A HINDUSTAN COCA-COLA BEVERAGE PVT. LTD.
*v.*
SANGLI MIRAJ & KUPWAD MUNICIPAL CORPORATION & ORS.
(Civil Appeal No. 4917 of 2011)

B JULY 4, 2011

**[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]**

C *Bombay Provincial Municipal Corporation Act, 1949:*

*s.2(42) – 'Octroi' – Levy of on glass bottles and plastic crates containing aerated beverages – Plea that bottles and crates are reusable and durable and were repeatedly used by* D *manufacturer – Further plea that the prices of bottles and crates were amortized and included in retail sale price of aerated beverages – HELD: If the bottles and crates have not finally rested in Municipal limits of the Corporation in which they are imported, the company can make an application for* E *refund under the Rules with the relevant evidence – In case the cost of bottles and crates is amortized and included in the retail sale price of the aerated beverages, evidence can also be placed in that regard in order to claim refund – The authorities may consider the proposal of the manufacturer or on their part devise a more convenient and workable* F *mechanism for levy and collection of octroi.*

**The appellants, engaged in the manufacture and sale of aerated beverages, filed writ petitions before the High Court challenging the bills of the respondent-Municipal** G **Corporation levying octroi separately on the glass bottles and plastic crates utilized by the appellants to pack and transport the aerated beverages manufactured by them. It was contended for the appellants that the glass bottles and plastic crates were both re-usable and durable and**

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were repeatedly used by the appellants. It was further contended that the cost of glass bottles and crates were amortized and included in the retail sale price of the aerated beverages. It was, therefore, pleaded that octroi could not be levied on the value of the glass bottles and crates and the impugned bills were, therefore, illegal and arbitrary. The High Court, relying on the case of *Acqueous Victuals** dismissed the writ petitions. However, liberty was granted to the appellants to claim refund by filing appropriate applications in case the bottles and crates were not sold, used or consumed in the Municipal limits of the respondent-Corporation. Aggrieved, the manufacturer filed the appeals.

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Dismissing the appeals, the Court

HELD: 1.1. The instant case is squarely covered by the decision of this Court in the case of Acqueous Victuals.* The difference of the mode of computation of the octroi will not affect the applicability of the ratio of the said decision to the instant case and the same applies to the instant case on all fours. Accordingly, in case the appellant-company is sending out the same bottles for recycling and if the bottles and crates are not sold, used, or consumed in the Municipal limits of the respondent-Corporation, that is to say, if they have not finally rested in the Municipal limits of the respondent-Corporation in which they are imported, the appellant-company can always make an application for refund under the Rules. The appellant-company will have to produce evidence on the points detailed in the case of *Acqueous Victuals**. In the instant case, the definition of "octroi" is contained in s. 2(42) of the Bombay Provincial Municipal Corporation Act, 1949. Relevant entry in respect of aerated water in the octroi schedule under the Rules is at serial no.11 (D). Relevant entry as regards bottles is at serial no.52. Relevant entry as regards barrel crate and individual crate, is at serial No.53E. The Rules contain detailed

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A **provisions under which an importer can make an application for refund. [para 18,22 and 23] [777-D-G; 780-B-G]**

**Acqueous Victuals Private Limited vs. State of Uttar* B *Pradesh & Ors.* **1998 (3) SCR 290 =[1998] 5 SCC 474; and** *Burmah Shell Oil Storage & Distributing Company of India Limited v. Belgaum Borough Municipality* **1963 Suppl. SCR 216 =AIR 1963 SC 906 - relied on**

*S.M. Ram Lal & Co. v. Secretary to Government of* C *Punjab* **1969 UJ 373 (SC), referred to.**

**1.2. In case, the cost of the bottles and crates is amortized and included in the retail sale price of the aerated beverage, the evidence can also be placed in** D **that regard, in order to claim refund on any such amount. [para 23] [780-E-F]**

