# The Municipal Committee Mukerian Vs The Sub-Divisional Officer (C) Dasuya and Another

## Civil Writ Petition No. 426 of 1982

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 3, 1984

**Acts Referred:**
Constitution of India, 1950 â€" Article 226, 227

**Hon'ble Judges:** Surinder Singh, J; D.S. Tewatia, J

**Bench:** Division Bench

**Advocate:** P.K. Palli, for the Appellant; R.C. Setia, for the Respondent

**Final Decision:** Dismissed

## Judgement

Surinder Singh, J.
This writ petition filed by the Municipal Committee, Mukerian, (hereinafter referred to as the Committee) under Articles

226 and 227 of the Constitution of India seeks to impugn order, dated September 28, 1981, passed by the Sub-Divisional Officer (C) Dasuya-

Respondent No. 1 (Copy Annexure P-2). The facts as alleged in the petition may be briefly recapitulated. Respondent No. 2 is a Paper Mill

running in the town of Mukerian. During the course of its business of production of paper and other allied goods, the Mill imports machinery, raw

material and other goods from different places. The Mill is situated in Village Chak-alla-baken on G T. Road which is outside the municipal limits

of town. The goods imported by the Mill are collected from the Railway Station Mukerian which is located within the municipal limits. It is the case

of the Committee that in spite of the protests of the Mill (Respondent No 2), the Committee has been realising octroi duty on the goods imported

by the Mill. The stand on behalf of the Mill is that since the premises of their industry are not located within the municipal limits of the Committee,

the latter is not entitled to charge octroi duty on the goods which are collected from the Railway Station for being used in the Mill itself. This stand is, however, controverted by the Petitioner-Committee with the contention that the consignments of goods reported by the Mill are received at

Railway Station, Mukerian and these consignments are collected by the Mill on the basis of Railway Receipts which are sent through certain Banks

at Mukerian where the Mill has its accounts. It is further contended that the goods after being received at the Railway Station and un-loaded from

the wagons are transported to the factory premises.

2. The particular ground leading to the present petition has been mentioned in paragraph 7 of the writ petition as follows:

That the Petitioner vide receipt No. 45/5 dated 14.4.1981 for R.R. No. 837344 dated 4.4.1981 charged Rs. 48.45 P. from Respondent No. 2 as

octroi duty on the goods. The Respondent No. 2 feeling aggrieved from the realisation of the octroi duty per receipt referred to above challenged

the same by way of appeal before the Collector (Deputy Commissioner) Hoshiarpur which was later on sent to Respondent No 1 for decision.

3. As per order, dated September, 28, 1981 (Copy Annexure P-2) Respondent No. 1 accepted the above appeal and set aside the levy of octroi

duty by the Petitioner Committee, referred to above. The present writ petition has been filed with a view to impugn the said order of Respondent

No. 1.

4. The learned Counsel for the Petitioner-Committee has contedded that the sale of goods imported by the Mill takes place at the Railway Station

where the physical possession of the goods passed into the hands of the Mill. The sale being, thus, complete at the Railway Station which is

situated within the limits of the Petitioner-Committee, the latter was entitled to charge octroi duty on the goods irrespective of the fact as to how

these goods are utilised by the Mill representatives after taking delivery of the same. The counsel referred to Section 82(1) of the Punjab Municipal

Act according to which, in case of non payment of octroi duty, the officer empowered to collect the same could seize any article on which the

octroi is chargeable with a view to satisfy the demand of octroi Reference was also made to certain rules which prescribe the procedure in regard

to various matters connected with the collection of octroi duty. These provisions, however do not have much relevance to the point in controversy.

The J crucial point for consideration is as to what actually octro means and for this purpose, it is necessary to peruse Rule V-1 of Appendix v. of

the Municipal Account Code (Octroi) wherein the term ""octroi"" has been defined to mean a cess on the entry into a municipality of goods for

consumption, use or sale therein. In so far as the consumption or use of the goods in the municipal limits of the Petitioner-Committee is concerned,

it is the comnon case of the parties that the goods are neither consumed nor used within the municipal limits. The argument on behalf of the

