1957

Khem Chand
v.
The Union of India and Others

Das C. J.

17, 1951, purporting to dismiss the appellant from service was inoperative and that the appellant was a member of the service at the date of the institution of the suit out of which this appeal has arisen. The appellant will get costs throughout in all courts. He must pay all court fees that may be due from him. Under order XIV, Rule 7 of the Supreme Court Rules were direct that the appellants could be paid his fees which we assess at Rs. 250.

Appeal allowed.

1957

December, 18

THE CENTRAL INDIA SPINNING AND WEAVING AND MANUFACTURING COMPANY, LIMITED, THE EMPRESS MILLS, NAGPUR

v.

THE MUNICIPAL COMMITTEE, WARDHA

(BHAGWATI, B. P. SINHA, JAFER IMAM, J. L. KAPUR and GAJENDRAGADKAR JJ.)

Terminal tax—Goods in transit passing through Municipal limits—If can be taxed—Imported into and exported from—Connotation of—C. P. & Berar Municipalities Act, 1922 (C.P. II of 1922), s. 66(I)(o).

Section 66(I)(o) of the C.P. and Berar Municipalities Act, 1922, empowered the municipalities to impose "a terminal tax on goods or animals imported into or exported from the limits of a municipality". The respondent framed rules for the imposition of terminal tax. The appellant transported bales of cotton from Yeotmal to Nagpur by road and the vehicles carrying the goods passed through the limits of respondent municipality. The goods were neither unloaded nor reloaded at Wardha but were merely carried across through the municipal area. The respondent collected terminal tax on these goods on the ground that they were exported by the appellant from the limits of the respondent municipality. The appellant disputed his liability to pay terminal tax, and claimed a refund:

Held, that the goods which were in transit and were merely carried across the limits of the municipality were not liable to terminal tax. Terminal tax on goods imported into or exported from the limits of a municipality was payable on goods on their journey ending within the municipal limits or commencing therefrom and not where the goods were merely

in transit and that their terminus elsewhere. Terminal tax leviable under s. 66(I)(o) must have reference to some activity within the municipal area i.e., the entry for the purpose of remaining within that area or the commencement of the jounrey from that area.

The words "imported into" do not merely mean "bringing into" but comprise something more i.e., incorporating and mixing up of the goods with the mass of the property in the local area. Similarly, the words "exported from" do not merely indicate "taking out" but have reference to the taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in transit i.e. brought into the area for the purpose of being transported out of it.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 119 of 1953.

Appeal by special leave from the order dated September 11, 1950, of the Nagpur High Court in Miscellaneous Civil Case No. 77 of 1946.

C. K. Daphtary, Solicitor-General of India and *M. S. K. Sastri,* for the appellants.

A. V. Vishwanatha Sastri, G. J. Ghate and *Naunit Lal,* for the respondent.

1957. December 18. The following Judgment of the Court was delivered by

Kapur J.

KAPUR J.—This is an appeal by Special Leave against a judgment and order of the High Court of Judicature at Nagpur dated February 14, 1950 and the question for decision turns upon the construction of s. 66(1)(o) of the C.P. & Berar Municipalities Act (Act II of 1922) which in this judgment will be termed the Act.

A short recital of the facts of the case will suffice for its decision. The appellant is a company which has its spinning and weaving mills at Yeotmal. The appellant's bales of cotton are transported from Yeotmal to Nagpur by road and vehicles carrying them pass through the limits of Wardha Municipality. The goods being in transit, the vehicles carrying them do no more than use the road which traverses the municipal limits of Wardha and is a P.W.D. road. The goods are neither unloaded nor reloaded at Wardha but are merely

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur
v.
The Municipal Committee, Wardha

Kapur J.

carried across through the municipal area. The Municipal Committee purporting to act under s. 66(1)(o) of the Act and r. 1 of the rules made thereunder collected Rs. 240 as terminal tax on these goods on the ground that they were exported by the appellant from the limits of the Municipality of Wardha. The appellant thereupon claimed a refund of this sum. On refusal by the Municipality the appellant took an appeal to the Deputy Commissioner, Wardha which was sent for disposal to the Sub-Divisional Officer, who, on March 11, 1946, referred the following two questions under s. 83(2) of the Act to the High Court for its opinion:

(1) Whether goods passing through the limits of Wardha Municipality by road despatched from Yeotmal to their destination at Nagpur without being unloaded or reloaded at Wardha are liable for an export terminal tax?