**1.3. As regards the plea that the bottles in which beverages are brought are recycled and used bottles and, therefore, levy of octroi cannot be at the same rate as that** E **of the new bottles, these are also disputes on the facts, which would require producing of evidence. On the appellant-company making an application for refund, the authority concerned will consider it in its proper perspective and, if a case is made out, shall grant refund.** F **In case the appellant is aggrieved by the valuation of the bottles and crates on the basis of which the impugned bill is issued they are at liberty to file objections before the appropriate authority, which will adjudicate the same in accordance with law. [para 23-24] [780-E-H; 781-A-B]**

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**1.4. The appellant has expressed its concern about the mechanism by which the levy could be computed and collected. According to it, the existing procedure is very cumbersome and unworkable at both the ends, and** H **moreover, the same would result into incurring of huge**

**managerial time and administrative cost. The appellant has also given proposals to the respondent-Corporation for devising a suitable and convenient mechanism. The said request requires consideration. Accordingly, the respondent-Corporation shall consider the said proposal in accordance with law and even otherwise on their part devise a suitable, convenient and workable mechanism for levy and collection of octroi. [para 25] [781-B-D]**

**Case Law Reference:**

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| **1998 (3) SCR 290** | **relied on.** | **para 6** |
| **1963 Suppl. SCR 216** | **relied on** | **Para 13** |
| **1969 UJ 373 (SC)** | **referred to** | **Para 14** |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4917 of 2011.

From the Judgment & Order dated 8.10.2010 of the High Court of Judicature at Bombay in Writ Petition No. 5510 of 2010 and Judgment and order dated 20.10.2010 in Review Petition No. 207 of 2010 in Writ Petition No. 5510 of 2010.

WITH

C.A. No. 4918 of 2011.

S.K. Bagaria, L. Nageshwara Rao, Vikram Nankani, Tarun Gulati, Sparsh Bhargava, Praveen Kumar, Dheeraj Nair, Chetan Chopra, Santosh Krishnan for the Appellant.

Shyam Diwan, Vijay Kumar, Sudhir Mehta, Vishwajit Singh for the Respondents.

The Judgment of the Court was delivered by

**DR. MUKUNDAKAM SHARMA, J.** 1. Delay condoned.

2. Leave granted.

A 3. As both the appeals involve identical question of law the same were heard together and are disposed of by this common judgment. Both the present Civil Appeals are filed against the judgment dated 08.10.2010 in the Writ Petition No. 5510 of 2010 and against the judgment dated 08.10.2010 in B the Writ Petition No. 5867 of 2010, passed by the Division Bench of the High Court of Judicature at Bombay whereby the Division Bench has dismissed the writ petitions filed by the appellants herein challenging the validity of the bill issued by the Respondent Corporation, levying and demanding octroi C from the appellants on glass bottles and crates.

4. In the Civil Appeal filed against the judgment dated 08.10.2010 in the Writ Petition No. 5510 of 2010 the appellant company is, inter alia, engaged in the manufacture of aerated beverages marketed under different brands. The products of D the company are distributed from its plant located at Pirangut Taluka, Mulshi, District Pune to amongst other places like Sangli Miraj and Kupwad.

5. According to the appellant, their products are distributed E and sold in returnable and reusable glass bottles. Glass bottles are stored in plastic crates. Glass bottles and crates are owned by the appellant. They are never sold to any distributor or retailer. Once the product in the glass bottles kept in crates is consumed, glass bottles along with crates are returned to the F appellant for filling after cleaning and washing them. The appellant pays octroi levied on the aerated beverages when they enter octroi limits of Municipal Corporations. The impugned bill has the effect of levying octroi separately on the glass bottles and plastic crates utilized by the appellant to pack and transport G the aerated beverages manufactured by them. The aerated beverages cannot be separated from bottles and crates. The bottles and crates are neither consumed nor sold but are returned. The glass bottles and plastic crates are both reusable and durable and are repeatedly used by the appellant. Moreover, it is alleged that the cost of the glass bottles and H

crates is amortized and included in the retail sale price of the aerated beverages. Hence, it was suggested that Octroi cannot be levied on the value of the glass bottles and crates and the impugned bills are, therefore, illegal and arbitrary.

