

Before P. C. Jain and J. M. Tandon, JJ.

MOHAN MEAKIN BREWERIES LIMITED,—Petitioner.

versus

MUNICIPAL CORPORATION OF JULLUNDUR and others.—
Respondents.

Civil Writ No. 1215 of 1978.

November 30, 1978.

Punjab Excise Act (1 of 1914)—Sections 16, 22, 23 and 32 Second Proviso—Punjab Municipal Corporation Act (42 of 1976)—Sections 90(3), 113 and 428—Punjab Municipal Account Code 1930—Rule V. 17—Constitution of India 1950—Article 14—Indian made foreign liquor imported and stored within the limits of a Municipal Corporation without payment of excise duty—Bond executed for its payment at the time of sale from the warehouse—Execution of such bond—Whether defers payment of excise duty—Value of liquor for purposes of octroi—Whether could include excise payable at the time of its issue from the warehouse—Value of liquor shown in the invoice—Whether can be departed from—Sections 90(3) and 113 of the Corporation Act—Whether ultra vires Article 14—Octroi already levied by the Municipal Committee—Fresh notification under sections 90(3) and 113—Whether necessary before octroi can be charged by the Municipal Corporation.

Held, that under section 16 of the Punjab Excise Act 1914, liquor cannot be imported without payment of excise duty. An option can be exercised on executing a bond for its actual payment when it is issued from the warehouse. The bond executed by the dealer will only defer the payment of excise duty on the liquor and not postpone its levy. The fact that the rate of excise in force at the time of issue of liquor from the warehouse may differ from the rate which was in force on the date of import, may entitle the dealer to the refund of excess payment of octroi, if any, but it would not make its import to the warehouse duty free. Section 16 of the Excise Act is mandatory about the payment of excise duty for importing liquor and actual payment thereof stands deferred on execution of a bond. It is, therefore, clear that the execution of the bond defers the payment and not liability to pay excise duty. The excise duty shall thus be deemed to have been levied at the time of import and its actual payment deferred till its issue from the warehouse.

(Para 8).

Held, that if excise duty is paid and included in the invoice, the octroi will be chargeable on the value of liquor including the excise. The value of an article is essentially linked with the amount spent for acquiring it. It would not be very relevant if a part of the

amount for acquiring an article is paid at one place and the remaining part at another. If the authority under sub-rule (3) of rule V. 17 of the Punjab Municipal Account Code 1930 has reason to suspect that the value of the article given in the invoice, which may not be fake, is not real, it will be competent to make a departure therefrom and to find its true value otherwise. Excise duty is deemed to have been levied at the time of import and its actual payment deferred because of the execution of a bond. The value or potential value of the liquor shall be taken to have been increased to the extent of the excise duty payable thereon for payment of octroi. The value of the liquor shown in the invoice without the excise duty will not be real. The authority under sub-rule (3) of rule V. 17 of the Code will thus be competent to ignore the invoice and assess the value of the liquor by including the excise duty payable thereon.

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DISSENTED FROM.

Held, that there are sufficient guidelines in the Punjab Municipal Corporation Act 1976 itself for exercise of discretion by the Government under sub-section (3) of Section 90 and section 113. The Corporation is an autonomous body and it needs funds for various objects and development schemes. A budget of the Corporation involving its income and expenditure is prepared every year. The expenditure involved is a sufficient guideline for the Government for specifying rates of octroi. The validity of the guidance cannot be tested by a rigid uniform rule and that must depend on the object of the act giving power to fix the rate. For a statutory provision for raising revenue for the purposes of the delegates, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid. The guidance furnished must be held to be good if it leads to the achievement of the object of the statute which delegated the power. The Government in exercise of power under sub-section (3) of section 90 and section 113 of the Corporation Act is to specify rates of octroi to be charged by the Corporation. The guidelines for specifying the rates, of octroi are contained in the Corporation Act. It will be immaterial if they are effective *qua* the Corporation or the Government. These guidelines would have circumscribed the discretion of the Corporation if it was exercisable by it. It is difficult to hold that they will not be so because the discretion to fix rates is exercisable by the Government and not by the Corporation. The guidelines need not necessarily be prescribed in the relevant section and can be inferred from the Act. Viewed in this light, the Corporation Act does contain guidelines to limit the discretion of the Government in the matter of specifying octroi

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rates under sub-section (3) of section 90 and section 113. Thus the provisions are not ultra vires Article 14 of the Constitution.

