Before M.M. Kumar, J.

M/S BALLARPUR INDUSTRIES LTD. & ANOTHER—
Petitioners

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THE STATE OF HARYANA & OTHERS—*Respondents*

C.W.P. No. 1769 of 1982

7th February, 2003

Constitution of India, 1950—Arts.19 (1)(g), 14, 301 & 304—Haryana Validation of Octori and Surcharge Act, 1980 (Act No. 7 of 1980)—Levy of octori duty on common salt used for industrial purposes—Common salt—Used for human consumption and industrial consumption—Distinction between—Whether classification on the basis of its use violates Art.14—Held, no— Retrospective operation of Haryana Act No. 7 of 1980 neither arbitrary nor unconstitutional—Imposition of octori duty on common salt does not violate Arts. 19 (1)(g), 301 or 304 as it would be within the reasonable restriction contemplated by Art.19(6)—Petition liable to be dismissed.

Held that 'common salt' would not become one with the 'industrial salt' merely because its chemical name is sodium chlorine. In the case of Ambala district which included Yamunanagar common salt has to be iodized salt. It is further clear that iodized refined salt is cured of the ill effect of magnesium. Therefore, I do not feel persuaded to accept the view that the common edible salt would be the same commodity as the industrial salt. It is well known that the industrial salt is uncrushed and unrefined salt which would be devoid of any iodine.

(Para 20)

Further held, that even if for the sake of presumption it is accepted that common edible salt and the common salt used for industrial purposes are one and the same thing, then picking up the industrial salt for the levy of octori cannot be considered to be without any reasonable basis because common edible salt has to reach every

common man rich or poor whereas the common salt used for industrial purposes would be used for gaining profits. The industry is in a better position to pay which is a relevant consideration in all taxing statutes. Therefore, I have no hesitation in rejecting the argument that the levy of octroi on common salt used for industrial purposes as distinguished from common edible salt violates the mandate of Article 14 of the Constitution.

(Para 24)

Further held, that a perusal of Act No. 7 of 1980 shows that it has been made applicable to every industry in Yamunanager and incidently if the petitioner happens to be the only industry merely on that account, it would not loose its character of a class of industry for the purposes of determining the question of valid classification. After perusing the provisions of Act No. 7 of 1980 any one importing 'industrial salt' or who has already imported and paid the octroi for industrial salt from 1st July, 1975 have been treated alike. There is nothing in the statement of objects and reasons to conclude that only the petitioners were sought to be brought within the sweep of validation Act.

(Para 26)

Further held, that the argument that the imposition of octroi duty violates Articles 301 and 304 of the Constitution, it imposes unreasonable restriction under Art. 19(1)(g) would not require any serious consideration in view of the fact that the octroi cannot be considered as a tax on movement of goods. Bringing the goods in municipal area with the intention to use and not in transit would be the decisive factor. The nature of such a levy is regulatory in character and is adequately covered by Entry 52, List II of Seventh Schedule. It cannot be considered to have violated Articles 301, 304 or 19(1)(g) of the Constitution as it would be within the reasonable restriction contemplated by Article 19(6) of the Constitution.

(Para 29)

D.N. Sawhney, Advocate, *for the petitioners.*

Naresh K. Joshi, AAG, Haryana, *for the respondents.*

JUDGMENT

M.M. KUMAR, J.

(1) The instant petition filed under Article 226 of the Constitution prays for issuance of a writ of mandamus to the respondent State of Heryana not to levy and collect octroi on the common salt brought into Municipal Committee Yamunanagar after declaring the Haryana Validation of Octroi and Surcharge Act, 1980 (for brevity, Act No. 7 of 1980) as unconstitutional being violative of Articles 14, 19(1)(g) and 301 of the Constitution. A further direction has been sought for issuance of a writ of certiorari for quashing the decision of Municipal Committee, Yamunanagar imposing octroi on industrial salt under item No. 61 of the Octroi Schedule. This letter is attached as Annexure P-1 with the writ petition (wrongly described as Annexure P-2). As a consequential relief, the petitioners have claimed a direction to the respondents to refund all the amount by way of octroi on salt from July, 1975.

