
C **913;** *M.M. Ipoh* **v.** *CIT,* **[1968] 1 SCR 65;** *Kapur Chand* **v.** *Tax Recovery Officer,* **[1969] 1 SCR 691;** *CIT, W.B.* **v.** *Durga Prasad,* **AIR (1971) SC 2439;** *Radhasoami Satsang* **v.** *CIT,* **[1992] 1 SCC 659, relied on.**

Society of Medical Officers **v.** *Hope,* **(1960) AC 55 and** *Broken Hill Proprietary Co. Ltd.* **v.** *Municipal Council,* **[1925] ALL ER 675, referred to.**

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Res Judicata by Turner 2nd Edn., **para 219, p. 193, referred to.**

3. In the light of the finding that the two witnesses ie. Quality Control Manager and the Public Servant had scientific knowledge and on the basis of their evidence, the goods imported by the Company was covered by Item No.
E **71, also, the Reivisional court was justified in holding that the Company was right in paying 0.5% octroi. [Para 23] [1027-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 647-650 of 2002.

F From the Judgment and Order dated 14.06.2001 of the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 593, 594, 595 and 596 of 1996.

Chinmoy Khaladkar and Manik Karanjawala for the Appellant.

G Nitin Sangra, Prashant Kumar, Sushil Karanjkar and Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. All these criminal appeals are filed by Municipal
H Corporation of City of Thane ('Corporation' for short) against M/s Vidyut

Metallics Ltd.- respondent No. 1 aggrieved by the order dated June 14, 2001 passed by a Single Judge of the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 593, 594, 595 and 596 of 1996. By the said order, the learned Single Judge dismissed the writ petitions filed by the Corporation and confirmed the order passed by the VIth Additional District & Sessions Judge, Thane holding that the respondent No. 1 herein was not liable to pay octroi at the rate of 1%, but only at the rate of 0.5%.

2. Short facts giving rise to the present appeals are that the respondent No. 1 is a Company registered under the Indian Companies Act, 1913 having its registered office and factory at Bombay-Agra Road, Wagle Estate, Thane. The Company is engaged in the process of manufacturing safety razor blades of various qualities and types. For the said purpose, the Company was importing stainless steel strips and bringing them to its factory within the octroi limits of the Corporation. According to the Corporation, since 1968, the Company had been importing stainless steel strips to its factory and it was paying octroi at the rate of 1% under Item No. 77 of the Schedule to the Maharashtra Municipalities (Octroi) Rules, 1974 (hereinafter referred to as 'the Rules'). The Company was also maintaining a current account with the Corporation under Section 142 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as 'the Act').

3. It is the case of the Corporation that in the year 1974, a sudden turn was taken by the Company. It obtained a copy of the Rules and found that it was paying octroi at an enhanced rate of 1% though it was liable to pay such octroi at the rate of 0.5% only. It, therefore, stopped paying octroi at the rate of 1% as provided in Item 77 of the Schedule and started to pay at the rate of 0.5% as provided under Item 71 of the Schedule. According to the Corporation, the said action was totally illegal, unlawful and inconsistent with the provisions of the Rules. From October 1, 1974 to March 31, 1979, the Company paid octroi at the rate of 0.5% instead of 1%. The Corporation, hence, wrote a letter on May 10, 1978 to the respondent-Company stating therein that the Company was liable to pay octroi at the rate of 1% under Item 77 and not at the rate of 0.5% under Item 71 of the Schedule. The Company was also called upon to pay the remaining amount within a period of 15 days or to show cause as to why the Company should not be made liable to pay the amount in accordance with law and in accordance with provisions of Section 169 of the Act. The respondent-Company replied to the said letter contending that the Company was liable to pay only at the rate of 0.5% under Item 71 and had been correctly paying octroi and no action could be taken

A against it.

4. Since the appellant-Corporation was not satisfied with the explanation submitted by the respondent-Company, it issued additional bills which the respondent-Company was liable to pay. Being aggrieved by the claim of the Corporation, the Company preferred appeals in the Court of IIIrd Joint Civil
B Judge, Senior Division, Thane which were registered as Municipal Appeal Nos. 3 to 6 of 1979. The learned Judge, by an order dated January 29, 1988 dismissed the appeals filed by the Company holding that Item No. 77 expressly referred to 'stainless steel' which was applicable and Item No. 71 could not be attracted to the goods brought by the appellant-Company within the
C Municipal limits and the Company was liable to pay octroi at the rate of 1%.