6. The said challenge did not find favour with the High Court and the High Court after placing reliance on the judgment of this Court in the case of *Acqueous Victuals Private Limited v. State of Uttar Pradesh & Ors.* reported at (1998) 5 SCC 474 dismissed the Writ Petition. However, liberty was granted to the appellant company to claim refund by filling appropriate application, in case, the bottles and crates are not sold, used, or consumed in the Municipal limits of the respondent-corporation, that is to say, if they have not finally rested in the Municipal limits of the respondent-corporation; and a further direction was issued that if such an application is filed, the same will be considered in its proper perspective by the concerned authority and if a case is made out the refund shall be granted.

7. We heard the learned senior counsel appearing for the parties at length. Similar submissions, as were made before the High Court, were also made before this Court. It was submitted by the learned senior counsel appearing for the appellant that plastic crates and glass bottles are durable and reusable. They are used a number of times by the appellant. The bottles and crates are not sold. They are not consumed. The bottles are used but again sent out and refilled. The crates are also similarly sent back.

8. It was further submitted that as per the definition of the term octroi as found in Section 2(42) of the Bombay Provisional Municipal Corporation Act, 1949 (for short "BPMC Act"), "octroi" means a cess on the entry of goods into the limits of a city for consumption, use or sale therein and as in the present case there is no consumption, use or sale, the levy of octroi is unjustified.

9. Strong emphasis was placed on the submission that,

A the cost of the bottles and crates is amortized and included in the retail sale price of the aerated beverage. Since the cost of glass bottles and crates is already included in the price of the beverage on which the octroi is levied and collected, no further octroi can be levied on the glass bottles and crates.

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10. All the above said submissions and contentions were refuted by the learned senior counsel appearing for the respondents. It was submitted that the issue in the present case stands settled by this Court, long back, in the case of *Acqueous Victuals* (supra) and the High Court has rightly C dismissed the Writ Petition by following the ratio laid down in the said judgment of this Court. Further, it was submitted that the appellant cannot be aggrieved by the said levy of the octroi on glass bottles and crates, as in case the appellant can satisfy the authorities that they were not used, consumed or sold in the D Municipal limits but were taken out for recycling, in the said case they can claim refund and as such are not burdened with the liability of octroi on such bottles and crates.

11. Before we proceed further it would be relevant to refer E to the judgment of this Court in the case of *Acqueous Victuals* (supra). In *Acqueous Victuals* (supra), the petitioner-Company was engaged in the business of bottling soft drinks. After bottling these beverages at its plants at Bareilly, the petitioner-Company distributed the same to wholesalers in Districts of F Uttar Pradesh. Section 128 of the Uttar Pradesh Municipalities Act, 1916 conferred powers on the Municipal Boards to impose octroi on goods or animals brought within the Municipality for consumption, use or sale therein. Byelaws of the Municipalities provide for levying octroi on soft drinks. As the Municipalities G were seeking to levy Octroi on the basis of gross weight not only of the beverages but also of the bottles containing the beverages which were brought within the Municipal limits, the petitioner-Company filed writ petition in the Allahabad High Court challenging the said levy. According to the petitioner-Company, the bye-laws provided for levying octroi on soft

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drinks but not on the weight of bottles which contained those soft drinks. The High Court dismissed the petition. The High Court held that the bottles in which the soft drinks were carried could be said to have been used within the Municipal limits for the purpose of storing them till they were ultimately utilized by the consumers concerned. Therefore, even the weight of bottles containing these liquids could legitimately be taken into consideration by the Municipalities for imposing the octroi duty thereon.