(2) The petitioner M/s Ballarpur Industries Limited has various manufacturing units at different places. Shree Gopal Mills is one of its units situated at Yamunanagar which is engaged in manufacturing amongst other items caustic soda and chlorine. For the purposes of manufacturing caustic soda and chlorine, the petitioners brings into their factory various raw material including salts within the Municipal limits of Yamunanagar which is claimed to be common salt and its chemical name is Sodium Chloride. It is claimed that till January, 1975, the salt used to be obtained from Hindustan Salt Limited (a Government of India undertaking) and subsequently from its own salt works situated at Singach in Gujarat. The petitioners have alleged that,—*vide* notification dated 30th May, 1953, the composite State of Punjab in pursuance of Section 61 of the Punjab Municipal Act, 1911 (for brevity, 1911 Act) had sanctioned a proposal of respondent No. 3 to levy tax in the nature of octroi on entry of goods in municipal limits of Municipal Committee, Yamunanagar for consumption, use or sale on the items set out in the Schedule to the notification which also contained the list of exempted items from the levy of octroi. Clause (b)(8) is the relevant entry which shows that the salt was exempted from octroi. It is claimed that salt has never been subjected to octroi under any law either by composite State of Punjab or by the newly

created State of Haryana after 1st November, 1966 despite various notifications issued for amendment of the said octroi Schedule. It has further been averred that although 1911 Act was repealed by Section 279 of the Haryana Municipal Act, 1973 (for brevity, 1973 Act) yet by virtue of clause (a) of sub-section (2) of Section 279 of 1973 Act, the notification dated 30th May, 1963 was saved from repeal and continued inforce. It has also been claimed that the aforementioned notification would be deemed to have been made and issued under the provisions of 1973 Act until and unless it is superseded by a notification or an order made under the provisions of 1973 Act. It is on this basis that the petitioners claim that salt continues to be exempted from levy of octroi under the notification dated 30th May, 1963 published in Punjab Government Gazette Part I-A dated 7th June, 1963. It has also been claimed that the petitioners unit at Yamunanagar till 8th July, 1975 did not pay any octroi nor was it required to pay because of the exemption under Entry 8 of Part B of the notification dated 30th May, 1963. However, on 8th July, 1975 the Municipal Committee, Yamunanagar to have levied octroi on salt brought by the petitioner in the municipal limits of Yamunanagar by describing the same as industrial salt and the levy has been justified under item No. 61 of the Octroi Schedule which prescribes the rates at Rs. 1.40 per quintal plus Rs. 75 as surcharge. It has further been alleged that the aforementioned imposition of octroi is without jurisdiction because the salt is covered by the list of exemptions from octroi as per item (b)(8). It is also claimed that there is no distinction between the salt used for human consumption and the salt used for industrial purposes and that the petitioners would not fall within the ambit of Entry Item No. 61 of the Octroi Schedule, the Octroi Schedule under which it has been levied by the letter dated 8th July, 1975 reads as under :—

> "Other washing soap (including monkey brand soap, Sunlight soap, Vim and Lux flakes) Salt-Petre refined, Potash, Empsom salts, Sodium Bi-Carbonate and other saline substances used in washing clothes, floors and utensils."

(3) Petitioners made various representations to the respondents by sending them a certificate from Hindustan Salt Limited in which it is stated that the industrial salt sold to the petitioners unit at Yamunanagar is of the same physical and chemical consumption as

that of common salt used for human consumption and the prices of both are the same. Annexure P-4 to P-8, P-10, P-11, P-14 and P-15 are the copies of various representations sent to various functionaries of the State or Municipal Committee, Yamunanagar. The aforementioned representations have remained under consideration of the State Government as is clear from letter dated 3th July, 1978, Annexure P-17. On 26th November, 1978, a notification. Annexure P-19 has been issued in pursuance of powers conferred by sub-section (1) of Section 84 and clause (a) of sub-section (1) of Section 84 of 1973 Act, exemption was granted from payment of octroi duty only on common salt (edible salt) within the limits of all municipal committees and notified areas for human consumption with effect from 1st November, 1978. The text of the notification is as under :—

> "No. 30/10/2CI.-78-In exercise of the powers conferred by sub-section (1) of Section 84 and clause (a) of sub-section (1) of the Haryana Municipal Act, 1973 and all other powers enabling him in this behalf, the Governor of Haryana hereby exempts from the payment of octroi duty Common Salt (Edible Salt) as may be brought within the limits of all the municipalities and notified areas for human consumption with effect from Ist November, 1978."