(Paras 14, 15 and 16)

Held, that it is evident from the provisions of section 428 of the Corporation Act that all notifications and taxes (including octroi) issued and imposed under the Punjab Municipal Act, 1911 continue to be valid and deemed to have been issued or imposed under the Corporation Act. In view of this saving provision, the notifications and taxes already issued and imposed by the Municipal Committee under the Punjab Municipal Act shall continue to be in force so long as not specifically superseded under the Corporation Act. The Municipal Corporation cannot, therefore, be held to be incompetent to charge octroi even in the absence of a notification under sub-section (3) of section 90 and section 113.

(Para 17).

Petition under Articles 226 and 227 of the Constitution of India praying that:—

- (i) *A writ in the nature of Certiorari quashing the impugned levies made by the Respondent No. 3 on behalf of Respondent No. 1 Corporation on July 16, 1977, July 31, 1977 and August 6, 1977 and quashing the impugned order dated November 22, 1977 of the Commissioner, Jullundur Division, Jullundur (Respondent No. 2).*
- (ii) *A writ in the nature of mandamus prohibiting the Respondents Nos. 1 and 3 from levying any octroi on goods imported within the octroi limits of the Municipal Corporation of Jullundur City or alternatively, if the Respondent No. 1 be found to be legally authorised to levy the octroi, then a writ in the nature of mandamus prohibiting the Respondents Nos. 1 and 3 from levying octroi on the value of any excise duty/countervailing duty as may be leviable thereon.*
- (iii) *Such other appropriate order(s) or writ(s) or direction(s), as this Hon'ble Court may deem fit in the circumstances.*

V. N. Koura Bar-at Law and R. K. Chhibbar, Advocate with him,
for the petitioners.

D. N. Awasthy, Advocate, B. S. Bindra, Advocate with him for
respondents Nos. 1 and 3.

M. P. Singh Gill D.A.G. Punjab, for respondent No. 4.

JUDGMENT

J. M. Tandon, J.

1. In this writ petition, a challenge has been laid to the competency of the respondents to charge octroi from the petitioner for the import of Indian made foreign liquor to its warehouse within the limits of Municipal Corporation, Jullundur City.

2. The petitioner sells Indian made foreign liquor in the State of Punjab and for this purpose maintains a bonded warehouse licensed under section 22(a) of the Punjab Excise Act, 1914 (hereinafter referred to as the Excise Act), within the limits of Municipal Corporation of Jullundur City. The liquor imported by the petitioner is stored in the bonded warehouse without payment of excise or counter-vailing duty. The liquor passes the octroi barrier of the Municipal Corporation, Jullundur, to reach its destination. Prior to the setting up of the Municipal Corporation, Jullundur City, there was a Municipal Committee governed by the Punjab Municipal Act, 1911. A Municipal Committee has power to levy octroi on the entry of goods within its local area under section 61(2) of the Punjab Municipal Act. The Municipal Committee, Jullundur, had levied octroi tax of *valorem* on Indian made foreign liquor. After the Municipal Corporation, Jullundur City, was set up in 1977, it continued to charge octroi from the petitioner for the import of liquor to its bonded warehouse. The octroi was charged not on the basis of the invoice of the liquor but on its potential value including the excise/counter-vailing duty which was to be paid by the petitioner to the Excise authorities within the State of Punjab when it was issued for sale from the bonded warehouse. The petitioner feeling aggrieved by the impugned levy, appealed to the Commissioner, Jullundur Division, challenging the authority of the Corporation to charge octroi and in any event to charge it on the potential value of the liquor including excise/counter-vailing duty. The Commissioner dismissed the appeal. It is under these circumstances that the present writ has been filed wherein the competency of the respondents to charge octroi and further to include the excise duty payable by the petitioner at the time of issue of liquor from the bonded warehouse for assessing its value for the purposes of octroi has been questioned. The petitioner has also challenged the *vires* of sections 90(3) and 113 of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the Corporation Act), which relate to the levy of octroi.

