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

WRIT PETITION NO.1136 OF 2003

Tupperware India Private Limited & Anr. ..Petitioners
Vs.
State of Maharashtra & Ors. ..Respondents

Mr.Abhishek Khare i/b. M/s.Khare Legal Chambers for Petitioners.
Mr.M.A. Sayyed, AGP for Respondent No.1.
Mr.Ashwin Sakolkar with Smt.Pooja Yadav for MCGM.

CORAM : G.S. KULKARNI, J.

DATE : 24th NOVEMBER, 2018

<u>P.C.:</u>

The petitioner is a company incorporated under the provisions of the Companies Act 1956 and is stated to be engaged in the business activity of supplying of premium plastic food storage, preparation and serving items (for short, “the said goods”) throughout India and through its distributors and dealers. The respondent No.2 who is the Municipal Corporation of Greater Mumbai constituted under the Bombay Municipal Corporation Act, 1888 (for short, “the said Act”) and under the statutory rules framed under the said act namely the Bombay Municipal Corporation (Levy) of Octroi Rules 1965 (for short, “the octroi rules”), was empowered to collect octroi on the goods which were imported within its municipal limits for the purpose of use, consumption and sale.

2. Case of the petitioners is that the goods were received by the petitioners from contract manufacturers at the petitioner's warehouse situated at Bhiwandi, outside its municipal limits. These goods are received under excise duty paid invoices issued by the manufacturer of the said goods. The petitioner has averred that from the said Bhiwandi warehouse, the goods were transferred under Stock Transfer Invoices (for short, “STV”) to depots of the petitioner within the municipal limits of the respondent No.2-Municipal Corporation.

3. The petitioners contend that the STV includes the original invoice value plus freight charges, excise duty, sales tax, insurance, etc. so that the value of the goods is in conformity with the definition of “value of the articles” as defined in Rule 2(7)(a) of the Octroi Rules. The petitioners say that only where the value of articles as determined by Rule 2(7) (a) is not ascertainable because of non-availability or non-production of the original invoice at the time of import or if the genuineness of the invoice produced is in doubt, that the value can be determined in accordance with Rule 2(7) (b) of the Octroi Rules.

4. The petitioners contend that this business activity of the petitioners was being carried out since 1997 during which time the STV has been accepted for the purposes of octroi payment without any demur or protest. Thus, the value as declared in the STV by the petitioners at the time of import of the products is the correct value for the purposes of assessment and levy of octroi in as much as the STV covers all the expenses incurred by the petitioners till the time of import of the goods within the municipal limits and also for the purposes of octroi valuation under Rule 2(7) (a) of the Octroi Rules.

5. According to the petitioners, cause of action to file the present petition arose in view of the arbitrary demand/imposition of octroi duty by the municipal corporation at the rate of 3 times and 200% of the STV which according to the petitioners, is on the instructions and order of the office of the Deputy Assessor and Collector (Octroi) and the Superintendent of Octroi (Respondent Nos.4 and 5). To this effect, a noting was made on form B dated 10 and 11 April 2003 by respondent Nos.4 and 5 failing with the petitioner was not permitted to import any further consignment in the municipal limits of Greater Bombay on STV.

6. Thereafter respondent No.4 by its letter dated 10 February 2003 called upon petitioner No.1 to furnish details, for fixation of the tariff for

the said goods. Sometime in April 2003, a lorry of the petitioners carrying the products was detained at octroi check post at Mulund and the petitioners were informed that unless and until octroi at the rate of 4 times of the declared STV was paid, the goods would not be permitted to enter the city limits of Mumbai. This according to the petitioners, was illegal as the STV which was declared on the invoices was genuine and correct. In fact, the petitioner No.1 was not manufacturer of the goods and the goods were outsourced from contract manufacturers in India. The value of the goods as contained in STV was true and correct value of the articles for the purposes of levy of octroi. Respondent No.4 however, was determined to impose octroi on the basis of the retail price of the said goods declared in the catalogue published by petitioner No.1. This was of an erroneous assumption that the petitioner No.1 was the manufacturer of the goods. The import of the petitioner No.1 from its warehouse at Bhiwandi to the warehouse within limits of municipal corporation was refused unless the petitioners paid octroi duty at the rate of 200% of the STV for import of the aid goods. The petitioners have quoted instances as took place on 10 and 11 April 2003. According to the petitioners, this action of the respondent was illegal and arbitrary.

