IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1970 OF 1989

Oil and Natural Gas Commission of India,
a statutory Corporation established by the
Oil & Natural Gas Commission Act, 1959,
having its Head Office at Tel Bhavan,
Dehradun and Bombay Offshore Project
at Vasundhara Bhavan, Bandra (East),
Bombay- 400 051. … Petitioner.

V/s.

1. Municipal Corporation of Greater Bombay,
having their office at Mahapalika Building,
Bori Bunder, Fort, Bombay- 400 001.

2. The Municipal Commissioner,
Municipal Corporation of Greater Bombay,
Mahapalika Building Bori Bunder, Fort,
Bombay. 400 001.

3. Dy.Assessor & Collector (O)
having his office at Mahapalika Building,
Boribunder, Fort, Bombay- 400 001.

4. State of Maharashtra. … Respondents.

Mr.Pradeep Sancheti, Senior Advocate with Mr.S.A.Balwal i/b. Vyas & Balwal for the petitioner.

Mr.J.Reis, Senior Advocate with Mr.S.S.Pakale, Ms.Yamuna Parekh and Mr.Sagar Patil for respondent Nos.1 to 3.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Akshay Shinde and Mr.Hemant Haryan, AGP for respondent No.4.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 28th September 2017.

<u>ORAL JUDGMENT</u> : (Per A.S.Oka, J.)

The issue involved in this petition under Article 226 of the Constitution of India is concerned with the powers of the first respondent- Municipal Corporation of Greater Bombay to levy octroi on natural gas imported by the petitioner- Oil and Natural Gas Commission within the municipal limits of the first respondent. Under Section 192 of the Mumbai Municipal Corporation Act, 1988 (for short "the said Act"), a power is conferred on the first respondent- Municipal Corporation to levy octroi on the articles as specified in Schedule-H to the said Act. We may note here that Section 139 of the said Act confers powers on the first respondent to impose four types of taxes which include octroi. At the material time, Entry 22(a) of Schedule- H read thus:

> "22(a) Mineral Oils of all sorts, diesel oil, petrol, aviation spirit, all kinds of lubricating oils, while oil, spindle oil, furnance oil, petroleum products, mava oil, sevasol, solvent oil, other fuel oils, oils used as insecticides, natural gasoline, paint solutions and compositions, Turkey Red Oil, and by-products of mineral oils, but nothing herein before contained shall include kerosene and Crude Oil …... 1 percent ad-valorem."

The petitioner has referred to a letter dated 27th March 1985 addressed by the Deputy Assessor and Collector (Octroi-Refund) of the first respondent to the Senior Deputy Director (F & A), Oil and Natural Gas Commission by which the octroi was demanded on natural gas imported by the petitioner during the years 1978-79 to 1982-83. The said letter refers to various books and alleges that the natural gas is similar to liquified petroleum gas which is capable of being used as a fuel. It was contended that the natural gas is therefore, chargeable under Class-IV Entry 22(a). Another letter annexed to the petition is dated 9th January 1986 is by the Additional Municipal Commissioner of the first respondent addressed to the Director, Finance and Accounts (Operation) of the petitioner. The said letter records that from 27th March 1985 various letters have been sent to the petitioner calling upon the petitioner to pay octroi but the same has not been paid. There is another letter dated 5th February 1986 addressed by the Senior Deputy Director (F & A) of the petitioner to the Additional Municipal Commissioner in which it was contended that as stated in letter dated 5th June 1986, octroi is not payable on natural gas as it is not included in the petroleum products. On 16th March 1988, the Municipal Commissioner himself addressed a letter to the Chairman of the petitioner inviting attention of the petitioner to the earlier correspondence and the demands made and calling upon the Chairman of the petitioner to issue instructions for payment of octroi of Rs.15,85,01,902.27. This letter is followed by another letter dated 2nd February 1989 addressed by the Municipal Commissioner to the Chairman of the petitioner calling upon the Chairman to issue instructions to make payment of octroi to avoid creating an embarrassing situation of legal action being taken against the petitioner. By a letter dated 11th February 1989, the Member (Finance) of the petitioner requested the Municipal Commissioner to reconsider the decision as octroi was not payable on the natural gas. By a letter dated 13th May 1989, the Municipal Commissioner informed the Chairman of the petitioner that on the failure of the petitioner to pay the amount of octroi payable up to 31st December 1987 within fifteen days from the date of the receipt of the said letter, legal action would follow. The said letter also states that the demand for the further period i.e. from 1st January 1987 was being intimated to the petitioner.