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3. The respondents, in their written statements, denied that the levy of octroi was illegal or sections 90(3) and 113 of the Corporation Act *ultra vires*, as alleged by the petitioner.

4. The learned counsel for the petitioner has urged the following three points:—

1. The value of the liquor for the purpose of octroi could not include the excise payable by the petitioner at the time of its issue from the bonded warehouse within the limits of Municipal Corporation, Jullundur.
2. Sections 90(3) and 113 of the Corporation Act, which empower the State Government to fix rates of octroi are *ultra vires* Article 14 of the Constitution for want of guidelines.
3. In the absence of a notification under sections 90(3) and 113 of the Municipal Corporation Act, no octroi can be charged.

5. We will discuss these points seriatim. It is admitted that the liquor is manufactured outside Punjab and is brought by the petitioner to be stored in its bonded warehouse at Jullundur. The excise duty on the imported liquor remains unpaid when it passes the octroi barrier of Municipal Corporation, Jullundur. It is further admitted that the Corporation authorities include the excise duty payable on the liquor for assessing its value for charging octroi. The value of liquor reflected in the invoice at the time of import does not include excise.

6. A licensed warehouse can be established under section 22 of the Excise Act and section 23 thereof prohibits the removal of intoxicants without payment of excise duty. These two sections read:

“22. The Financial Commissioner, subject to such restrictions or conditions as the State Government may impose, may—

- (a) establish or license a warehouse wherein any intoxicant may be deposited and kept without payment of duty:

(b) discontinue any warehouse so established.

23. No intoxicant shall be removed from any distillery, brewery, warehouse, or other place of storage established or licensed under this Act, unless the duty (if any) payable under Chapter 5 has been paid or a bond has been executed for the payment thereof."

Section 16 of the Excise Act deals with import, export and transport of liquor. It reads:

"16. No intoxicant shall be imported, exported or transported except—

(a) after payment of any duty to which it may be liable under this Act or execution of a bond, for such payment; and

(b) in compliance with such conditions as the State Government may impose."

It is apparent that section 16 shall be attracted in the instant case inasmuch as liquor is imported by the petitioner for storing in its bonded warehouse at Jullundur. Under sub-section (a) of this section, it is obligatory for the petitioner to pay the excise duty on liquor for its import. It is, however, open to the petitioner to execute a bond for payment of excise duty and in the event of such option being exercised, the liquor would be allowed to be imported for being stored in the bonded warehouse without actual payment of excise duty at that time. Section 32 of the Excise Act provides the manner in which the excise duty may be levied. The second proviso to this section, which is relevant for the purpose of this case, reads:

"Provided further that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under section 22(a) it shall be made—

(a) if the State Government by notification so directs, at the rate of duty which was in force at the date of import of that article; or

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- (b) in the absence of such direction by the State Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

7. The learned counsel for the petitioner has argued that the excise duty becomes payable on the liquor when it is issued from the bonded warehouse at Jullundur. No duty is consequently payable on the liquor when it passes the octroi barrier of Municipal Corporation, Jullundur. The value of liquor for purposes of octroi can, therefore, be its invoice value which does not include the excise duty payable thereon. The learned counsel for the petitioner has also placed reliance on Rule V.17 of the Punjab Municipal Account Code, 1930, to which reference will be made a little later. The point to be considered at this stage, therefore, is whether the excise duty is leviable on the liquor at the time of its issue from the bonded warehouse or earlier. It is understood that if the excise duty on the liquor is held leviable earlier to its reaching the bonded warehouse and its payment only deferred, the value for purpose of octroi shall include the excise duty.