(2) Whether the respondent Municipal Committee is not liable to refund the export terminal tax collected on such goods?

The reference in the first instance came up for hearing before Sheode, J., who referred the matter to a Division Bench and the Division Bench in turn referred it to a Full Bench. The High Court after referring to a number of decided cases was of the opinion that the tax had been validly imposed and the appellant was therefore not entitled to a refund.

The powers of the Municipality to impose, assess and collect taxes are set out in Chapter 9 of the Act and s. 66(1) enumerates the taxes which may be imposed. Clause (d) of sub-section (1) deals with tolls; cl. (e) with octroi and cl. (o) with terminal tax. The sub-section provides:

"66(1) A committee may, from time to time, and subject to the provisions of this Chapter, impose in the whole or in any part of the municipality any of the following taxes for the purposes of this Act, namely:—

(a) a tax payable by the owners of buildings or lands situate within the limits of the municipality, with reference to the gross annual letting value of the buildings or lands;

(b) a tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality;

(c) a tax, payable by the owner, on all or any vehicles or animals used for riding, driving, draught or burden, or on dogs, where such vehicles, animals or dogs are kept within the limits of the municipality;

(d) a toll on vehicles an animals used as aforesaid entering the limits of the municipality, and on boats moored within those limits:

Provided that a toll under this clause shall not be payable on any vehicle or animal on which a tax under clause (c) has been imposed.

(e) an octroi on animals or goods brought within the limits of the municipality for sale, consumption or use within those limits;

(f) market dues on persons exposing goods for sale in market or in any place belonging to or under the control of the Government or of the committee;

(g) fees on the registration of cattle sold within the limits of the municipality;

(h) a latrine or conservancy tax payable by the occupier (or owner) upon private latrines, privies or cesspools, or upon premises or compounds cleansed by municipal agency;

(j) a tax for the construction and maintenance of public latrines;

(k) a water-rate, where water is supplied by the committee;

(l) a lighting rate where the lighting of public streets, places and buildings is undertaken by the committee;

(m) a drainage tax, where a system of drainage has been introduced;

(n) a tax payable by the occupiers of buildings or lands within the limits of the municipality, according to their circumstances and property within those limits;

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur v. The Municipal Committee, Wardha

Kapur J.

(o) a terminal tax on goods or animals imported into or exported from the limits of a municipality:

Provided that a terminal tax under this clause and an octroi under clause (e) shall not be in force in any municipality at the same time; and

(p) a tax on—

(i) persons travelling by railway to or from a municipality to which pilgrims resort, or

(ii) pilgrims visiting a shrine within the limits of a municiplity".

Rule I of the Terminal Tax Rules made under the Act relates to exports and r. 2 to imports. They provide;

(1) On the following goods exported by rail or road a terminal tax shall be levied at the rate noted against each;

at 2 as. per maund of 40 seers; Cotton.....

(2) On the following goods imported by rail or road a terminal tax shall be levied at the rate noted against each.

Then follows the schedule.

The High Court was of the opinion that "The words 'export' and 'import' have no special meaning. They bear the ordinary dictionary meaning, which has been the foundation for the decisions to which I have referred in the opening portion of my opinion. These words mean only 'taking out of and bringing into'."

The appellant's contention is that the words 'imported into or exported from' do not merely mean 'to bring into' or to carry out of or away from but also have reference to and imply the termination or the commencement of the journey of the goods sought to be taxed and therefore goods in transit which are transported across the limits of a Municipal Committee are neither imported into the municipal limits nor exported therefrom. It is also contended that even if the words 'imported into or exported from' are used merely to mean "to bring into" or "to carry out of or away from" the qualifying of the tax by the adjective "terminal" is indi-

cative of the *terminus ad quem* or *terminus a qua* of the journey of the goods and excludes the goods in transit. The respondent on the other hand submits that the tax is leviable merely on the entry of the goods into the municipal limits or on their exit therefrom and the word "terminal" has reference to the termini of the jurisdictional limits of the municipality and not to the journey of the goods. The efficacy of the relative contentions of the parties therefore requires the determination of the construction to be placed on the really important words of which are "terminal tax", "imported into or exported from" and "the limits of the Municipality". In construing these words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.