5. The Company challenged the order passed by the learned IIIrd Joint Civil Judge, Senior Division by filing revision petitions. The VIth Addl. District & Sessions Judge, Thane allowed those revisions, set aside the order passed by the trial Court and held on merits that the contention raised by the
D Company was well founded. It also held that at an earlier occasion, a similar question had arisen and a competent Court of the Chief Judicial Magistrate, Thane held that the Company could be charged only under Item 71 and not under Item 77 of the Schedule. The said order was confirmed by the Revisional Court and also by the High Court of Bombay vide its order dated July 16, 1990, in Writ Petition No. 2987 of 1990. It was, therefore, held that the point
E was finally concluded and the Company had paid proper octroi and it was not liable to pay octroi under Item No. 77. The revision petitions were, therefore, allowed and the order passed by the learned Judge was set aside. The High Court also dismissed writ petitions. The said order is challenged by Thane Municipal Corporation in this Court.

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6. On January 9, 2002, notice was issued by this Court. On July 8, 2002, leave was granted and the matters have been placed before us for final hearing.

7. We have heard learned counsel for the parties.

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8. Learned counsel for the appellant-Corporation contended that the Revisional Court as well as the High Court had committed an error of law in holding that Item No. 71 of the Schedule to the Octroi Rules would apply and not Item No. 77. It was submitted that Item No. 77 was clear and unambiguous and the Courts ought to have decided the case on that basis. It was also

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submitted that even the respondent-Company was satisfied that it was liable to pay octroi at the rate of 1% under Item No. 77 and accordingly for about seven years (1968 to 1974), the Company paid octroi at the rate of 1%. It was only from 1974 that it contended that it was liable to pay only 0.5% octroi under Item No. 71 of the Schedule which was illegal. The counsel also submitted that in such matters, a decision taken in earlier assessment year cannot be said to be final and conclusive operating *res judicata* or estoppel and since the items are different and the goods brought by the Company is covered by Item No. 77, the Company is bound to pay octroi duty at the rate of 1%. It was, therefore, prayed that the trial Court was right in invoking Item No. 77 and in dismissing appeals filed by the Company and the said order deserves to be restored by setting aside the order passed by the Revisional Court as well as by the High Court.

9. The learned counsel for the respondent-Company, on the other hand, submitted that the order passed by the trial Court was totally wrong and hence the Revisional Court and the High Court set it aside by upholding the contention raised by the Company. It was stated that though the Company was paying octroi under Item No. 77 initially, it was convinced that the correct item would be Item No. 71 and it was liable to pay octroi at the rate of 0.5% thereunder. The Company, therefore, corrected its mistake and started paying octroi at the rate of 0.5% under Item No.71. The counsel also submitted that the same question came up for consideration before a competent Court of Law and the matter was decided in earlier litigation in favour of the Company. In Writ Petition No. 2987 of 1990, the High Court, vide its order dated July 16, 1990, held that the correct item which would apply to the goods brought by the respondent-Company was Item No. 71. Obviously, therefore, the Revisional Court as well as the High Court in the present proceedings were right in relying on that decision and no interference is called for. It was also submitted that even on merits in the present proceedings, the Revisional Court decided the issue in favour of the Company.

10. Having considered the rival contentions of the parties, we are of the opinion that the view taken by the Revisional Court as also by the High Court cannot be faulted. The counsel for the parties drew our attention to both the items i.e. Item No. 71 and Item No. 77 of the Schedule to the Octroi Rules. Those Items read thus:

Item No.71 : Iron and Steel

(i) to (xxx) ... ...

A (xxxi) Hoops and strips;

(xxxii) ... ...

Item No. 77

Non-ferrous metals, that is to say brass, copper, tin, aluminum, lead
B zinc, German Silver, stainless steel their alloys, wires, wares, sheets ingots and circles.

11. At an earlier occasion also, the Corporation sought to levy octroi by considering the goods in question under Item No. 77. It is no doubt true that between 1968 and 1974, the Company itself treated the goods imported
C by it under Item No. 77 and paid octroi at the rate of 1%. On going through the Octroi Rules, however, it realized that the correct Item was 71 and not 77 and started paying octroi at the rate of 0.5% from April, 1974. The Corporation also accepted the amount paid by the Company. Only in 1979, additional bill was issued and demand was raised. The Company, therefore, filed an appeal against the additional demand and Chief Judicial Magistrate, Thane by an
D order dated November 20, 1986, allowed the appeal and set aside the additional demand. In that case, the Court observed that Item No. 77 related to Non-ferrous matters whereas Item No. 71 applied to Ferrous matters. One R.B. Deb who was the Quality Control Manager of the appellant-Company having Master degree and sufficient knowledge in Physics, Chemistry and Mathematics
E was examined as a witness by the Company. He stated that he was familiar with chemistry of metals. According to the Court, therefore, he was an 'expert'. Mr. Deb deposed that the Company was manufacturing 'Safety Razor Blades' from stainless steel strips of certain specification. He also stated that stainless steel strip was steel having chromium content of more than 12% and steel was a ferrous metal and its chemical symbol was "Fe". According to him, ferrous
F metals were rich in iron, i.e. the principal constituent was iron whereas non-ferrous metals were those without content of iron. He asserted that Company was importing ferrous material in stainless strips. According to him, stainless strip was a species from the larger group called Iron and Steel which was a genus. If the Item was covered under category of ferrous metal, octroi duty
G chargeable would be as per Item No. 71 and not 77. The Court, relying on his evidence, held that the Company was right in treating the goods under Item 71 of the Schedule to the Octroi Rules and octroi duty payable by it was proper. As already referred to above, Revisional Court confirmed the order passed by the Trial Court and even Writ Petition was dismissed by the High Court.