8. Under section 16 of the Excise Act, the liquor cannot be imported without payment of excise duty. The petitioner can exercise option on executing a bond for its actual payment when it is issued from the warehouse. Will the execution of the bond render the excise duty leviable at the time of its issue from the warehouse or only defer its payment till the time of its issue? In our opinion, the bond executed by the petitioner will only defer the payment of excise duty on liquor and not postpone its levy. The learned counsel for the petitioner has argued that the second proviso to section 32 supports the inference that the levy is postponed because in the absence of a notification to the contrary, the petitioner shall have to pay excise duty prevalent on the date of its issue from the warehouse and not at the rates which were in force on the date of import. The argument proceeds that there can be no levy of excise, whether actual or potential, so long as it is not quantified and it will happen only when the liquor is issued from the warehouse. There is no merit in this contention. The fact that the rate of excise in force at the time of issue of liquor from the warehouse may differ from the rate which was in force on the date of import may entitle the petitioner to the refund of excess payment of octroi,

if any, but it would not make its import to the warehouse duty-free. Section 16 of the Excise Act is mandatory about the payment of excise duty for importing liquor and actual payment thereof stands deferred on execution of a bond. It is, therefore, clear that the execution of the bond defers the payment and not liability to pay excise duty. The excise duty shall thus be deemed to have been levied at the time of import and its actual payment deferred till its issue from the warehouse.

9. The learned counsel for the petitioner has drawn our attention to Rule V. 17 of the Municipal Account Code and has contended that according to the provisions contained therein, the value of an article for the purpose of octroi is to be determined on the basis of its price given in the invoice plus the cost of freight. In support of his contention, he has cited *Jai Dayal v. The Municipal Committee, Nahan and others*, (1).

10. Rule V. 17 of the Municipal Account Code reads:—

“V. 17(1) The octroi payable in respect of goods imported otherwise than by rail for consumption, use or sale within octroi limits shall be assessed—

(a) by the officer-in-charge of the barrier of import, if:—

(i) the octroi is leviable by weight or tale, or

(ii) the octroi is leviable *ad valorem* according to the provisions of rule V. 12.

(b) by the Octroi Superintendent.

(2) When octroi liable *ad valorem* is to be assessed by an officer-in-charge of a barrier, he shall calculate their value on the information at his disposal with regard to the invoice produced by the importer or the value declared by the importer.

(3) When octroi leviable *ad valorem* is to be assessed by the Octroi Superintendent, he shall, if no invoice is presented with the goods, calculate the value of the goods on the

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information at his disposal with due regard to the value declared by the importer, and, if an invoice is presented, calculate the value on the value entered in the invoice plus the cost of freight unless he has reason to suspect that the invoice is not genuine, in which case he shall proceed as if no invoice had been presented."

A near similar situation to the one under discussion arose in *Jai Dayal v. The Municipal Committee, Nahan and others* (supra). A liquor licensee of Nahan imported liquor for sale within the limits of Municipal Committee, Nahan. He was liable to pay octroi to be assessed *ad valorem*. It was necessary for him to pay excise duty on the liquor that he proposed to import to the Collector of Nahan, who, on receipt of the same, issued an excise permit. The licensee purchased liquor on the basis of the import permit issued to him by the Collector of Nahan. He consequently paid the price of the liquor to the supplier. The invoice issued contained the price that was paid to the supplier and not the excise that had already been paid to the Collector. The Municipal authorities charged octroi from the licensee on the price of the liquor including the excise. The licensee challenged the action of the Municipal Committee and the stand taken by him was that as provided under sub-rule (3) of rule V. 17 of the Municipal Account Code, 1930, which was applicable to Nahan, the value of the liquor for the purpose of octroi was to be restricted to its invoice and the excise duty already paid by him to the Collector of Nahan for importing the same could not be taken into account. The learned Single Judge upheld the stand of the licensee holding that the value of the article as given in the invoice could only be taken into account for payment of octroi under sub-rule (3) of rule V. 17. It was further held that a departure from the invoice could be made only if it was not genuine. As the invoice of the licensee was genuine and not fake, the Municipal Committee, Nahan, could not include the excise duty for determining the value of liquor for charging octroi.