'Import' is derived from the Latin word *importare* which means 'to bring in' and 'export' from the Latin word *exportare* which means to carry out but these words are not to be interpreted only according to their literal derivations. Lexico-logically they do not have any reference to goods in 'transit' a word derived from *transire* bearing a meaning similar to transport, i.e., to go across. The dictionary meaning of the words 'import' and 'export' is not restricted to their derivative meaning but bear other connotations also. According to Webster's International Dictionary the word "import" means to bring in from a foreign or external source; to introduce from without; especially to bring (wares or merchandise) into a place or country from a foreign country in the transactions of commerce; opposed to export. Similarly "export" according to Webster's International Dictionary means "to carry away; to remove; to carry or send abroad especially to foreign countries as merchandise or commodities in the way of commerce; the opposite of import". The Oxford Dictionary gives a similar meaning to both these words.

The word "transit" in the Oxford Dictionary means the action or fact of passing across or through; passage or jour-

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur
v.
The Municipal Committee, Wardha

Kapur J.

ney from one place or point to another; the passage or carriage of persons or goods from one place to another; it also means to pass across or through (something) to traverse, to cross. Even according to the ordinary meaning of the words which is relied upon by the respondent, goods which are in transit or are being transported can hardly be called goods 'imported into or exported from' because they are neither being exported nor imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination which in the instant case was Nagpur.

The respondent's counsel sought to support his argument by referring to the following cases decided by various Indian High Courts where the words 'import' and 'export' were construed as meaning 'bring in' or 'take out of or away from' and it was also held that goods in transit are also covered by the words 'imported into' or 'exported from'.

In *Re Rahimu Bhanji*(1) which was a case of a criminal prosecution for refusal to pay octroi on the ground that octroi was not due on goods in transit, the court gave a literal meaning to the word "import" and held that as the goods had been brought within the limits of the Municipality they were liable to octroi under the Rules which provided for a refund, which could be applied for. The definition of octroi seems to have been ignored in that case.

In *Narottamdas Harjivandas & Co.* v. *Bulsar Town Municiplity*(2) the tax was imposed on goods in transit and the argument raised was that the municipality had no power to impose a terminal tax upon such goods as were not meant for consumption within the limits of the Municipality. The court held:

"In our opinion there is no force in this contention. The Municipal Rules and Bye-laws dealing with the terminal tax define it as 'an octroi levied on the import into the said Municipality of goods specified in the Terminal Tax Schedule, such octroi not being liable to be refunded.' 'Import' is

(1) (1897) I.L.R. 22 Bom. 843. (2) I.L.R. (1941) Bom, 97, 103.

defined in the Rules as meaning 'conveying goods by Railway or by Ship or otherwise into Municipal limits'. It is clear therefore that the tax is leviable on all goods entering Municipal limits whether they are intended for consumption within the city or whether they are merely in transit through the city to some other place".

This decision rested on the definition of the words "import" and "terminal tax" without taking into consideration the meaning of 'octroi' which implies consumption, use or sale. Besides these observations were really obiter because the court held that the goods never entered the limits of the Municipality and consequently no tax was chargeable.

Dalvadi Maganlal Bhagwandas v. *Ahmedabad Municipality*(1) was a case in which bricks manufactured within the limits of the Ahmedabad Municipality had in order to be carried to the place of business of the munfacturer, which was in another part of the town, to be temporarily taken out of the limits of the Municipality and re-entered at another point. The re-entry was held to be "import" on the basis of the dictionary meaning of the word and because "import" had no reference to and was not qualified by any consideration of the place of manufacture or place of consumption. Rajadhyaksha J., said at p. 137:

"There is no such limitation on the meaning of the word "import" which must be given its ordinary meaning". and at p. 140 the learned Judge observed:

"We are of the opinion that the word "import" in r. 380, Ahmedabad Municipal Code must be given its ordinary meaning, and that is "to bring something within the Municipal limits from a place without its boundaries", irrespective of the consideration as to whether the goods were manufactured within the Municipal limits, how long they were outside those limits and for what purpose",

(1) I.L.R. (1945) Bom. 132.

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur v. The Municipal Committee, Wardha

Kapur J.