(4) Aggrieved by the aforementioned notification dated 26th November, 1978, petitioners earlier filed Civil Writ Petition No. 1071 of 1979 challenging the levy and collection of octroi on common salt. However, on 24th May, 1979, the writ petition was dismissed as withdrawn on the basis of a preliminary objection that alternative remedy was provided. The petitioners again filed another Writ Petition before the Supreme Court under Article 32 of the Constitution being Writ Petition Nos. 1293-94 of 1979. When the writ petitions came up for hearing before the Supreme Court, the respondent-State pointed out that the Haryana Legislative Assembly has passed Haryana Validation of Octroi and Surcharge Act No. 7 of 1980 which is published in the Official Gazette on 14th April, 1980 and which has been enforced from retrospective effect from 1st July, 1975. Before the Supreme Court also the writ petition was withdrawn and the following order was passed :—

> "Mr. Tarkunde says that the petitioners will file a petition under Article 226 of the Constitution in the High Court. In that view of the matter, we grant leave to the

petitioners to withdraw the petition. On the question of laches, we hope that the High Court will take into consideration the circumstances that this Writ Petition has been pending in this Court since 1979."

Thereafter, the present writ petition has been filed.

(5) Respondent No. 1 has opposed the writ petition by taking numerous preliminary objections. The first objection is that the petitioners have alternative remedy of appeal and revision under Sections 99 and 100-A of 1973 Act and Civil Writ Petition No. 1079 of 1979 filed before this Court was withdrawn on 24th May, 1979 on that score. Another objection raised is that the collection of octroi was started by the Municipal Committee, Yamunanagar by virture of Annexure P-1 from 8th July, 1975. No reason for delay has been given even if the delay from 1979 when the earlier writ petition was filed is condoned.

(6) On merits, it has been disputed if the petitioners import into the area the edible common salt for human consumption. It is in fact claimed that the industrial salt or common salt which is not used for human consumption and is used for manufacturing of caustic soda and chlorine is different than the edible salt used for human consumption. It has then been asserted that Municipal Committee, Yamunanagar was within its competence to levy and collect octroi on industrial salt used for manufacturing of caustic soda and chlorine under the Octroi Schedule. However, in order to make Item No. 61 of the Octroi Schedule more clear and explicit Haryana Act No. 7 of 1980 was enacted. The stand of the State further is that the industrial salt which is imported by the petitioners into municipal area cannot be used for human consumption and it cannot be exempted from payment of octroi. It has further been claimed that Epsom Salt, other saline substances were liable to pay octroi under Item No. 61 of the Octroi Schedule and exemption was available only to edible salt used for human consumption. Entries 5 and 52 of State List in the 7th Schedule of the Constitution has also been relied upon to claim that the octroi is premissible to be levied on the entry of goods in the local area for consumption, use or sale.

(7) Respondent No. 3 in its separate written statement has pointed out that the petitioners have been shifting their stand

concerning the variety of salt. A reference in this regard has been made to documents Annexure R-2 which are statements of octroi in respect of the years 1973, 1973, 1974, 1978 and 1979. It has further been pointed out that some time, the petitioners have described the item as salt and at another time industrial salt. The summary has been disclosed as—

	"Year	*The item as shown in the declarations*
1.	*1972*	*Salt*
2.	*1973*	*Uncrushed Salt*
3.	*1974*	*Salt*
4.	*1978*	*Industrial Salt*
5.	*1979*	*Salt for Chemical Industry (NOC)".*

(8) It has further been asserted that once the incidence of octroi has been passed on to the ultimate consumers by charging them, the incidence of octroi has been shifted and, therefore, Haryana Act No. 7 of 1980 which has been made applicable retrospectively is beyond the scope of challenge. No fresh levy has been imposed and as 1973 Act has been assented to by the President of India on 26th April, 1973, no further assent was required.

(9) On merits respondent No. 3 it has submitted that the salt imported within the municipal limits by the petitioners is industrial salt and the same is non-iodised. Non-iodised salt is declared unfit for human consumption more particularly in the District of Ambala which included Yamuna Nagar at that time in the State of Haryana. In that area, the prevalence of goitre is wide spread owing to the small quantity of iodine in water. Reference has been made to Communication dated 1st March, 1974 which is a notification issued by the Food (Health) Authority, Haryana-cum-Director Health Services stating that no person in Haryana shall sell non-iodised salt in Ambala District. Another communication dated 10th May, 1979 has also been referred to prohibiting the sale of salt other than iodised salt in Ambala district. Then the letter dated 12th December, 1979 has been relied upon to show that because of deficiency of iodine in water, the incidence of goitre is common in the districts of Ambala and Gurgaon. On the basis of aforementioned problem of goitre it has been claimed that

exemption was granted from the levy of octroi duty only to iodised salt which alone is common salt fit for human consumption. A distinction is sought to be drawn between the words salt and salts. It is claimed that only those traders are granted exemption from the levy of octroi duty who produce a certificate from competent authority certifying that the salt imported in the municipal area is iodised and is fit for human consumption.