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12. In our opinion, the IIIrd Joint Civil Judge, Senior Division, Thane was not right in passing the order in the present proceedings and in observing that the order passed by the Chief Judicial Magistrate, Thane in earlier litigation had no binding effect and he could decide the appeal independent of that decision. The Revisional Court as well as the High Court were, therefore, right in setting aside the said order.

13. Before the High Court as well as before us, it was contended by the learned counsel for the Corporation that in earlier proceedings, Criminal Writ Petition was dismissed by the High Court in *limine* without recording reasons and hence, the said decision would not operate as *res judicata* nor it would debar the Corporation from raising a point of law which arises in the present proceedings. It was also submitted that in matters relating to recovery of taxes, revenue, octroi, etc. each year is an independent unit and a decision in one year does not deprive the Revenue from claiming the requisite amount of octroi from the assessee in other years, if such demand is otherwise legal and lawful.

14. So far as the proposition of law is concerned, it is well-settled and needs no further discussion. In taxation-matters, the strict rule of *res judicata* as envisaged by Section 11 of the Code of Civil Procedure, 1908 has no application. As a general rule, each year's assessment is final only for that year and does not govern later years, because it determines the tax for a particular period. It is, therefore, open to the Revenue/Taxing Authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis in subsequent years. A decision taken by the authorities in the previous year would not estop or operate as res judicata for subsequent year. [vide *Maharana Mills (P) Ltd.* v. *ITO,* [1959] Supp 2 SCR 547 : AIR (1959) SC 881; *Visheshwar Singh* v. *CIT,* [1961] 3 SCR 287; *Instalment Supp (P) Ltd.* v. *Union of India,* [1962] 2 SCR 644; *New Jehangir Vakil Mills* v. *CIT,* [1964] 2 SCR 971; *Amalgamated Coalfields Ltd.* v. *Janapada Sabha,* [1963] Supp 1 SCR 172; *Devilal* v. *STO,* [1965] 1 SCR 686; *Udayan Chinubhai* v. *CIT,* [1967] 1 SCR 913; *M.M. Ipoh* v. *CIT,* [1968] 1 SCR 65; *Kapur Chand* v. *Tax Recovery Officer,* [1969] 1 SCR 691; *CIT, W.B.* v. *Durga Prasad,* AIR (1971) SC 2439; *Radhasoami Satsang* v. *CIT,* [1992] 1 SCC 659 : AIR (1992) SC 377; *Society of Medical Officers* v. *Hope,* (1960) AC 55; and *Broken Hill Proprietary Co. Ltd.* v. *Municipal Council,* (1925) All ER 675 : (1926) AC 94 : 95 LJPC 33; Turner on Res Judicata, 2nd Edn., para 219, p. 193].

A 15. In the leading case of *Broken Hill Proprietory Co.* v. *Municipal Council*, (1926) AC 94 : (1925) All ER 672 : 95 LJPC 33, the Judicial Committee of the Privy Council observed;

> The decision of the High Court related to a valuation and a liability to a tax in a previous year, and no doubt as regards that year
B the decision could not be disputed. The present case relates to a new situation, namely, the valuation for a different year and the liability for that year. It is not *'Ieadem questio', and therefore, the principle of 'res judicata' cannot apply."*

(emphasis supplied)

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16. In *Udayan Chinubhai* v. *Commissioner of Income Tax, Gujarat*, [1967] 1 SCR 913, this Court stated; "It is true that an assessment year under the Income Tax Act is a self-contained assessment period and a decision in the assessment year does not ordinarily operate as res judicata in respect of
D the matter decided in any subsequent year, for the assessing officer is not a Court and he is not precluded from arriving at a conclusion inconsistent with his conclusion in another year. It is open to the Income Tax Officer, therefore, to depart from his decision in subsequent year, since the assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. *A decision reached in one year*
E *would be a cogent factor in the determination of a similar question in a following year, but ordinarily there is no bar against the investigation by the Income Tax Officer of the same facts on which a decision in respect of an earlier year was arrived at."*

(emphasis supplied)

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17. In *M. M. Ipah* v. *Commissioner of Income Tax, Madras*, [1968] 1 SCR 65, this Court again stated; "The doctrine of *res judicata* does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment: the findings on question
G of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive."