The two Nagpur cases relied upon were *Bhagwandas Harikishandas* v. *Municipal Committee, Yeotmal*(1) and *Kashiram Jhabarmal Firm* v. *Municipal Commitee, Nagpur*(2). In the former case the decision was again based solely on the literal dictionary meaning of the words "imported into or exported from", and a further argument relying on the existence of the word "or" between "imported and exported" instead of "and".....as an argument against the imposition of the tax on goods in transit was also repelled. In the latter case where the goods were brought into the municipal limits for being despatched by rail the court again relied on the "plain meaning" of the words "imported into or exported from" and also on certain government instructions which were in favour of the imposition of tax on goods in transit. There are also some unreported judgments of the Nagpur High Court taking a different view of the words "imported into or exported from" and those have been referred to in the judgment of Grille C. J. in *Kashiram's case*(2) and in the referring order of Sheode J., in the present case.

Emperor v. *Har Dutt*(3) was a case of payment of toll tax in respect of a lorry brought within the limits of the Municipality through the toll barrier. The word used in Rule I in that case was "bring" and it was held that bringing has no element of pause or repose. This case is hardly relevant to the facts of the case now before us.

In an earlier case *Nek Mohammad* v. *Emperor*(4) to the words "bring" and "import" an element of pause and repose was attached, but this case was not approved of in *Hardwarimal Harnath Das* v. *Municipal Board, Dehradun*(5) which also was a case of goods in transit. The word "import" was there given the meaning "carried into". But the decision was based on the definitions given in the Statutory Rules to the word "import" which was "bringing into the terminal tax limits from outside those limits".

(1) A.I.R. (1945) Nag. 197. (2) I.L.R. (1946) Nag. 99.
(3) A.I.R. (1936) All. 743.
(4) A.I.R. (1936) All. 83. (5) I.L.R. (1940) All. 4

In none of these cases was the argument as to the qualification stemming from the use of the words "terminal tax" considered nor was the signification of the word "terminal" as a prefix to the word tax discussed.

The respondent also relied on *Muller* v. *Baldwin*(1) where it was held that "coals exported from the Port" must be taken to have been used in its ordinary meaning of "carried out of the Port" and therefore included coals taken out of the port in a steamer as "bunker coals" that is, coals taken on board for the purpose of consumption on the voyage. The argument that the term "exported" must receive a qualified interpretation and that it means taken for the purpose of trade only was rejected. Lush J. said at p. 461:—

"There is nothing in the language of the Act to shew that the word "exported" was used in any other than its ordinary sense.....Construing the words of the Act upon this principle, we feel bound to hold that coals carried away from the port, not on a temporary excursion, as in a tug or pleasure-boat, which intends to return with more or less of the coals on board, and which may be regarded as always constructively within the port, but taken away for the purpose of being wholly consumed beyond the limits of the port, are coals "exported" within the meaning of the Act".

Now three things clearly imerge from that (Muller's case; (1) that the word "export" was not applied to coals in transit because the coals were taken from the port and started journey from there and would be included in the phrase "taken out" of the port and (2) that temporary taking out was not "export" as was held in *Maganlal Bhagwandas* v. *Ahmedabad Municipality*(2); (3) that the test is the intention with which the goods were brought in or taken out.

It was urged that in accordance with the current authority of the different courts of India, a different interpretation should not be placed on the words of the section but this argument is of little avail in a case where the decision has

(1) (1874) 9 Q. B. 457. (2) I.L.R. (1945) Bom. 132.

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur v. The Municipal Committee, Wardha

Kapur J.

not been acquiesced in for long or the authorities are not absolutely unanimous. Moreover it is not a case of disturbing the course of construction which has continued unchallenged for such a length of time as to acquire the sanction of continued decisions over a very long period and there is therefore no principle which will preclude this court from correcting the error. See *William Hamilton and John Hamilton* v. *William Baker*(1). *The Lancashire and Yorkshire Railway Company* v. *The Mayor, Alderman, and Burgesses of the Borough of Bury*(2). *Pate* v. *Pate*(3).