7. It is on this basic premise, the petitioners have approached this Court. It is contended that in the facts of the petitioners' case, the value

of the goods is ascertainable as per Rule 2(7)(a). The stock transfer invoice (STV) was required to be regarded as a genuine document by the respondent-municipal corporation as the petitioner No.1 is not manufacturer of the goods, but the goods are purchased from third party manufacturer. The genuineness and authenticity of the STV could not have been rejected by the respondents.

8. The petitioners being aggrieved by the above action of the respondent, has filed the present petition making the following substantive prayers:

> "(a) For a declaration of this Hon'ble Court declaring that the action of the respondents in demanding octroi duty at 3 times and 200% of the STV value and on the basis of MRP is manifestly illegal and without the authority of law.
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> (b) For a Writ of Certiorari or a Writ, order or direction in the nature of Certiorari or any other appropriate Writ direction or order under Article 226 of the Constitution of India calling for the records relating to the noting/order made on Form "B", being Exhibits "E-1", "E-2", "E-3" & "E-4" hereto, and the order of the 3rd respondent Ex.G hereto and after considering the same quashing and/or setting aside the same.
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> (c) For a Writ of Mandamus or a writ in the nature of Mandamus of any other appropriate Writ, Order of direction directing the Respondents to :
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> > (i) Forthwith permit Petitioner No.1 to import the said goods at the STV that is declared;
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> > (ii) forbear from demanding octroi duty on a value other than the declared STV;
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> > (iii) forthwith refund to the Petitioners and amount of Rs. 75,607/-, being the amount illegally levied, demanded and collected in respect of the consignment imported on 10th and 11th April 2003.
> >
> > (iv) Forthwith withdraw and/or cancel the aforesaid order Exhibit "G" hereto and forbear from taking any action in pursuance of or in implementation of the same;

> (v) to forthwith refund to the Petitioners the sum of Rs.6,58,180 together with interest thereon at the rate of 15% per annum from the date of payment till realisation.”

9. On 9 June 2003 Division Bench of this Court passed an interim order directing that the representations made by the petitioners be considered by the municipal corporation. The Division Bench issued the following directions:-

> “3. Taking overall facts and circumstances into consideration, we pass the following order:
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> (i) The petitioners or their representative shall appear before the respondent no.4 – Deputy Assessor or Collector (Octroi) on 16.06.2003 at 12 O'clock along with all relevant documents in support of their representation.
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> (ii) The respondent no.4 – Deputy Assessor and Collector (Octroi) is directed to hear the petitioners or their representative on that day or any other subsequent date but in no case later than three days therefrom and pass appropriate order by 23.06.2003.
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> (iii) The learned counsel for the respondent is directed to place on record the said order immediately thereafter supported by affidavit.
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> 4. S.O. to 26.06.2003.”

10. According to the above interim directions of the Division Bench of this Court, the municipal Corporation passed an order dated 24 June 2003 inter-alia holding that the STV produced by the petitioners showing therein the value of the articles in the invoices raised by the manufacturer based at Hyderabad, by adding therein wareshouse expenses, freight charges, excise duty, insurance etc. are not acceptable. It was held that the levy of octroi on the MRP was a stop gap

arrangement till the fixation of tariff as per the provisions of 2(7)(b) of the octroi Rules. It would be appropriate to note the observations and the operative portion of the said order passed by the Deputy Assessor & Collector (Octroi) which read thus:-