(10) I have heard Mr. D.N. Sawhney, learned counsel for the petitioners who has raised following three submissions before me :—

(a) Levy of octroi duty on common salt is violative of Article 14 of the Constitution becuase classification of common salt into industrial salt and non-industrial salt has been created in respect of same article on the basis of its use and that because both the salt are one and the same commodity.

(b) Retrospective operation of Haryana Act No. 7 of 1980 is arbitrary and, therefore, unconstitutional as the petitioners have been singled out for invidious discrimination for its application to their single individual unit.

(c) That imposition of octroi duty also violates Articles 19(1)(g), 301 and 304 of the Constitution as it has surrected unreasonable restrictions on the inter-State freedom of trade, commerce and the same is against public interest. This argument is based on the presumption that octroi is a tax on movement of goods.

(11) Mr. D.N. Sawhney, learned counsel for the petitioners substantiating his first submission has stated that levy of octroi can be challenged on the anvil of Article 14 of the Constitution if it could be shown that distinction created between the article exemption and the one which is taxed is illusory. According to the learned counsel there is no distinction between the common salt and the salt used by the petitioners for manufacturing of caustic soda and chlorine. As the distinction sought to be created by notification Annexure P-19 dated 26th November, 1978 is between common salt (edible salt) and the salt used by the petitioners which is also a common salt is illusory and

superficial, therefore, the same is liable to be struck down under Article 14 of the Constitution. In support of his submission, the learned counsel has relied upon a judgment of **Delhi High Court rendered in Civil Writ Petition No. 1637 of 1973 titled Delhi Cloth and General Mills Company Limited** *versus* **Union of India and others**, decided on 13th March, 1986, and argued that common salt and industrial salt are one and the same thing and, therefore, any classification on the basis of its use for human consumption or industrial consumption would be violative of Article 14 of the Constitution. Learned counsel has also placed reliance on paragraphs 15 and 16 of a judgment of Constitution Bench of the Supreme Court in **Raja *Jagannath Baksh Singh*** versus ***State of Uttar Pradesh and another, (1).***

(12) It was then submitted that the legislation enacted in 1980 is also arbitrary and discriminatory inasmuch as it seeks to single out the petitioner- industry for levy of octroi. Learned counsel has made a reference to the statement of objects and reasons to argue that after perusal of the same it would stand proved that the sole object of passing Act No. 7 of 1980 was to single out the petitioners for imposition of octroi. The statement of objects and reasons reads as under :—

"STATEMENT OF OBJECTS AND REASONS

A large quantity of salt is being brought within the Municipal limits of Yamunanagar for use in the manufacturing of industrial products on which the Municipality of Yamunanagar is charging octroi under item 61 of its Octroi Schedule since July, 1975. To remove all doubts in this regard, it has become necessary to make a specific provision for it. Hence this Bill."

(13) The learned counsel further submitted that a reasonable classification based on **intelligible differentia** is permissible if it distinguishes persons or things that are grouped together from others left out of the group. According to the learned counsel, the legislature has specifically mentioned that respondent No. 3 Yamunanagar Municipal Committee has been charging octroi under Item No. 61 of the Octroi Schedule since July, 1975 and a large quantity of salt is

(1) AIR 1962 SC 1563

being imported within the municipal limits of Yamunanagar for use in manufacturing of industrial products which would show that it has only one industry in mind i.e. the petitioner. The learned counsel has again elaborated his argument by making reference to the letter dated 8th July, 1975 (Annexure P-1) addressed by the Administrator of respondent No. 3 wherein octroi under Item No. 61 of the Octroi Schedule has been permitted to be collected subject to final decision by the Government. The aforementioned letter further reveals that industrial salt could not be exempted from levy of octroi and refund could be claimed by the petitioners after the decision of the Government. Thereafter, the petitioners have been paying octroi under protest. A reference has also been made to the representation dated 12th July, 1975 wherein a certificate from the Samber Salt Limited a Government of India Undertaking has been attached to argue that there is absolutely no difference between the salt for human consumption and the one imported by the petitioners for industrial Consumption. Both the salts are common salts and the common salt stands exempted from the payment of octroi. According to the learned counsel the representations made by the petitioners Annexures P-2 to P-8, P-10, P-11, P-14, P-15 and P-16 would categorically show that the respondents were deferring the decision on this aspect which firstly culminated in issuance of an order by the local self government on 26th November, 1978. According to Annexute P-19 common salt (edible salt) was exempted from octroi. All these facts would show that the legislation is aimed at taxing an individual (the petitioner) and has to be struck down as violative of Article 14 of the Constitution.