It is undisputed that if the excise duty is paid and included in the invoice, the octroi will be chargeable on the value of liquor including the excise. The value of an article is essentially linked with the amount spent for acquiring it. It would not be very relevant if a part of the amount for acquiring an article is paid at one place and the remaining part at another. The value of the liquor imported by the licensee of Nahan, therefore, did not include the

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“(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.”

It is clear that the rates of octroi to be charged by the Corporation under sub-section (1) of section 90 are to be specified by the Government. Under section 113 of the Corporation Act, which deals with the levy of octroi, it is again provided that “the Corporation shall levy octroi on articles and animals, imported into the City, at such rates as may be specified by the Government”. The contention of the learned counsel for the petitioner is that sub-section (3) of section 90 and section 113 of the Corporation Act are violative of Article 14 of the Constitution because no guidelines are prescribed therein for specifying the rates of octroi. In support of his contention, he has cited *Ram Krishna Dalmia v. Justice Tendolkar*, (2), wherein it was held that the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons. The other authority cited in support of this proposition is *Kunnathat Thathuni Moopil Nair etc. v. State of Kerala and another*, (3).

14. The learned counsel for the respondents has contended that there are sufficient guidelines in the Corporation Act itself for exercise of discretion by the Government under sub-section (3) of section 90 and section 113. The substance of the contention is that the Corporation is an autonomous body and it needs funds for various objects and development schemes. A budget of the Corporation involving its income and expenditure is prepared every year. The expenditure involved is a sufficient guideline for the Government for specifying rates of octroi. Reliance has been placed on *The Corporation of Calcutta and another v. Liberty Cinema*, (4), wherein section 548 of the Calcutta Municipal Act, 1951, was under scrutiny. It was provided therein that a licensee of a cinema house

(2) A.I.R. 1958 S.C. 538.

(3) A.I.R. 1961 S.C. 552.

(4) A.I.R. 1965 S.C. 1107.

under section 443 of that Act would pay a fee at such rate as may from time to time be provided. It was argued that section 548 was invalid on the ground that it amounted to illegal delegation of legislative functions to the Corporation because it left it entirely to the latter to fix the amount of the tax and provided no guidance for that purpose. This contention was repelled. It was held that delegation of essential legislative power would be bad but the fixation of the rates of taxes is not of the essence of legislative power of taxation. The fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for there is no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter and if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated. It was further held that the validity of the guidance cannot be tested by a rigid uniform rule and that must depend on the object of the Act giving power to fix the rate. For a statutory provision for raising revenue for the purposes of the delegates, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid. The guidance furnished must be held to be good if it leads to the achievement of the object of the statute which delegated the power. All taxes including the one under section 548 could be collected and used by the Corporation only for discharging its functions under the Act. The Corporation which is an autonomous body has to perform various statutory functions. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. In the case of a self-governing body with taxing powers, a large amount of flexibility in the guidance to be provided for the exercise of that power must exist. There was sufficient guidance in the Act as to how the rate of levy was to be fixed. While discussing *Liberty Cinema's case* (supra) in *M/s Devi Das Gopal Krishan etc., v. State of Punjab and others* (5); it was observed that a power to fix rates must be supported by some reasonable guidance given in the Act whereunder the said power was conferred.

15. The learned counsel for the petitioner has argued that under section 548 of the Calcutta Municipal Act, 1951, the power to fix rates had been given to the Corporation whereas under the Corporation

(5) A.I.R. 1967 S.C. 1895.