2. During the pendency of this petition, the Maharashtra Ordinance No.II of 1993 was promulgated by the State Government by which various amendments were made to the said Act including the amendment to Schedule-H and in particular to Entry 22(a). The said Ordinance was replaced by the Maharashtra Act No.XII of 1993. The amendment made by the Ordinance and the Maharashtra Act No.XII of 1993, clause(a) of Entry No.22 reads thus:

> "9. In Schedule H to the Bombay Corporation Act,-
> (a) ….. ….. ….. ….. ….. ….. ….. …..
> (b) in entry 22, in sub-entry (a), for the words

> "petroleum products" the words "petroleum products including natural gas and liquified petroleum gas" shall be and shall be deemed to have been substituted with effect from the 1st day of April 1978;"

In the statement of objects and reasons appended to the aforesaid Ordinance, it was stated thus:

> "The amendments to Schedule H include *inter alia* amendment to entry 22(a). The expression "petroleum products" includes natural gas and liquified petroleum gas and octroi could be and is leviable thereon. Doubts have however been expressed whether the expression "petroleum products" so includes the natural gas and liquified petroleum gas. Although it does implicitly so include, clause (a) of entry 22 which provides for levy of octroi on petroleum products is amended to make it explicit retrospectively with effect from the first day of April 1978, being the date by or about which the Corporation has levied octroi on natural gas and liquified petroleum gas."

3. In the petition as originally filed, there was a challenge to the demand made by way of letters referred above on the ground that the natural gas is not included in Entry 22(a). Later on, the constitutional validity of the said Maharashtra Act No.XII of 1993 as well as the said Ordinance was challenged by carrying out amendment. We may note here that this petition was dismissed by the judgment and order dated 22nd February 2002 passed by a Division Bench of this Court. However, by the

judgment and order dated 18th March 2009, the said judgment and order was set aside by the Apex Court on the ground that the matter needs reconsideration by this Court in totality. Therefore, an order of remand was passed by the Apex Court. That is why we are hearing this petition.

4. There are affidavits and counter affidavits filed on record. In one of the affidavits [affidavit of Shri Manohar Balbhim Raje, Deputy Assessor and Collector (Octroi) dated 1st August 1989], reliance is placed by the Municipal Corporation on technical material in support of its contention that the natural gas is always included in the petroleum products.

5. The first submission of the learned senior counsel for the petitioner is that the natural gas was never covered by Entry 22(a) which item is of mineral oils of all sorts, diesel oil, petrol, natural gasoline etc. He submitted that as the natural gas is completely different from the items mentioned in Entry 22(a), it was never included in the said Item and by a validating amendment, inclusion of natural gas in Entry 22(a) cannot be made with retrospective effect. A submission made is that as the natural gas was never included in Entry 22(a), by purportedly passing a validating Act, the recovery of octroi on natural gas cannot be made with retrospective effect.

6. The second contention of the learned senior counsel appearing for the petitioner is based on Rule 25 of the Mumbai Municipal Corporation (levy) of Octroi Rules, 1965 (for short "the Octroi Rules"). A submission is that even if the impugned Act and the impugned Ordinance

are said to be valid, the recovery of octroi can be made only within a period of three months from the date of import of goods. Inviting our attention to the various demands which have been challenged by the petitioner, he submitted that the claim made for octroi only for a few days may be within the said period of three months and, therefore, the Municipal Corporation has no power to recover substantial part of their impugned demand for octroi.

7. The third submission was that at the relevant time, the petitioner was Oil and Natural Gas Commission under the Oil and Natural Gas Commission Act, 1959. The natural gas procured or produced by the petitioner will have to be treated as a property of the Government and, therefore, exemption under Section 194 of the said Act will apply.