(14) Mr. Sawhney has also submitted that validation clause of Act No. 7 of 1980 would not operate to the detriment of the petitioners because the validation has not been made on account of any declaration made by judicial pronouncements or for any other valid reason. According to the learned counsel retrospective operation of Act No. 7 of 1980 would be permissible because withdrawal of any financial benefit by an amendment made with retrospective effect must ordinarily be held to be unreasonable and arbitrary. According to the learned counsel once exemption has been granted by the Octroi Schedule notified on 30th May, 1963,—*vide* its Item No. 8 under the heading list of Items for Octroi and sub-heading (b) Miscellaneous Articles, the could not be withdrawn by validating the same with effect

from 1st July, 1975. In support of his submission, he has heavily relied upon the minority view of the Supreme Court in ***M/s Lohia Machines Limited*** versus ***Union of India (2).***

(15) The last submission made by the learned counsel is that octroi is a levy on movement of goods and, therefore, it has to conform to Article 301 and 304 of the Constitution. According to the learned counsel imposition of octroi would impede the inter State freedom of trade and octroi and would work against the public interest.

(16) Mr. Naresh K. Joshi, learned Assistant Advocate General, Haryana has submitted that there is a world of difference between the common salt (edible salt) intended to be exempted from levy of octroi and the industrial salt which is intended to pay octroi. According to the learned counsel, there is no artificial or superficial distinction between the two items. Referring to the order of Government dated 26th November, 1978 Annexure P-19, the learned counsel has submitted that effort of the Government is to make this distinction more explicit which has eventually resulted into passing of Act No. 7 of 1980. The learned counsel has drawn my attention to the averments made by respondent No. 3 in its written statement in which it has been averred that from 1972 to 1979 the petitioners have been shifting their stand by describing the imported articles some times salt and at other time industrial salt which difference would show that the salt and industrial salt are two different commodities and cannot be considered as one or the same product. He has further argued that the common edible salt has to be iodized salt particularly in the District of Ambala in Haryana of which Yamunanagar use to be a part. In the area of Yamunanagar salt without iodine is not treated as edible salt because of wide spread prevalence of goitre. He has also referred to the notifiction of Haryana Government dated 26th November, 1978 Annexure R-1 in this regard which is statement of octroi in respect of the petitioner-industry. He has further made reference to various documents attached as Annexure R-3 collectively. Making reference to letters dated 1st March, 1974 and 10th May, 1979 issued by the Director, Health Services, Haryana, the learned counsel argued that no person in Haryana could sell non-iodized salt in Ambala District because of incidence of goitre. Therefore, the exemption issued by the notification dated 30th May, 1963 would apply only to common edible

(2) AIR 1985 S.C. 421

salt as has been clarified by notification of the government dated 26th November, 1978 Annexure P-19 and also by Act No. 7 of 1980. He has further submitted that even otherwise common edible salt is a different commodity than the industrial salt used for producing caustic soda and chlorine because the latter would not require the addition of iodine, refinement or would not be subjected to a process aimed at nullifying the effect of magnesium. Therefore, it would not constitute any violation of Article 14 of the Constitution.

(17) Learned State counsel has then submitted that there is no prohibition in enacting a law which may apply only to one individual because an individual alone may constitute a basis for valid classification. The learned counsel further argued that Act No. 7 of 1980 is not confined to Yamunanagar alone and is applicable to whole State of Haryana, therefore, it cannot be held to have violated the mandate of Article 14 of the Constitution.

(18) I have thoughtfully considered the respective submissions made by learned counsel for the parties and am of the view that this petition is liable to be dismissed. In order to find out whether the salt exempted from octroi duty by item at serial No. 8 under sub-heading (b) Miscellaneous Articles of the heading list of Exemptions from Octroi in the Octroi Schedule dated 30th May, 1963 would include the salt used for manufacturing of caustic soda and chlorine, the intentions of the Legislation has to be found out. It is common knowledge that salt Satyagrah initiated by Father of Nation Shri Mahatma Gandhi Ji in March/April, 1930 popularly known as 'Dandi March' against the foreign rulers was to avoid incidence of tax on the making of edible salt by the local population for their own consumption. It appears to be the intention of the notification issued on 30th May, 1963 which provided that only that salt is exempted from octroi which was not being taxed before 1st April, 1937. The relevant portion of the Octroi Schedule issued on 30th May, 1963 reads as under :—

> "**No. 2784-CJ(4CI)-63/20355.**—Wheras in supersession of the tax levied in this behalf, the Municipal Committee, Pathankot, in district Gurdaspur, in exercise of the powers conferred by section 61 of the Punjab Municipal Act, 1911, has proposed to levy a tax on the entry of the goods into the Pathankot Municipality for

consumption, use or sale therein, in the nature of octroi (without refunds).