> " As per the Law laid down by the trial court, MRP should not be the basis. However, in the instant case the levy of octroi on the MRP was a stop gap arrangement till the fixation of tariff as per the Provisions of 2(7)(b) of levy of octroi rules. The value of the article defined therein lay down that value be ascertained on the basis of wholesale cash price less trade discount for which the articles of like kind or quality are sold or are capable of being sold at the time and place of import without any abatement or deduction whatever except of the amount of the octroi payable on importation thereof.
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> Hence the order:
>
> **ORDER**
>
> The stock transfer memo produced by the Co. showing therein the value of the articles in the invoices raised by their manufacturer based at Hyderabad by adding therein warehouse expense freight charges, excise duty, insurance etc. are not acceptable for the reason elaborated above. The value of the articles imported by the Co. be determined on the basis of provision of 2(7)(b) read with rule 18 of levy of octroi rules. In the event, the value so fixed is less than the provisional assessment carried out by the assessing authority, the difference in octroi would be refundable to the Co. in accordance with law.
>
> Sd/-"

11. By an amendment as made to the petition, the petitioners were permitted to assail the above order dated 24 June 2003.

12. On behalf of the municipal corporation a reply affidavit of Mr.Dhirajlal B. Shah dated 19 August 2003 is placed on record. In this affidavit, the corporation has raised an objection that an

alternative and efficacious remedy of an appeal available to the petitioners under Section 217 of the Act as there are serious disputed questions of facts. It is further submitted that in the absence of original invoice in respect of articles consigned to City of Mumbai, there is no other method by which the petitioners could prove the value of the goods, except by leading the evidence in that regard. It is stated that STV cannot be termed as an invoice for the purposes of levy of octroi as the goods are not imported under the said invoice/memo. It is stated that in the absence of original invoice, the only method available to the respondents was to determine the value of the articles as per the provisions of Rule 2(7)(b) of the Octroi Rules and that the tariff is accordingly fixed under Rule 2(7)(b) read with Rule 18 of the Octroi Rules.

13. As regards the petitioners' contention of applicability of Rule 2(7)(a) of the Octroi Rules, it is stated that the said rule will be applicable if articles are imported into Greater Mumbai limits accompanied by original invoice by adding all duties, charges incurred or liable to be incurred till the removal of the articles from place of import. It is stated that the petitioners are importing articles under stock transfer memo which cannot be termed or considered as an invoice for the purpose of levy of octroi. Although the petitioners at the time of hearing had

shown their willingness to produce the invoice raised by their manufacturer based at Hyderabad on their Bhiwandi warehouse, however, the said invoice did not reflect the value of articles imported into Mumbai and the same has been reflected in manufacturing costs, other charges and profit of the manufacturer. Thus, the so called invoice also did not include the duties and charges incurred once the articles are sent to the petitioners' Bhiwandi warehouse and subsequent freight charges, profit, etc. It is stated that for this reason stock transfer memo sent by the respondents are not acceptable and therefore, the direction of the respondents that the value of the goods be determined on the basis of Rule 2(7)(b) read with Rule 18 of octroi rules, is correct. It is further stated that in the event the value so fixed is less than the provisional assessment made by the assessing authority, the difference of octroi would be refundable to the petitioners in accordance with law.

14. There is another affidavit filed on behalf of the municipal corporation of Mr.Sukhdev Kondiba Bangar dated 11 March 2016. It is stated that the petitioners on its own volition addressed a letter dated 29 December 2014 to the Additional Municipal Commissioner (P), relating to the present writ petition. In this communication, the petitioners stated that the corporation was requested to consider the value of the items for octroi duty purposes in terms of Rule 2(7)(b) and Rule 18 of

the Octroi Rules. The letter also recorded that the petitioners will withdraw the writ petition unconditionally in case the said request of the petitioners is accepted. This letter of the petitioners was replied by respondent No.4 – Deputy Assessor inter-alia informing the petitioners that they were required to produce the entire list of products imported by them in Mumbai along with MRP so as to enable the respondent-corporation to fix the assessable value of the said products for payment of octroi. However, on the same day, the petitioners informed the respondents that they were never agreeable to fix the assessable value based on MRP. The case of the corporation in this reply is that the petitioners themselves were in complete state of confusion as to the assessable value of the goods and this fortifies corporation's view that there are disputed questions of facts which require evidence to be adduced and thus a statutory appeal under the provisions of Section 217 of the Act before the Small Causes Court is the appropriate remedy for the petitioners.