In another case *Wilson* v. *Robertson*(4) under the statute the duty was imposed on all goods "imported into or exported from Berwick harbour" which extended down the Tweed to the sea but no part of it extended above the bridge. Goods were brought up the river in a sea-going vessel which having first used rings and posts put up by the Harbour Commissioners in order to moor while lowering the masts, passed through Berwick Bridge, and unloaded her cargo about two hundred yards above the bridge and beyond the limits of the harbour. It was held that goods were not "imported into" the harbour so as to make any dues payable in respect of them. The argument raised there was that as there was no harbour down the Tweed except Berwick and though the goods were actually unloaded above the Berwick bridge and out of the limits of the harbour it was substantially imported into the harbour. The vessel in that case was obliged to stop before passing the bridge and avail herself of the benefits of the machinery and works provided by the Commissioners and that was part of the means used towards the unloading of the vessel and it was argued that this would amount to import. Lord Cambell C.J. said :

"The argument on behalf of the plaintiff would be very pertinent if addressed to a Committee of the House of Commons in favour of making the harbour dues payable in such a case as the present. We can, however, look only to what

(1) (1889) 14 App. Cas. 209, 220, 222. (3) (1915) A.C. 1100, 1108.
(2) (1889) 14 App. Cas. 417, 420. (4) (1855) 24 L.J.Q.B. 185.

the legislature has enacted, in order to see whether this burthen is cast upon the defendants. The dues are only to be paid upon goods imported into the harbour of Berwick, the limits of which are defined by the Act, and which does not extend above the bridge. Now, has this iron been so imported? It is admitted that, if it had been carried through the bridge to a port higher up the river, no dues would have been payable; and the plaintiff's counsel by that admits himself out of court"..... These observations support the submissions against the meaning of "export" or "import" being merely taking out of or bringing into.

Mersey Docks and Harbour Board v. *Twigge*(1) was a case of goods shipped from a foreign port under a through bill of lading to Liverpool, landed in London and sent from there to Liverpool in another ship and it was held that such goods were imported into Liverpool ports beyond the seas and not from London. The transit began at Singapore and ended at Liverpool and was not broken by the transhipment in London.

By giving to the words "imported into or exported from" their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. The effect of the construction of "import" or "export" in the manner insisted upon by the respondent would make rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter State and intra State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided.

(1) (1898) 67 L.J.Q.B. 604.

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur v. The Municipal Committee, Wardha

Kapur J.

Chief Justice Marshall dealing with the word "importation" said in *Brown* v. *State of Maryland*(1):

"The practice of most commercial nations conforms to this idea. Duties, according to that practice, are charged on those articles only which are intended for sale or consumption in the country. Thus sea-stores, goods imported and re-exported in the same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in by stress of weather, and landed, but not for sale are exempted from the payment of duties. The whole course of legislation on the subject shows that in the opinion of the legislature the right to sell is connected with the payment of the duties".

Continuing the learned Chief Justice at p. 447 observed:

"Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself..... ....." This supports the contention raised that "import" is not merely the bringing into but comprises something more *i.e.* "incorporating and mixing up of the goods imported with the mass of the property" in the local area. The concept of "import" as implying something brought for the purpose of sale or being kept is supported by the observations of Kelly C. B. in *Harvey* v. *The Mayor and Corporation of Lyme Regis*(2). There the claim for a toll was made under the Harbour Act and the words for construction were "goods landed or shipped within the same cobb or harbour". Construing these words Kelly C. B. said:

"The ordinary meaning and purport of the words is perfectly clear, namely, that tolls are to be paid on goods substantially imported; that is, in fact, carried into the port for the purpose of the town and neighbourhood."

Similarly the word "export" has reference to taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in

(1) (1827) 12 Wheat 419, 442; 6 L. Ed. 678, 686.
(2) (1869 4 Ex. 260, 262.

transit *i.e.* brought into the area for the purpose of being transported out of it. If the intention was to tax such goods then the word used should have been "re-exported" which means to export (imported goods) again; Re-exportation means the exportation of imported goods.

Even assuming that the words "imported into" or "exported from" could be restricted only to their derivative meaning and thus construed to mean only "brought into or taken out or away from" this general meaning it was submitted by the appellant is qualified by the use of the prefix "terminal" used adjectively with the word "tax", which makes it necessary to determine the meaning of the term "terminal tax". And the question then arises does it have reference to the jurisdictional limits of the Municipality or to the ultimate termination or the commencement of the journey of the goods as the case may be. In dealing with this the High Court said:

"It remains to consider what is signified by the word "terminal". It is obvious that it could refer either to the termini of the goods or the termini of the Municipality. It is clear to me that the word "terminal" refers not to the destination or origin of the goods but to the termini of the Municipal limits. Digby, J., pointed out that it refers to the traffic rather than the origin of the goods".