And whereas the proposals of the taxation aforesaid have been santioned by the Governor of Punjab under sub-section (8) of Section 62 of the aforesaid Act.

Now, therefore, in supersession of the tax, the imposition of which was notified with Punjab Government Notification No. 11209-C-52/ 11-466, dated the 3rd January, 1953, as subsequently amended from time to time, and in pursuance of the provisions of sub-section (10) of Section 62 of the aforesaid Act, the Government of Punjab is pleased to notify the imposition of the tax, in accordance with the Schedule as hereinafter appearing and to specify that the tax shall come into force with effect from the Ist August, 1963.

OCTROI SCHEDULE WITHOUT REFUNDS

A tax called octroi (without refunds) calculated on the gross weight of consignments including packing, drums and other articles used in packing and a tax on animals by tail at the rates shown in column No. 3 and in the case of assessment of *ad valorem* basis at the rates shown in column No. 5 of the schedule herein below upon the articles and live animals mentioned in column No. 2 thereof, imported by rail or road into the limits of the Municipality but subject to the following provisions :—

xx xx xx xx

OCTROI SCHEDULE

LIST OF EXEMPTION FROM OCTROI

(a) Articles belonging to Government

xx xx xx xx

(b) Miscellaneous Articles

1 to 7. xx xx xx

8. Salt (where it was not being taxed before the 1st April, 1937).

xx xx xx xx

61. Other washing soap (including monkey brand soap), sunlight soap, vim and lux flakes), alum, saltpetre refined, potash, epsom salts, sodium bicarbonate and other saline substances used in washing clothes, floors and utensils. 0.50 1.40."

(19) It is further clear that the petitioners on their own showing have been describing the article imported in the municipal area under different names like salt, salt for chemical industries, industrial salt and uncrushed salt. This factual aspect is made clear by the petitioners themselves in their declarations/ representations filed by them. Respondent No. 3 has also placed on record document Annexure R-1 obtained from the Northern Railway for the purposes of paying freight to the railway authorities at a rate chargeable for industrial salt. Even the railway authorities have separate rates of freight for the industrial salt and the iodized salt as is clear from Annexure R-1.

(20) The argument of the learned counsel based on the judgment of Delhi High Court in the case of Delhi Cloth and General Mills Company (supra) that a common salt and the common salt used for industrial purposes are one and the same thing would not apply to the facts of the present case as the material placed on the record of this case shows that comon salt would not become one with the industrial salt merely because its chemical name is sodium chlorine. In the case of Ambala District which included Yamunanagar common salt has to be iodized salt. It is further clear that iodized refined salt is cured of the ill effect of magnesium. Therefore, I do not feel persuaded to accept the view that the common edible salt would be the same commodity as the industrial salt. It is well known that the industrial salt is uncrushed and unrefined salt which would be devoid of any iodine.

(21) Even otherwise I am of the view that wide discretion has been conferred on the legislature in choosing the subjects of tax and if the statute discloses a broad permissible policy of taxation, the Courts are likely to uphold it because the Courts would lean more readily in

favour of a presumption of constitutionality of a taxing statute, rather than presuming otherwise. These principles are well known and have been repeatedly reiterated by the Supreme Court. In two judgments delivered by Constitution Benches of the Supreme Court in the case of ***M/s East India Tobacco Co. etc*** versus ***State of Andhra Pradesh and another (3) and State of Madhya Pradesh*** versus ***Bhopal Sugar Industries, (4)*** the above view has been taken. Another Constitution Bench in the case of ***Vivian Joseph Ferreira and another*** versus ***The Municipal Corporation of Greater Bombay and others, (5)*** reiterating the same principle, their Lordships of the Supreme Court observed as under :—