15. The petitioners have placed on record an affidavit in rejoinder dealing with the reply affidavit as filed by the respondents. Rejoinder moreover reiterates the same stand as taken in the petition.

16. The only submissions as made on behalf of the petitioners in support of the prayers are as under:-

(i) The Deputy Assessor of the municipal corporation has not applied his mind that the petitioner No.1 is not a manufacturer, but is the purchaser of the goods as manufactured by the third party manufactures at Hyderabad and other places. It is submitted that these goods are brought and stored at godown outside municipal corporation limits at Bhiwandi and thereafter they are imported within the municipal limits of respondent-corporation.

(ii) It is submitted that such transfer of the goods from Bhiwandi to the warehouse within the corporation limits was earlier permitted to be done on STV and that as and when necessary invoices are produced. It is further submitted that when original invoices cannot be produced, STVs are required to be held as conclusive for the purpose of determination of the octroi payable by the petitioners. As the STV would contend all the necessary expenses charges etc. on the said goods and which would be reflective of the true value of the goods.

(iii) It is submitted that considering the above circumstances and the import as made by the petitioners within the municipal corporation limits, this is a clear case where the deputy assessor was required to apply the provisions of Rule 2(7)(a) of the octroi rule. The insistence of the municipal corporation to apply rules 2(7)(b) is therefore arbitrary and illegal.

(iv) Rule 18 of the octroi rules would permit acceptance of a STV as it provides for production of original invoice, bill “or other documents showing the correct value of such articles”. It is submitted that once the Rule 18 uses the word “or” then the municipal corporation cannot refuse to accept the STVs.

(v) The case of the municipal corporation that all these issues are required to be ascertained in a statutory appeal under Section 217 of the Act is not correct as pattern of import to the municipal limits is clear which is on the basis of STV which ought to be accepted by the municipal corporation.

17. In support of the above submission, learned Counsel for the petitioners has placed reliance on the decisions of the Supreme Court in **Tata Engineering And Locomotive Company Ltd. And Anr. V/s. Municipal Corporation of the City Of Thane and Ors.**[1] and the decision of the learned Single Judge of this Court in **Hindustan Lever**

1 1993 Supp (1) Supreme Court Cases 361

Limited v. Municipal Corporation of Gr. Bombay & Anr.[1].

18. On the other hand, learned Counsel for the respondents has supported the stand as taken by the municipal corporation and as reflected in the reply affidavit and the order dated 24 June 2003 passed by the Deputy Assessor and Collector (Octroi) passed in pursuance of the interim order of this court.

19. I have perused the record as also I have heard learned Counsel for the parties.

20. The respondent-municipal corporation is entitled to collect octroi which is a tax on the entry of goods within the municipal limits for use, consumption and sale. It is not in dispute that in the present case the petitioners have a godown which is situated out side the limits of the respondent-municipal corporation. The case of the petitioners is that the goods which are either manufactured by it or third party manufactures on the basis of invoices issued by these manufactures are brought to this godown which is situated at Bhiwandi (Thane District). Thereafter the petitioners are transferring these goods from Bhiwandi to the warehouse situated within the municipal limits of the respondent corporation. It is not the case of the petitioners that these goods are not

1 2005 SCC OnLine Bom 216

brought within the corporation limits for the purposes of use, consumption and sale. Thus, there is a presumption as created in relation to these goods that they are brought within the corporation limits for the purpose of use, consumption and sale and hence undoubtedly octroi was leviable on these goods. This is also not disputed by the petitioners.