According to the Oxford Dictionary "terminal" means end, boundary; situated at or forming the end or extremity of something; situated at the end of a line of railway; forming or belonging to, a railway terminus.

"Terminus" means the point to which motion or action tends, goal, end, finishing point; sometimes that from which it starts; starting point. An end; extremity; the point at which something comes to an end.

In Corpus Juris Vol. 62 it is stated at p. 729 that "terminal" in connection with transportation means *inter alia* "the fixed beginning or ending point of a given run".

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur
v.
The Municipal Committee, Wardha

Kapur J.

If "terminal" besides the above meaning has an additional meaning also and that meaning signifies the termini 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 the taxing authorities and doubt resolved in favour of the tax-payer. In Crawford on Statutory Constructions in para. 257 at p. 504 the following passage pertaining to construction of taxing statutes taken from *Bedford* v. *Johnson*(1) is quoted :

"Statutes levying taxes or duties upon citizens will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing upon a close analogy, and all questions of doubt will be resolved against the government and in favour of the citizen, and because burdens are not to be imposed beyond what the statute expressly imparts".

In that case the court refused to regard automobile parking lots as falling within the scope of a statute which imposed a tax on general warehouse storage establishments. On this principle the word "terminal" must in the context be construed as having reference to terminus and has to be read to connote the idea of the end of something connected with motion and not that of an intermediate stage of a journey.

It would be quite legitimate to examine the legislative history of these "terminal taxes" which would be a useful aid to construction of clause (o) of s. 66(1). In the last century a tax known as Octroi payable on the entry of goods in a local area for consumption, use or sale therein was introduced. In 1920 an optional substitute called "terminal tax" came into existence by virtue of item 8 of Schedule II of the Scheduled Tax Rules framed under s. 80A(3)(a) of

(1) 102 Colo 203, 78 Pac (2) 373.

the Government of India Act, 1915 as amended in 1919. Item 8 was as follows:

Item 8 "A terminal tax on goods imported into or exported from, a local area, save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July, 1917." In the Government of India Act, 1935 this item was replaced by two items one dealing with "terminal tax" and the other with the right of a local area to impose tax on entry of goods into a local area. The former was put in the Central List (List I) and the latter in the Provincial List (List II). (1) Item No. 58 in List I of Schedule 7 of the Constitution Act was :

"Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights" and (2) in the Provincial List another item was introduced—item No. 49 which was as follows:

"Cesses on the entry of goods into a local area for consumption, use or sale therein."

The Constitution of India maintains this distinction in the Seventh Schedule and item No. 89 in List I corresponding to the above-mentioned item No. 58 is "terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights".

In the State List the item No. 52 which is as follows:

"Taxes on the entry of goods into a local area for consumption, use or sale therein"

and Item No. 56 is:

"Taxes on goods and passengers carried by road or on inland waterways".

The legislative history of this tax thus shows that octroi was leviable on the entry of goods in a local area when the 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. In 1935 the terminal tax was made leviable on goods

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur
v.
The Municipal Committee, Wardha

Kapur J.

carried by railway or air but the tax on entry of goods was imposable on goods for consumption, use or sale in a local area. Both these taxes have been continued by the Constitution. If the pre 1920 octroi and the post 1935 cess or tax on entry of goods is payable on goods for consumption, use or sale, can it be said that the Constitution Act of 1915 as amended in 1919 or the Rules made thereunder intended to vary the nature of the tax by the introduction of item 8 in Sch. II under the Scheduled Tax Rules *i.e.* the tax became leviable on entry of goods or on their being taken out without their acquiring the qualification of incorporation with the mass of property of the local area. The presumption is against the imposition of new burdens. In the absence of clear intention to the contrary the incidence of the tax leviable under item 8 of Sch. II of the Schedule Tax Rules is incapable of having a different complexion from that which it had before 1920 or that which was clearly given after 1935. It was said in *U.S.* v. *Fisher*(1):

"that it is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irrestible clearness".....

It is also a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act. There is no evidence that the actual object of the Act in the present case was to extend the powers of the Municipalities to imposing the tax on articles which were in the course of transit.