> "The question of validity of taxing statutes has arisen before this Court in a number of cases. The principle emerging from them is that in order that a tax may be valid, it is firstly, within the competence of the legislature imposing it, secondly, that it is for a public purpose, and thirdly, that it does not violate the fundamental rights guaranteed by Part III of the Constitution. The taxing statute is as much subject to Art. 14 as any other statute, (1961)3 SCR 77 = (AIR 1961 SC 552), Raja Jagannath *versus* U.P. (1963)1 SCR 220 = (AIR 1962 SC 1563), East India Tobacco Co. *versus* Andhra Pradesh (1963)1 SCR 404 = (AIR 1962 SC 1733), Khandige Sham Bhatt *versus* Agricultural Income Tax Officer, (1963)3 SCR 809 = (AIR 1963 SC 591) and State of Andhra Pradesh *versus* Nalla Raja Reddy, (1967)3 SCR 28 = (AIR 1967 SC 1453). But in view of the inherent complexity of fiscal adjustment of diverse elements a larger discretion has to be permitted to the Legislature for classification so long as there is no transgression of the fundamental principles underlying the doctrine of classification [of (1963)3 SCR 809 = (AIR 1963 SC 591)]. These principles are that the classification must be based on an intelligible differentia which distinguishes persons or objects grouped together from others left out of the group, and that differentia

(3) AIR 1962 S.C. 1733
(4) AIR 1964 S.C. 1179
(5) AIR 1972 S.C. 845

must have a rational nexus with the object of the statute. So long as these principles are properly followed in classifying persons or objects for taxation, the power to classify must be wide and flexible so as to enable the Legislature to adjust its system of taxation in all proper and reasonable ways, [see (1963)3 SCR 809 = (Air 1963 SC 591)].

It is well recognised that a Legislature does not have to tax everything in order to tax something. It can pick and choose districts, objects, persons, methods and even rates of taxation as long as it does so reasonably. (Willis. Constitutional Law of the United States, 587. A taxing statute is not invalid on the ground of discrimination merely becuase other objects could have been but are not taxed by the legislature. [Ravi Verma *versus* Union of India (1969)3 SCR 827 = (AIR 1969 SC 1094.)] When a statute divides the objects of tax into groups of categories, so long as there is equality and uniformity within each group, the tax cannot be attacked on the ground of its being discriminatory, although due to fortuitous circumstances or a particular situation some included in a class or group may get some advantage over others, provided of course they are not sought out for sepcial treatment: [(1963)3 SCR 809 = (AIR 1963 SC 591)]. Likewise, the mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity, for then hardly any tax, for instance, sales tax and excise tax, can escape such a charge. [Twyford Tea Co, Ltd. *versus* State of Kerala (1970)3 SCR 383 = (AIR 1970 SC 1133)]."

(22) Similar view has been taken by another Constitution Bench in ***Damthuluri Ramaraju and others*** versus ***The State of Andhra Pradesh and another (6)*** and in ***Kerla Hotel and Restaurant Association and others*** versus ***State of Keraala and others (7)*** In Kerala Hotel and Restaurant Association case (supra), it has been observed that in taxing statute, the test to determine its

(6) AIR 1972 S.C. 828
(7) (1990)2 S.C.C. 502

validity is that it should not be pulpably arbitrary as the scope for classification permitted in taxation is far greater than any other area. The observations of their Lordships read as under :—

> "The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic quality as well. It cannot be doubted that if the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker sections of society, that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause."

(23) In the aforementioned case, the classification made by the provisions imposing sales tax on the cooked food sold to the affluent society in luxury hotels and exempting the same from sales tax in modern eating houses was raised. Upholding the classification it held that there was a rationale nexus for the classification with the available object for which it is made and the classification is founded on intelligible differentia.

(24) Even if for the sake of presumption it is accepted that common edible salt and the common salt used for industrial purposes are one and the same thing, then picking up the industrial salt for the levy of octroi cannot be considered to be without any reasonable basis because common edible salt has to reach every common man rich or poor whereas the common salt used for industrial purposes would be used for gaining profits. The industry is in a better position to pay which is a relevant consideration in all taxing statutes. This view is supported by the Constitution Bench judgment in ***Ganga Sugar Corporation*** versus ***State of Uttar Pradesh (8)*** Therefore, I have no hesitation in rejecting the first argument raised by Mr. Sawhney that the levy of octroi on common salt used for industrial purposes as distinguished from common edible salt violates the mandate of Article 14 of the Constitution.