18. In our opinion, however, it is necessary to distinguish a decision on
H question which directly and substantially arose in any dispute about the

liability for a particular year, and question which arose incidentally or collaterally. If, for instance, the validity of a taxing statute is impeached by an assessee who is called upon to pay a tax for a particular year and the matter is taken to a High Court or to this Court and it is held that the taxing statute is valid, it may not be easy to hold that the decision on this basic and material issue would not operate as *res judicata* against the assessee in a subsequent year. [vide *Amalgamated Coalfields Ltd.* v. *Janapada Sabha,* (1963) Supp 1 SCR 172]

19. Thus, in *Udayan Chinubhai*, when the Income Tax Officer, Bombay recorded a finding that the original Hindu Undivided Family of Sir Chinubhai had been divided and ceased to exist, and the property had been partitioned, it was not open to the Income Tax Officer, Ahmedabad to revise or reconsider the previous order passed by the Income Tax Officer, Bombay and to revive the original family as if there was no partition and the status of joint family continued to exist.

20. The Court observed; "It is true that an assessment year under the Income Tax Act is a self-contained assessment period and a decision in the assessment year does not ordinarily operate as *res judicata* in respect of the matter decided in any subsequent year, for the assessing officer is not a Court and he is not precluded from arriving at a conclusion inconsistent with his conclusion in another year. It is open to the Income Tax Officer, therefore, to depart from his decision in subsequent years, since the assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. A decision reached in one year would be a cogent factor in the determination of a similar question in a following year, but ordinarily there is no bar against the investigation by the Income Tax Officer of the same facts on which a decision in respect of an earlier year was arrived at. But this rule in our judgment, does not apply in dealing with an order under S. 25-A(1). Income from property of a Hindu undivided family "hitherto" asserted as undivided may be assessed separately if an order under Section 25-A(1) had been passed. When such an order is made, the family ceases to be assessed as a Hindu undivided family. Thereafter that family cannot be assessed in the status of a Hindi undivided family unless the order is set aside by a competent authority. Under Cl. (3) of S. 25-A if no order has been made, notwithstanding the severance of the joint family status, the family continues to be liable to be assessed *in the status of a* Hindu undivided family, but once *an order has been passed, the recognition of severance is granted by the Income Tax Department and Cl. (3) of S. 25-*

A *A will have no application."*

(emphasis supplied)

21. We are in agreement with the following observations of Ranganath Misra, C.J. in *Radhasoami Satsang* v. *Commissioner of Income Tax,* [1992] 1 B SCC 659 : JT (1991) 4 SC 313;

> "We are aware of the fact that strictly speaking *res judicata* does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but *where a fundamental aspect permeating through* C *the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."...*

(emphasis supplied)

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22. In the present case, in earlier litigation, the Court considered the evidence of Mr. Debe, Quality Control Manager who was described as 'expert' on the point and accepting his evidence, the Court held that the goods imported by the Company was ferrous in nature and not non-ferrous and the Company was right in paying octroi under Item No. 71. It was thus a E 'fundamental factor' and the nature of goods imported by the Company was directly and substantially in issue, on the basis of which the decision was taken. It would indeed be very difficult to hold that such decision would not continue to operate in subsequent years unless it is shown that there are changed circumstances or the goods imported by the Company in subsequent F years was different than the one which was imported earlier and in respect of which decision had been arrived at by the Court. No such contention has been raised by the Corporation nor any material has been placed on record. We are, therefore, of the view that the Revisional Court as well as the High Court were right in giving benefit of the decision in earlier litigation to the respondent-Company.

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23. There is an additional factor also as to why the Trial Court was wrong and Revisional Court and the High Court were right in setting aside the order passed by the Trial Court in the present proceedings. The Revisional Court in the present proceedings also considered the evidence of two witnesses - Mr. R.K. Debe, Quality Control Manager, and Mr. Arora - a Public Servant. H

The Revisional Court observed that they had 'scientific knowledge' and on the basis of their evidence, it held that the goods imported by the Company was covered by Item No. 71. In the light of that finding also, we are of the view that the Revisional Court was justified in holding that the Company was right in paying 0.5% octroi. The impugned orders, hence, deserve no interference and the appeals must be dismissed.

24. For the foregoing reasons, all the appeals deserve to be dismissed and are accordingly dismissed.

K.K.T. Appeal dismissed.