Petitioner-Committee, however, is that the sale of the goods takes place within the municipal limits, ie. at the Railway Station. We do not, however, agree with this contention The use of the word ""therein"" after the words ""consumption, use or sale"" is indicative of the intention of the

framers of the Code, this intention being that octroi is leviable only on the goods which enter into the municipal limits for the purpose of being

consumed, used or sold within the said limits. In the case in hand, it was emphatically averred on behalf of the Mill that the goods imported through

Railway Station Mukerian are meant only for use and consumption in the factory of the Mill which is located outside the municipal limits. This

assertion has not been controverted by means of a replication or even otherwise at the bar The interpretation sought to be placed by the learned

Counsel for the Petitioner on the word ''sale'' that the moment the delivery of the goods is obtained by the Mill at the Railway Station the sale is

complete, is not based upon a correct approach to the matter. What is required to be seen is not as to whether any sale has taken place at the

Railway Station but whether the goods which enter into the municipal limits are meant for being sold consumed or used within that limits. This is

evidently - not so in the present case in view of the uncontroverted averment made in the written statement.

5. Reliance, on behalf of the Petitioner-Commitee, has been placed upon the observations made in certain decisions, which may now be noticed, in

Amrit Banaspati Co. Ltd., Chandigarh v. The State of Punjab (1974) 76 P. L. R. 410, it was held by a learned Single Judge of this Court as

follows:

... It is admitted by the learned Counsel for the Petitioner that the hundies are drawn in favour of the Petitioner and the payment is made by it to the

banks at Rajpura. In the circumstances, it cannot be said that the property in the goods passes to the Petitioner before the payment is made by it to

the bank and the Railway Receipt is got released. The Railway will be considered to be agent of the person who despatches the goods and draw

the hundi. The sale is effected in favour of the Petitioner when the payment is made by it to the bank who is agent of the owner of the goods.

We are afraid that the view taken by the learned Single Judge as above is not a correct interpretation of the relevant provision i.e. Punjab

Municipal Act and the Rules framed thereunder. Indeed, the learned Judge has considered the impact of the word ''sale'' in relation to the Contract

Act, 1872 and the Sale of Goods Act. 1930. However, as already observed, for the purpose of interpreting the word ''sale'' in regard to the

chargeability of the octroi, all that is necessary to appreciate is whether the goods taken delivery of at the Railway Station are liable to octroi duty,

even if they are just to be transported through the municipal limits to a place outside the municipal limits. The question as to whether the sale is

complete at the Railway Station or not, is not relevant. We do not, therefore, agree with the view taken by the learned Single Judge in Amrit

Banaspati''s case (supra) and the overrule the said authority.

5. The learned Counsel then cited Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, , wherein it

was held as follows:

The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or

consumption ; or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for

putting the goods in the way of use or consumption. It is an earlier stage, the ultimate desitnation of the goods being use or consumption. The

earlier stage, namely, the sale by him, does not have the person who brought the goods into the local area from liability to the tax if the goods were

brought inside for cousumption or use. Further, so long as the goods are brought inside the area for sale within the area to an ultimate consumer, it

makes no difference that the consumer does not consume them in the area but takes them out for consumption elsewhere. The word ""therein does

not mean that all the act of consumption must take place in the area of the municipality It is sufficient if the goods are brought inside the area to be

delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or

consumer in the area.

6. The above observations have, however, to be read in conjunction with the further observations made by their Lordships in the same case to the

following effect:

x x x x x It was only when the goods were re-exported out of the area that the tax could not legitimately be levied, x x x x x.

The implication of these words was highlighted in a subsequent decision of the Supreme Court in Hiralal Thakorlal Dalal Vs. Broach Municipality

and Others, , wherein their Lordships held that trading firm would ""not be liable to Octroi in respect of goods which it brought into the local area

and which were re-exported."" In this view of the matter, the goods imported by Respondent No. 2 Mill for being transported to the factory

premises situated outside the municipal limits can only be deemed to have passed through the municipal limits of Mukerian during the course of

their transit to the Mill premises. This being so, the impugned order passed by the Sub-Divisional Officer (c) Copy Annexure P-2) is quite legal

and it was rightly held by the said officer that the committee could only ask for Rahdari (transit fee) and not any octroi duty on the goods so

transported.

7. There is no merit in this writ petition which is dismissed. We however, leave the parties to bear their own costs of the same.

D.S. Tewatia, J.

I agree.