12. Dealing with the petition challenging the High Court's decision, this Court referred to Section 128 (1) (viii) of the Uttar Pradesh Municipalities Act, 1916 which states that subject to any general rules or special orders of the State Government in this behalf, the taxes which a Board may impose can consist of Octroi on goods or animals brought within the Municipality for consumption, use or sale therein. The rates of levy were given in Schedule I. Schedule I referred to aerated water but not to aerated water bottles. This Court considered the main charging provision i.e. Section 128(1)(viii) which stated that Octroi can be charged on goods which were brought within the Municipality for consumption, use or sale and held that packing which contains the consignment of octroiable beverages would remain liable to be included in the taxable gross weight of consignment provided such packing is shown to be brought within the Municipal limits for the purpose of its sale, consumption, or use within the Municipal limits. But, if the packing is found to have been taken out of the Municipal limits after its contents were discharged within the Municipal limits, then the weight of such packing cannot be brought to octroi tax or if such tax is levied at the entry point, it would become liable to be refunded. This Court further observed that the claim of refund would involve disputed questions such as whether such consignments with the packing were actually sold with their contents to the local consumers, or wholesalers, whether they were consumed or used up within the local limits or whether they were used for an indefinite period and ultimately rested

A within the Municipal limits and had not been taken out. These disputed questions of fact are required to be examined and adjudicated upon when claims for refund are considered by the appropriate authorities.

B 13. While arriving at the above conclusion, this Court referred to the Constitution Bench judgment in *Burmah Shell Oil Storage & Distributing Company of India Limited v. Belgaum Borough Municipality* reported at AIR 1963 SC 906 where it was dealing with the question whether octroi was leviable on the goods brought within the limits of Belgaum for C consumption by Burmah Shell, for re-export and for sale. While interpreting the words found in Entry No.52 of the State list in the Constitution dealing with taxes on the entry of goods into a local area for consumption, use or sale therein, this Court observed that the two expressions, "use" and "consumption" D together connote the bringing in of goods and animals with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up. This Court observed that this authoritative pronouncement of the Court makes it clear that before a E Municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the Municipal limits for consumption, that is, for being totally used up so that it ceases to exist within the Municipal limits or it was to be used for an indefinite period within the Municipal F limits so that it ultimately rests within the Municipal limits and does not go out subsequently, or the commodity concerned must be shown to have been brought within the Municipal limits for the purpose of sale within the said limits.

G 14. This Court also referred to its judgment in *S.M. Ram Lal & Co. v. Secretary to Government of Punjab* reported at 1969 UJ 373 (SC), where this Court was dealing with the question, whether the wool imported within the Municipal limits of Faridabad in raw form for dyeing within the Municipal limits could be said to have been used in the Municipal limits or

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consumed therein so as to attract Octroi duty thereon. This Court observed that the word 'use' occurs in Entry No.52 of List II of Seventh Schedule sandwiched between 'consumption' and 'sale', and it must take colour from the context in which it occurs. This Court further observed that the coupling of three words 'consumption', 'use' and 'sale' connotes that the underlying common idea was that either the title of the owner is transferred to another or the thing or commodity ceases to exist in its original form.

15. However, this Court did not approve of the High Court's reasoning that the bottles and shells were used as containers till final consumption of contents and, therefore, the bottles which contained the beverage were used till the final consumption stage and were, therefore, liable to levy of Octroi leaving aside the question whether they were brought within the Municipal limits for consumption thereof. Referring to Burmah Shell's case, this Court held that though the use of the bottles may not amount to its destruction or total using up, but to attract octroi, the bottles must have finally rested within the Municipal limits and not taken out. This Court concluded that to attract the levy of octroi on the goods brought within the Municipal limits, there must be proof of the fact that the goods got consumed completely within the Municipal limits or were used for an indefinite period in such a way that they come to rest finally and permanently within the Municipal limits or sold within the said limits.

16. With reference to the facts of the case before it, this Court observed that the moot question was whether the bottles which were filled in with beverages imported for sale within the Municipal limits could be said to have been consumed or used within the Municipal limits. The question whether the bottles were really sold by the petitioner-Company within the Municipal limits requires resolution on consideration of relevant facts. If empty bottles are taken out of Municipal limits, they cannot be said to have been consumed or destroyed within the Municipal