(8) (1980)1 S.C.C. 223

(25) The other argument that there is colourable and arbitrary exercise of power in enacting Act No. 7 of 1980 retrospectively with the only object of extracting and validating the payment of octroi from the petitioners has also not impressed me. It is well known that an individual can constitute a class of his own if he answers the text of valid classification. A tax in order to be valid should be within the competence of the legislature imposing the same and secondly it should be for a public purpose. if the third requirement that it has not violated any of the fundamental rights enshrined in Chapter III of the Constitution is satisfied, the taxing statute cannot be declared as invalid as has been laid down in Vivian Joseph Ferreira's case (supra).

(26) A perusal of Act No. 7 of 1980 shows that it has been made applicable to every industry in Yamunanagar and incidently if the petitioner happens to be the only industry merely on that account, it would not loose its character of a class of industry for the purposes of determining the question of valid classification. The Supreme Court in ***Charanjit Lal Chaudhary*** versus ***Union of India (9),*** held that even one corporation or a group of persons can be taken to be a class by itself for the purposes of legislation provided there is sufficient basis or reason for it. It has been observed that there can certainly be a law applying to one person or a group of persons and the same cannot be held to be unconstitutional if it is not discriminatory in character. After perusing the provisions of Act No. 7 of 1980 any one importing industrial salt or who has already imported and paid the octroi for industrial salt from 1st July, 1975 have been treated alike. There is nothing in the statement of objects and reasons to conclude that only the petitioners were sought to be brought within the sweep of validation act. The above proposition of law concerning validation fell for consideration before the Supreme Court in the case of ***Indian Almunium Co. and others*** versus ***State of Kerala and others (10).***

(27) I am further of the view that the incidence of octroi collected by respondent No. 3 and paid by the petitioners must have already been shifted to other quarters to whom the end product of caustic soda and chlorine had been sold by the petitioner. In a recent judgement, the Supreme Court in the case of ***Shree Digvijay Cement Co. Ltd.*** versus ***Union of India (11),*** has held that the doctrine of

(9) AIR 1951 S.C. 41
(10) (1996) 7 SCC 637
(11) AIR 2003 SCW 186

undue enrichment would be applicable to the cases of refund and it has to be applied even in cases where tax has been held to be illegal because refund could be granted if it is established that he has not passed on the burden to another person. The observations of their Lordships read as under :–

> "The next question is : whether the appellants are entitled to refund of the contribution made by them under Clause 9-A of the Control Order ? There is no automatic right of refund. In Mafatlal Industries Ltd. and others *versus* Union of India and others [1997)5 SCC 536)], the Constitution Bench has held that the right to refund of tax paid under an unconstitutional provision of law is not an absolute or an unconditional right. Similar is the position even if Article, 265 can be invoked. The principles of unjust enrichment are applicable in claim of refund. The claimant has to allege and establish that he has not passed on the burden to another person. The Constitution Bench has held whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the requirement as explained in the judgement. Where the burden of duty has been passed on the claimant cannot say that he has suffered any real loss of prejudice. Real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reasons, it is just and appropriate that amount is retained by the State i.e., by the people. The doctrine of unjust enrichment is a just and solitary doctrine. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State, for, the State represents the people of the country. No one can speak of the people being unjustly enriched."

(28) The argument of the learned counsel based on the Minority view in M/s Lohia Machines case *(supra)* has to be rejected because it cannot be said that the minority judgment is law declared by the Supreme Court under Article 141 of the Constitution. Therefore, I am not inclined to examine the aforementioned argument of the learned counsel in any serious detail.

(29) The last argument that the imposition of octroi duty violates Articles 301 and 304 of the Constitution, it imposes unreasonable restriction under Article 19(1)(g) of the Constiution would not require any serious consideration in view of the fact that the octroi cannot be considered as a tax on movement of goods. Bringing the goods in municipal area with the intention to use and not in transit would be the decisive factor. The nature of such a levy is regulatory in character and is adequately covered by Entry 52, List II of Seventh Schedule. It cannot be considered to have violated Articles 301, 304 or 19(1)(g) of the Constitution as it would be within the reasonable restriction contemplated by Article 19(6) of the Constitution. It is a compensatory tax as is well settled. In this regard reference may be made to the judgment of the Supreme Court in ***Municipal Council, Kota, Rajasthan*** versus ***Delhi Cloth and General Mills Co. Ltd. Delhi and others,(12)*** and ***State of Bihar and others*** versus ***Bihar Chambers of Commerce and others (13)*** Therefore, the last contention of the learned counsel too has to be rejected.

(30) No other point has been urged.

(31) For the reasons recorded above, this petition fails and the same is dismissed.

R.N.R.

(12) (2001)3 SCC 654
(13) 1996 (9) SCC 136