8. The learned senior counsel appearing for the petitioner relied upon the decisions of the Apex Court in the case of ***M/s.J.K.Cotton Spinning and Weaving Mills Ltd. and another v. Union of India and others***[1]. He also invited our attention to another decision of the Apex Court in the case of ***R.C.Tobacco (P) Ltd. and another v. Union of India and another***[2]. He relied upon the decision of the Apex Court in ***National Agricultural Cooperative Marketing Federation of India Ltd. and another v. Union of India and others***[3]. He urged that the legislative power to amend the enacted law with retrospective effect is subject to well recognized limitations. The law must be reasonable and not unduly harsh. He submitted that in the facts of the case, the retrospective effect has to be

1 1987 (Supp) SCC 350
2 (2005) 7 SCC 725
3 (2003) 5 SCC 23

held as unduly harsh thereby exposing impugned amendment to invalidity being in violation of Article 14 of the Constitution of India. He submitted that even in the case of ***Tata Motors Ltd. v. State of Maharashtra and others***[4], the Apex Court reiterated that retrospective operation of taxation statute is always open to a serious challenge on the ground of unconstitutionality on well recognized principles. He also relied upon the decision of the Constitution Bench of the Apex Court in the case of ***Lohia Machines Ltd. and another v. Union of India and others***[5]. He submitted that the validating Act cannot have effect of imposing a fresh tax. At the most it can seek to legalize the tax which was already levied. His submission is that the natural gas was never included in Entry 22(a) and, therefore, in any event, the amendment which purports to validate the levy of octroi cannot be upheld.

9. The learned Advocate General submitted that the words and phrases used in taxing statutes must be construed as understood in popular or commercial parlance and not technically. On this aspect, he relied upon the decision of the Apex Court in the case of ***M/s.Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh***[6]. On the same point, the learned Advocate General also relied upon the decision of the Apex Court in the case of ***M/s.MSCO Pvt.Ltd. v. Union of India and others***[7]. He relied upon another decision of the Apex Court in the case of ***Commissioner of Income-Tax, Bombay and others v. Podar Cement Pvt.Ltd. and others***[8]. He relied upon the said decision for

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4 (2004) 5 SCC 783
5 (1985) 2 SCC 197
6 (1981) 2 SCC 528
7 (1985) 1 SCC 56
8 (1997) 5 SCC 482

pointing out that the principle stated in the well known commentary of Justice G.P.Singh titled as "Principles of Statutory Interpretation" has been accepted by the Apex Court. He submitted that there can be a clarificatory and declaratory amendment which could have retrospective effect. He submitted that in the present case, the amendment to Entry 22(a) is a clarificatory amendment which declares that the natural gas was always included in Entry 22(a) and, therefore, such an amendment could be retrospective. He invited our attention to the decision of the Constitution Bench of the Apex Court in the case of ***Association of Natural Gas and others v. Union of India and others***[9]. Inviting our attention to the said decision, he submitted that the Apex Court after due consideration of the scientific material placed before it came to the conclusion that the natural gas is a petroleum product and that the words "petroleum" or "petroleum products" have been given wide meaning to include natural gas and other similar products. He would, therefore, submit that the natural gas was always included in Entry 22(a) of Schedule-H and that is the reason why the impugned amendment is clarificatory and declaratory in nature.

10. The learned senior counsel appearing for the respondent-Municipal Corporation supported the learned Advocate General and he relied upon the decision of the Apex Court in the case of ***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited***[10]. He relied upon various other decisions of the Apex Court in the cases of ***Empire Industries Limited and others v. Union of India***

9 (2004) 4 SCC 489
10 (2015) 1 SCC 1

and others[11]; ***The Government of Andhra Pradesh and another v. Hindustan Machine Tools Ltd.***[12]; ***Commissioner of Income-Tax, Ahmedabad v. Gold Coin Health Food Pvt. Ltd.***[13]; and ***State of Madhya Pradesh v. Rakesh Kohli and another***[14]. He would, therefore, submit that there is no merit in the challenge to the constitutional validity of the impugned amendment. He submitted that Rule 25 of the Octroi Rules cannot be read in isolation. He submitted that Rule 25 will apply only to those importers who follow the procedure laid down by Chapter-I by filling in an application as required by Rule 4. He submitted that in case of an importer who fails to follow the procedure and evades the payment of octroi, Rule 25 will have no application.