A limits. The question which needs investigation is whether out of the total consignment of bottled beverages imported within the Municipal limits, the entire consignments of the very bottles after getting emptied got re-exported or whether some of the said bottles forming part of the original consignments got B destroyed by way of breakage, etc. or were never returned by the consumers concerned and only rest of the imported bottles were re-exported by enabling the consumers and retailers or wholesalers to get refund of the price of the bottles paid by way of advance security from the petitioner-Company on return of C these empty bottles for recycling. It is axiomatic that if the bottles in which beverages were brought within the Municipal limits for sale to consumers had themselves got destroyed by breakage, etc. or were not returned by consumers, they could be said to be consumed within the Municipal limits and, hence, there D would be no occasion for their export at any time thereafter. In the said circumstance the intention with respect to the fact that whether or not, the said goods were brought for consumption and usage will become clear only at the subsequent stage i.e. when the bottles are re-exported. In the view that it had taken, this Court held that if the petitioner-Company satisfied the E authorities concerned that the bottles containing the original consignments after getting emptied within the Municipal limits were actually taken out of the Municipal limits for recycling, then it would be entitled to claim proportionate refund of the octroi duty assessed on the weight of such empty bottles only subject F to the burden of such amount of duty not being shown to have been passed on to consumers of beverages or to anyone else, i.e. there is no unjust enrichment.

17. Setting aside the High Court's order to the above G extent, this Court permitted the petitioner-Company to lodge its claim for refund by producing evidence on the following points:

"(a) Nature of the consignments concerned with their dates and the number of bottles packed with beverages brought within the municipal limits with their weight;

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(b) Proof regarding the fact that these bottles were not sold within the municipal limits to wholesalers, retailers or to any other person;

(c) Number of bottles covered by the consignments concerned which were subsequently taken out as empty bottles beyond the municipal limits for recycling and weight of such empty bottles;

(d) Whether the bottles which are actually found to have been taken out of the municipal limits were the very same bottles containing beverages brought within the municipal limits by way of relevant consignments;

(e) Whether the value of such bottles and amount of octroi duty on their weight was passed on to the consumers or not?"

18. In our considered opinion the present case is squarely covered by the above said decision of this Court in the case of *Acqueous Victuals* (supra), and the said decision was passed on the similar facts as of the present case, the only difference being that in the case of *Acqueous Victuals* (supra) octroi was computed and levied on the basis of the weight of the bottles and crates, whereas in the present case, the impugned bill seeks to levy octroi on the basis of value of the bottles and value of the crates. It was suggested by the learned senior counsel appearing for the appellant that due to the said difference the judgment in the case of *Acqueous Victuals* (supra) will not be applicable to the present case. In our opinion the said difference of the mode of computation of the octroi will not affect the applicability of the ratio of the said decision to the present case and the same applies to the present case on all fours.

19.It was also suggested by the learned senior counsel appearing for the appellant that the decision in the case of *Acqueous Victuals* (supra) cannot be said to be the correct law as the said decision did not correctly appreciate the law laid

A down by the Constitution Bench of this Court in the case of *Burmah Shell Oil* (supra). In order to appreciate the said submission it would be appropriate to extract the relevant portion of the judgment in the case of *Acqueous Victuals* (supra) wherein this Court has elaborately considered the law B laid down by the Constitution Bench in the case of *Burmah Shell Oil* (supra):-

> "15. In view of the aforesaid decision, it becomes obvious that the word "retention" is held to be a synonym with the word "repose", meaning thereby the article concerned C must finally rest within the municipal limits. In the light of the aforesaid judgment of the Constitution Bench of this Court, therefore, it is obvious that before a municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the D municipal limits for consumption, that is, for being totally used up so that it ceases to exist within the municipal limits themselves or it was to be used for an indefinite period within the municipal limits so that it ultimately rests within the municipal limits and does not go out subsequently, or E the commodity concerned must be shown to have been brought within the municipal limits for the purpose of sale within the said limits. Having thus laid down the aforesaid legal position concerning the imposition of octroi in the penultimate paragraph of the Report at p. 234, the Court F observed that the Burmah Shell was liable to pay octroi tax on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such G consumers bought them for use in the area or outside it. The Company was, however, not liable to octroi in respect of goods which it brought into the local area and which were re-exported. But to enable the Company to save itself from tax in that case it had to follow the procedure laid H down by rules for refund of taxes.