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 is clear from the decision of the Federal Court in *Punjab Flour and General Mills' case*(2) which is discussed in a later

(1) (1804 2 Cranch 358, 390; 2 L. Ed. 304.
(2) [1947] F.C.R. 17.

part of this judgment. Therefore terminal tax on goods imported or exported is similar in its incidence and is payable on 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.

The vires of the tax has not been assailed but the difference in the language of the two items in Lists I and II has been pressed before us for the purpose of showing that the word "terminal" implies the terminus of a journey and not the end of the jurisdictional limits of a municipality. Terminal in item No. 58 of List I of the 1935 Constitution Act has reference to the terminus of carriage of goods. There is no reason to give to this word a different meaning in item No. 8 of Scheduled Tax Rules under the Government of India Act of 1915 or in clause (o) of s. 66(1) of the Act. The two sets of taxes in Lists I and II have different qualities. The "terminal tax" under item No. 58 of List I arises at the end of journey by railway wherever the end may be in relation to particular goods and under item No. 49 of List II the tax or cess on entry of goods whatever the nomenclature is imposable when the goods enter a local area for consumption, use or sale therein. The two sets of taxes are so distinct that they may be imposed simultaneously, one when they reach their destination at the end of a railway journey and the other when they enter the limits of a local area for the object above-mentioned. But in both cases the activity in regard to the motion of the goods ends, in the one case as the goods are carried no further by railway and in the other as their entry is for consumption, use or sale. Keeping in view the terms and language and the legislative history of the section 66(1) we are unable to enlarge the terms of the section by mere construction so as to include within its operation goods which are in transit and are being transported across the jurisdictional limits of the Municipality.

The Federal Court in *Punjab Flour and General Mills Co. Ltd.* v. *Chief Officer, Corporation of City of Lahore*(1) considered the meaning of the word "terminal" in a case

(1) [1947] F.C.R. 17.

1957

The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur
v.
The Municipal Committee, Wardha

Kapur J.

which was brought from Lahore. There the Municipality of Lahore imposed a terminal tax in 1926 calculated on the gross weight of consignments or per tail as the case might be, at the rates and on the articles specified in the schedule, imported into the Municipality by rail or by road. By a notification of 1938 the Municipality in supersession of that tax imposed a new tax called "Octroi (without refund)" which was to be similarly calculated on the gross weightage of the consignments imported into the limits of the Municipality. This in turn was replaced by the imposition of a new tax also called "Octroi (without refund)" on consignments imported into the limits of the Municipality. The appellant's contention in that case was that the tax imposed was a "terminal tax" on goods carried by railway and as such not imposable. The Municipality argued on the other hand that it was a tax within the provisions of Entry No. 49 of List II and as such could be imposed with the previous sanction of the Provincial Government under s. 61(2) of the Punjab Municipalities Act. The following passage from the judgment of Spens C. J. shows the meaning to be attached to the word "terminal":

"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 referrable 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 of consumption, use or sale therein.....

In our judgment there is no limitation to be implied in Entry No. 49, List II, in regard to the manner in which goods may be transported into a local area. It follows that

so far as rail-borne goods are concerned the same goods may well be subjected to taxation under Entry No. 58 of List I as well to local taxation under Entry No. 49 of List II. 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".

Therefore according to the Federal Court "terminal" has reference to the terminus of the railway or air i.e., the end of journey. The tax imposed in that case was held not to be a terminal tax but merely a cess on entry of goods into the local area within Entry No. 49 of List II even though it was imposed on rail-borne goods entering the municipal area.

It is a noticeable feature of s. 66(1) that apart from the terminal tax there are 14 other heads of taxation imposable by the Municipality and in the case of each one of these 14 heads the tax is on some activity which takes place within the jurisdictional limits of the Municipality. This supports the contention of the appellant that the terminal tax leviable under cl. (o) properly construed must have reference to some activity within the municipal area *i.e.*, the entry for the purpose of remaining within that area or commencement of journey from that area.

We are, therefore, of the opinion that the terminal tax under s. 66(1)(o) is not leviable on goods which are in transit and are only carried across the limits of the Municipality, and would therefore allow this appeal, reverse the decision of the Nagpur High Court. The appellant will have its costs in this court and in the High Court.

Appeal allowed.