11. The learned senior counsel appearing for the first respondent on a query made by this Court, on instruction, stated that there is no provision under the said Act or the Octroi Rules to recover interest on the overdue amount of octroi but if this Court is inclined to dismiss the petition, it is the power of this Court under Article 226 of the Constitution of India to direct the petitioner to pay reasonable interest on the overdue amount. He stated that the Municipal Corporation has not initiated prosecution under Section 478 read with Section 478A of the said Act.

12. The learned senior counsel appearing for the petitioner by way of reply pointed out that there was uncertainty and ambiguity on the question whether natural gas was included within petroleum and

11 (1985) 3 SCC 314
12 (1975) 2 SCC 274
13 (2008) 9 SCC 622
14 Civil Appeal No.684/2004 decided on 11th May 2012

petroleum products and, therefore, as held by the Apex Court in ***Vatika Township Private Limited*** (supra) as two interpretations are possible, the one which is in favour of the petitioner- assessee will have to be accepted by the Court.

13. We have given careful consideration to the submissions. We have already quoted Entry 22(a) of Schedule-H as it existed prior to the impugned amendment. Before amendment, it included mineral oils of all sorts, diesel oil, petrol, aviation spirit, petroleum products, natural gasoline, paint solutions etc. Specific exclusion was made of kerosene and crude oil. Now, the first question for consideration is whether “natural gas” was covered by unamended Entry 22(a). On this aspect, the decision of the Apex Court in ***M/s.Indo International Industries*** (supra) will be relevant. Paragraph- 4 of the said decision reads thus:

> “4. **It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted**. In *Ramavatar Budhiaprasad v. Assistant Sales Tax Officer, Akola,* 37 STC 33 (Ori HC) question was whether 'betel leaves' fell within item 'vegetable' so as to earn exemption from sales tax and this Court

held that word 'vegetable' had not been defined in the Act, and that the same must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance and so construed it denoted those classes of vegetable matter which are grown in kitchen garden and are used for the table and did not comprise betel leaves within it and, therefore, betel leaves were not exempt from taxation: In *C.S.T. v. Jaswant Singh Charan Singh*, AIR 1967 SC: (1967) 2 SCR 720 the question was whether the item 'coal' under Entry 1 of Part III of Second Schedule to Madhya Pradesh General Sales Tax Act, 1958 included charcoal or not and this Court observed thus :

> Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

Viewing the question from the above angle this Court further observed that both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'char-coal' in the term "coal", and held that 'charcoal' fell within the concerned Entry No. 1 of Part III of Schedule II of the Act."

(emphasis added)

Even in the case of ***M/s.MSCO Pvt.Ltd.*** (supra), the very same issue arose for consideration of the Apex Court. In paragraphs- 4 and 5, the Apex Court has held thus:

> "4. The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment', etc. **But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it**. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craies on Statute Law (Sixth Edn.) says thus at page 164:
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>> In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a II new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purpose of that Act alone." (Macbeth v. Chislett 1910 AC 220-223).
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> 5. **When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense**. It is well known that under the law levying customs duties sometimes exemptions are given from the levy of the whole or a part of customs duty when the goods in question are sold either in the form in which they are received or in a manufactured or semi-manufactured

> state to a manufacturing establishment for purposes of using them in manufacturing finished or semi-finished goods in order to lessen the cost of machinery or equipment employed in or raw materials used by such manufacturing establishment. The object of granting such exemption is to give encouragement to factories or establishments which carry on manufacturing business. The appellant, however, relies upon the meaning assigned to the word 'industry' in the Industrial Disputes Act, 1947 in support of its case. The expression 'industry' is no doubt given a very wide definition in Section 2(j) of the Industrial Disputes Act, 1947. It read thus :
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> > 2(j) 'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."
>
> (emphasis added)

Hence, while dealing with a taxing statute, the terms or expressions used therein must be given popular meaning or the meaning attached to the term or expression by those dealing in them. If the definition of a particular term or expression is not specifically to be found in the taxation statute, the same shall be given meaning which is consistent with the common parlance or commercial parlance. In short, in such cases, the meaning which should be given to such term or expression which the people conversant with the subject matter of statute understand it. Scientific, technical, mechanical meaning cannot be given to such terms or expressions.