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Act the said power is exercisable by the Government and not by the Corporation. The considerations which prevailed with the Supreme Court for deciding *Liberty Cinema's case* (supra), would not therefore, hold good in the instant case. We are unable to appreciate this contention. It is significant to note that the Government, in exercise of power under sub-section (3) of section 90 and section 113 of the Corporation Act, is to specify rates of octroi to be charged by the Corporation. According to the learned counsel for the petitioner, this power, if exercisable by the Corporation, may have been valid but not when it is exercisable by the State Government. The guidelines for specifying the rates of octroi are contained in the Corporation Act. It will be immaterial if they are effective *qua* the Corporation or the Government. These guidelines would have circumscribed the discretion of the Corporation if it was exercisable by it. It is difficult to hold that they will not be so because the discretion to fix rates is exercisable by the Government and not by the Corporation. In our opinion the ratio of *Liberty Cinema's case* is applicable to the facts of the present case irrespective that the power to fix rates of octroi is exercisable by the Government.

16. In *The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and another*, (6) section 150 of the Delhi Municipal Corporation Act was examined and the argument raised was that it was unconstitutional inasmuch as it is suffered from the vice of excessive delegation of legislative power and was, therefore *ultra vires* with the result that no tax could be levied by the Corporation thereunder. It was held that in spite of the fact that no guidelines were prescribed in section 150 itself, there were various circumstances which did provide guidance to the Corporation in carrying out the duties imposed upon it thereunder. The guide or control on the limit of taxation was to be found in the purposes of the Act. The Corporation had been assigned certain obligatory functions which it must perform and for which it must find money by taxation. It had also been assigned certain discretionary functions: If it undertook any one of them, it must find money. The limit to which the Corporation could tax was, therefore, circumscribed by the need to finance the functions, obligatory or optional. Another circumstance was the necessity of adopting budget estimates every year. The budget showed the revenue and the expenditure and these must

balance so that the limit of taxation could not exceed the needs of the Corporation as shown in the budget. Still another circumstance was the provision contained in section 150 that the rates fixed by the Corporation had to be submitted to the Government for sanction. The legislature had thus made Government the watch-dog to control the actions of the Corporation in the matter of fixing rates and other incidents of taxes. This authority supports the contention of the learned counsel for the respondents that guidelines need not necessarily be prescribed in the relevant section and can be inferred from the Act. Viewed in that light the Corporation Act does contain guidelines to limit the discretion of the Government in the matter of specifying octroi rates under sub-section (3) of section 90 and section 113. These provisions, therefore, cannot be held *ultra vires* Article 14 of the Constitution.

17. The last contention of the learned counsel for the petitioner is that no notification has been made under sections 90 and 113 of the Corporation Act regarding the imposition of octroi and its rates and in the absence thereof, the Municipal Corporation, Jullundur, has no authority to charge octroi from the petitioner for the import of liquor to Jullundur for storing it in its warehouse. We find no merit in this contention as well. Section 428 of the Corporation Act is a saving provision and sub-section (1) of this section reads:

“428. Save as expressly provided otherwise in this Act,—

- (a) any appointment, delegation, notification, notice, tax, order, direction, scheme, license, permission, registration, rule, bye-law, regulation, form made, issued, imposed or granted under the Punjab Municipal Act, 1911, or any other law in force in any local area, constituted to be a City or included in a City, immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law or form made, issued, imposed or granted under the Act or any other law as aforesaid, as the case may be;

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It is evident that all notifications and taxes (including octroi) issued and imposed under the Punjab Municipal Act, 1911, continue to be valid and deemed to have been issued or imposed under the Corporation Act. In view of this saving provision, the notifications and taxes already issued and imposed by the Municipal Committee, Jullundur, under the Punjab Municipal Act, shall continue to be in force so long as not specifically superseded under the Corporation Act. It is understood that the notification issued under the Punjab Municipal Act regarding octroi is neither inconsistent with nor has been superseded under the Corporation Act. The Municipal Corporation of Jullundur, therefore, cannot be held incompetent to charge the impugned octroi from the petitioner.

18. In the result, the writ petition fails and is dismissed with no order about costs.

N.K.S.