16. The aforesaid authoritative pronouncement of the Constitution Bench of this Court, therefore, sets at rest the controversy in the present case. If it is the case of the writ petitioner that during the relevant period from 1980 to 1987 it brought within the municipal limits of the four respondent-Municipalities beverages packed in bottles and the bottles were not sold within the municipal limits and after the beverages were taken out of these bottles, these very bottles were returned to the petitioner and were taken back to Bareilly, then for claiming the refund of the octroi paid on the weight of these bottles during the relevant period when the consignments entered the municipal limits from time to time, the writ petitioner had to follow the procedure laid down by the Municipality concerned under its rules for refund of taxes and had to comply with the statutory gamut of these rules. It had also to show that the burden of disputed octroi duty was borne by it and was not passed on to consumers of beverages contained in these bottles. In other words, it would not be guilty of unjust enrichment if refund was granted. If the refund claim on furnishing the relevant proofs was not ultimately granted, the remedy of appeal provided under the rules had to be followed."

20. On a minute and detailed perusal of the judgment of the Constitution Bench in the case of *Burmah Shell Oil* (supra), and the above noted inference drawn in the case of *Acqueous Victuals* (supra), we do not agree with the said submission of the appellant. We respectfully agree with the above noted inference drawn and are of the considered opinion that this Court in *Acqueous Victuals* (supra) has correctly appreciated the law laid down by the Constitution Bench in *Burmah Shell Oil* (supra).

21. Though it was vehemently argued that the cost of the bottles and crates is amortized and included in the retail sale price of the aerated beverage but no facts were placed before the High Court in that regard. Moreover, even in case the same were placed, the same being disputed question of fact could not have been gone into by the High Court exercising the

A jurisdiction under Article 226 of the Constitution of India.

22. In the present case, the definition of "octroi" is contained in Section 2(42) of the BPMC Act. Relevant entry in respect of aerated water in the octroi schedule under the said B Rules is at serial no.11 (D). Relevant entry as regards bottles is at serial no.52. Relevant entry as regards barrel crate and individual crate, is at serial No.53E. The said Rules contain detailed provisions under which an importer can make an application for refund.

C 23. Accordingly, in our opinion, as also laid down by this Court in *Acqueous Victuals* (supra), in case the appellant-company is sending out the same bottles for recycling and if the bottles and crates are not sold, used, or consumed in the Municipal limits of the respondent-Corporation, that is to say, D if they have not finally rested in the Municipal limits of the respondent-Corporation in which they are imported, the appellant-company can always make an application for refund under the said Rules. The appellant-company will have to produce evidence on the points detailed in the *Acqueous* E *Victuals* (supra) which we have quoted hereinabove. As submitted by the appellant, in case, the cost of the bottles and crates is amortized and included in the retail sale price of the aerated beverage, the evidence can also be placed in that regard, in order to claim refund on any such amount. Besides, F it was also pointed out that bottles in which beverages are brought are recycled and used bottles and therefore levy of octroi cannot be at the same rate as that of the new bottles. These are also disputes on the facts, which would require production of evidence. On the appellant-company making an G application for refund, the concerned authority will consider it in its proper perspective and if a case is made out shall grant refund.

24. Needless to say, in case, the appellant is aggrieved by the valuation of the bottles and crates on the basis of which

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the impugned bill is issued they are at the liberty to file objections before the appropriate authority, and the appropriate authority will adjudicate the same in accordance with the law, as against which if still aggrieved, further remedy as available could be resorted to.

25. At this stage it is pertinent to mention that during the hearing, the appellant has expressed its concern about the mechanism by which the said levy could be computed and collected as according to them the present procedure is very cumbersome and unworkable at both the ends, and moreover, the same would result into incurring of huge managerial time and administrative cost. After the present judgment was reserved for pronouncement, the appellant has also given proposals to the respondent corporation for devising a suitable and convenient mechanism. The said request on the part of the appellant requires consideration. Accordingly, the responded corporation shall consider the said proposal in accordance with law and even otherwise on their part devise a suitable, convenient and workable mechanism for levy and collection of octroi.

26. With the above said directions both the appeals are dismissed with no order as to costs.

R.P. Appeals dismissed.