14. In the case of ***Association of Natural Gas and others*** (supra), the Apex Court answered a special reference. The first question

referred was whether the natural gas in whatever physical form including liquified natural gas is a Union subject covered by Entry 53 of List-I of and the Union has exclusive legislative competence to enact laws on natural gas. Thus, the Apex Court was dealing with Entry 53 of List-I of Seventh Schedule of the Constitution which deals with regulation and development of oilfields, mineral oil resources, petroleum, petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable. The submission of the Government of India before the Apex Court was that the term “petroleum or petroleum products” includes natural gas. The Apex Court thereafter proceeded to make a reference to scientific and other material placed on record regarding the concept of natural gas. In paragraphs- 35 and 37 the Apex Court held thus:

> “35. **All the materials produced before us would only show that the natural gas is a petroleum product**. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word 'petroleum' or 'petroleum products' has been defined in an inclusive way, so as to include natural gas. In Encyclopaedia Britannica, 15 th Edn. Vol. 19, page 589 (1990), it is stated that "liquid and gaseous hydrocarbons are so intimately associated in nature that it has become customary to shorten the expression 'petroleum and natural gas' to 'petroleum' when referring to both." **The word petroleum literally means 'rock oil'. It originated from the Latin term petra-oleum. (petra-means rock or stone and oleum-means oil). Thus, Natural Gas could very well be comprehended within the expression 'petroleum' or 'petroleum product'**.”

> “37. A survey of the various legislations on the topic would show that the term 'petroleum' or 'petroleum

> products' has been given a wide meaning to include natural gas and other similar products."
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> (emphasis added)

Thus, in so many words the Apex Court after considering the technical material before it held that the natural gas is a petroleum product.

15. Now, coming back to the unamended Entry 22(a), as pointed out earlier, it includes mineral oils of all sorts, diesel oil, petrol, aviation spirit, petroleum products, natural gasoline, paint solutions etc. The Apex Court in ***Association of Natural Gas and others*** (supra) has referred to the material which is extensively discussed in the judgment which shows the meaning assigned to the petroleum and petroleum products is the same as the meaning assigned by the persons who regularly deal with the same. Therefore, while interpreting unamended Entry 22(a), we have no option but to hold that the natural gas was always included in it.

16. Therefore, even without amending Entry 22(a), the Municipal Corporation had power to levy octroi on natural gas. Now we turn to the challenge to the provisions of the impugned Ordinance and the impugned Act. We have already quoted the relevant part of the impugned amendment. The impugned amendment amends clause (a) of Entry 22 by substituting the words "petroleum products" by the words "petroleum products including natural gas and liquified petroleum gas". It seeks to make the said amendment retrospective by specifically providing that the words "shall be and shall be deemed to have been substituted with effect

from 1st day of April 1978". Thus, the amendment seeks to clarify that the natural gas was always included in the petroleum products covered by Entry 22(a). In the Statement of objects and reasons appended to the impugned amendment, it is stated that natural gas was always implicitly included in Entry 22(a) as it is a part of the petroleum products. It further records that doubts were expressed whether natural gas and liquified gas were included in petroleum products. Therefore, an amendment is sought to be made though natural gas was already included and it is made retrospectively with effect from 1st April 1978 when the Municipal Corporation started levying octroi on natural gas or liquified gas products. In ***Podar Cement Pvt.Ltd. and others*** (supra) on which reliance is placed by the learned Advocate General, the Apex Court dealt with the law regarding declaratory statutes. In paragraph- 51 of the said judgment, the Apex Court quoted with approval an opinion expressed by Justice G.P.Singh in his well known commentary on "Principles of Statutory Interpretation". Paragraph- 51 of the said decision reads thus:

> 51. In Justice G.P. Singh's 'Principles of Statutory Interpretation' (Sixth Edn. 1996) under the heading "Declaratory Statutes", the learned author has summed up as follows :
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> > "**Declaratory statutes.- The presumption against retrospective operation is not applicable to declaratory statutes**. As stated in CRAIES and approved by the Supreme Court :
> >
> > > "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The

usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'".

But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. **In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective**. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."

(emphasis added)

17. Thus, the clear position of law is that every statute is presumed *prima facie* prospective unless expressly or by necessary implication it is given retrospective operation. But such presumption is not applicable to the declaratory or explanatory statues. Such statutes are made to supply an obvious omission or to clear up doubts as to the meaning of the provision or term or expression in the enactment. It is well settled that if the statute is curative or merely declaratory of the previous law, its retrospective operation is generally intended and is always open for the legislature to make enactments having retrospective operation. A declaratory Act as defined by Justice G.P.Singh is to remove doubts existing as to the common law or the meaning or effect of any statute. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the present case, the impugned amendment on its plain reading is clarificatory in nature which is expressly given retrospective effect. Therefore, making of such a legislation is certainly within the four corners of legislative competence of the State Legislature. There is one more aspect which is relevant. In this case, we are dealing with a taxing statute. Law is very well settled that in case of a taxing statute, the powers of the legislature are different in the sense that more latitude is available to the legislature in the matter of fiscal statutes.

18. As we have found that natural gas or liquified petroleum gas were always part of petroleum or petroleum products in Entry 22(a), what is sought to be done by the impugned amendment is to declare and clarify

that the natural gas and liquified petroleum gas were always included in the term "petroleum or petroleum products" used in Entry 22(a). Therefore, we do not see any unconstitutionality attached to the impugned Ordinance or the impugned Act.

19. It is not possible to accept the submission that there was a serious doubt whether natural gas was included in petroleum or petroleum products. In fact, the submission that two interpretations were possible cannot be acceptable at all in the light of the decision of the Apex Court in the case of ***Association of Natural Gas and others*** (supra).

20. Now, we come to Rule 25 of the Octroi Rules which is relied upon by the learned senior counsel appearing for the petitioner. Perusal of the Octroi Rules shows that octroi is leviable on the goods which attract levy of octroi which are brought into limits of the Municipal Corporation by way of import by sea or import by rail or import by air or import by road. In the present case, the petitioner has imported natural gas into the limits of the Municipal Corporation. It is an import by sea by use of a pipeline. When articles are imported by sea, Rule 4 of the Octroi Rules require that the importer should fill in an application in Form-A and an Octroi Import Bill in Form-B along with necessary documents. The procedure thereafter to be followed by the officers of the Municipal Corporation is laid down in Rule 4. After the scrutiny of forms and documents, Inspector or Officer is required to endorse whether the articles imported are liable to octroi. Similar provisions are also made in cases of import by rail, import by air and import by road. These are the elaborate provisions regarding examination of articles, determination of value etc.

It is in this context, Rule 25 will have to be considered. Rule 25 of the Octroi Rules reads thus:

> "**25. Recovery of Octroi not paid or short paid.**
> When octroi has not been paid or has been paid short at the time of import or when such octroi after having been paid has been erroneously refunded through inadvertence, error, collusion, misconstruction or any other reasons on the part of the Municipal Octroi Staff or that of the Agents appointed by the Commissioner under Section 213 of the Mumbai Municipal Corporation act, or through misstatement as to weight, value or description on the part of the importer, the person primarily liable to pay such tax or the difference of the tax shall pay the amount of tax or deficiency on receipt of a demand issued within three months of the date of the import or payment of tax as the case may be and the Commissioner or at his instance the agents referred to him may refuse to pass any article belonging to such person until the said amount of octroi or deficiency is paid."

21. Rule 25 is applicable when the importer after following the procedure of the said Rules either fails to pay octroi or the octroi paid is short or when such octroi after having been paid has been erroneously refunded due to inadvertence, error, collusion etc. In such cases, Rule 25 provides that the person primarily liable to pay such tax or difference of tax shall pay the amount of tax or deficiency on receipt of a demand issued within three months of the date of the import or payment of tax as the case may be. The present case is of complete evasion of payment of octroi. It is not the case of the petitioner that the petitioner followed procedure of filling in forms and claiming that octroi was not leviable on natural gas. There is no provision under the said Act which provides for a

period of limitation or outer limit within which octroi could be levied or collected from the date of its import. Rule 25 is merely an enabling provision which enables the Municipal Corporation to take steps for recovery of octroi in the contingencies which are covered by the said Rule. By no stretch of imagination Rule 25 can be interpreted to mean that in a case of a person who evades octroi by clandestinely importing articles subject to octroi and who fails to follow the procedure laid down by the Octroi Rules is liable to pay octroi only within a period of three months from the date of import of goods and, therefore, after expiry of the said period of three months, the Municipal Corporation is powerless to take steps for recovery of octroi from the person who has evaded payment of octroi. This enabling provision of Rule 25 does not take away power of the Municipal Corporation to recover octroi after expiry of three months from the date of import of goods within its limits in a case where the goods are imported within its limits without following the procedure laid down in Rule 4 Therefore, the argument based on Rule 25 has no application. Both decisions relied upon by the learned senior counsel appearing for the petitioner deal with the express provisions of law which provided for a specific period for recovery of tax. There is no such statutory embargo on the powers of the Municipal Corporation.

22. As regards the argument regarding exemption, the learned senior counsel appearing for the petitioner relied upon Section 194 of the said Act which reads thus:

> “**194. Exemption of articles belonging to the Government from Octroi.**
>
> (1) No octroi shall be leviable on any article which at the time of its importation is certified by an

> officer empowered by the government concerned in this behalf to be the property of the Government.
>
> **Refund of octroi on articles which become the property of the Government after importation.**
>
> (2) If any article on which octroi is paid is imported under a written declaration signed by the importer that such article is being imported for the purpose of fulfilling a specified contract with the State Government or otherwise for the use of the Government, the full amount of the tax paid thereon shall be refunded on production at any time within six months after importation, of a certificate signed by an officer empowered by the Government concerned in this behalf certifying that the article so imported has become the property of the Government."

If exemption is to be claimed, the same is required to be claimed under sub-section (1) of Section 194 by producing a certificate of an officer empowered by the Government concerned in this behalf stating that the article at the time of importation is a property of the Government. Such certificate has to be produced at the time of importation of the goods. This procedure is admittedly not followed in this case. Hence, the petitioner is disentitled to claim exemption.

23. Reliance is placed by the learned senior counsel appearing for the petitioner on the provisions of the Oil and Natural Gas Commission Act, 1959. Section 14 thereof empowers the Commission to plan, promote, organise and implement progammes for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it. In fact, Section 17 thereof makes it very clear that all the properties acquired by the Commission vest in the

Commission. There is no provision in the said Act which provides that the natural gas procured or produced by the petitioner will be the property of the Government.

24. Thus, the challenge must fail on all grounds agitated by the petitioner

25. The learned senior counsel appearing for the Municipal Corporation stated that the Municipal Corporation has not initiated prosecution under Section 478 of the said Act. Considering the fact that the punishment prescribed by Section 478 is of maximum period of six months, the period of limitation for lodging prosecution on the basis of demand subject matter of this petition has already elapsed. As far as penalty is concerned, in view of Section 478-1A, the penalty can be imposed only on conviction of a person for evading the payment of octroi. Thus, for the non-payment of demand subject matter of this petition, neither penalty nor interest can be levied by the Municipal Corporation.

26. This petition filed in the year 1989 was admitted and interim relief was granted. Thereafter this petition was dismissed and the said order of dismissal was set aside by the Apex Court. Moreover, we are dealing with a public sector undertaking which was earlier a Commission established under a central statute. Though we are not inclined to entertain this petition on merits, it is not a case where a direction can be issued to the petitioner to pay interest. In fact, the learned senior counsel appearing for the Municipal Corporation pointed out that the Apex Court directed the petitioner to deposit 50% of the demand as on 7th May 2002

and subject to the deposit, the demand for arrears was stayed. It is stated that, accordingly, the amount was deposited by the petitioner and in terms of the order of the Apex Court the same was withdrawn by the first respondent- Municipal Corporation by furnishing bank guarantees in the total sum of Rs.13,86,27,163/-. Thus, a substantial amount has been deposited by the petitioner during the pendency of the proceedings.

27. Subject to what is observed above, we see no merit in the petition and the same deserves to be rejected. Accordingly, we pass the following order:

<u>O R D E R</u>

Writ petition is rejected. Rule is discharged.

On the prayer made by the learned counsel for the petitioner, we direct that the interim order which is operative till today shall continue to operate for a period of two months from the date on which this judgment and order is uploaded on the website of this Court.

(RIYAZ I. CHAGLA, J.) (A.S.OKA, J.)