21. The only contention as urged on behalf of the respondents is on the method on which the octroi is required to be levied. According to the petitioners, the method ought to be as per provisions of Rule 2(7)(a) read with Rule 18 of the octroi rules. It would be necessary to note as to what these two rules provide. Rule 2(7)(a) and (b) provides for 'value of the articles' which reads thus:-

> “2(7)(a) 'Value of the articles' where octroi is charged ad-valorem shall mean the value of the articles as ascertained from original invoice plus shipping dues, insurance, custom duties, excise duties, counter vailing duty, sales tax, transport fee, vend freight charges, carrier charges and all other incidental charges, excepting octroi incurred or liable to be incurred by the importer till the articles are removed from the place of import.
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> Or
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> (b) where the value as at (a) above is not ascertainable on account of non-availability or non-production of the original invoice at the time of import or when the genuineness of the invoice produced is in doubt it shall mean the wholesale cash price less trade discount for which the articles of like kind or quality are sold or are capable of being sold at the time and place of import, without any abatement or deduction whatever except of the amount of Octroi payable on importation thereof.”

22. Rule 18 is the provision for determination of the value and reads thus:-

> "(1) Every importer of articles on which octroi is leviable on value "Advalorem" shall produce the original invoice, bill or other documents showing the correct value of such articles along with a copy thereof and shall fill in and deliver to the Octroi Inspector or to any other officer appointed in that behalf, a declaration in Form "A" annexed to these rules. If the contents in the invoice or bill etc., appear fair and reasonable to the said Octroi Inspector or to the said Officer the same shall be accepted and the articles shall be assessed to Octroi as provided for in Rule 2(7). The copy of the said invoice, bill etc., shall be stamped and initialled by the said Octroi Inspector or the Officer with the special stamp provided for the purpose and the original invoices, bills etc. shall be returned to the Importer and the duplicate thereof shall be retained as Octroi Office record and a note of submission of the invoice or other documents and retention thereof shall be made on the A & B forms by the said Octroi Inspector or the said Officer assessing the articles to Octroi. If however, copy of the invoice, bill or other documents is not produced, the original thereof that has been produced shall be retained as Office record.
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> (2) If the invoice, bill or other documents along with its copy is not produced by the importer at the time of import or whatever document produced by him is not deemed reliable by the said Octroi Inspector or the said Officer or it is incomplete or if the importer refuses or is otherwise unable to declare the true value of the article in form "A", the said Octroi Inspector or the Officer concerned shall calculate and recover octroi according to the value fixed in this behalf by the Commissioner or by Dy. A & C (O) with prior approval of the Deputy Municipal Commissioner concerned, from time to time. The value so fixed shall be shown in forms "A" & "B".
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> (3)(i) If, however, the importer whose invoice, bill or other documents have not been accepted for the purposes of assessment of octroi, makes a written complaint to the Commissioner or to such officer as may be appointed by the Commissioner about the excess recovery of octroi and undertakes to produce account books or such other documents to substantiate the value shown in the said invoice, bill or other documents, the Commissioner or the said Officer authorised by him, may, after being satisfied about the correctness and genuineness of the invoice, grant refund of excess amount of octroi recovered provided that such written complaint is made within a period of three months or within

> such longer period as may be approved by the Commissioner.
> (ii) In case of non-production of invoice, bill or other documents with its copy at the time of importation of the goods for which the complaint for refund has been made in manner (i) above, the Commissioner may in his discretion grant refund on recovery of penalty not exceeding 10 per cent on refund amount due, provided the Commissioner is otherwise satisfied of the correctness of the claim.
> (4) In case where Octroi is recovered on basis of the value fixed by the Commissioner and not on the invoice value of the article, the Commissioner may at any time within 3 months from the date of import call upon the importer to produce in the Municipal Office the original invoice and other document concerning the value of the articles imported for his inspection. The importer shall be bound to produce the above mentioned document within one month from the date of receipt of such requisition. If on going through these documents, it is found that less than the porper and due amount of octroi has been recovered the Commissioner may call upon the importer to pay the difference of octroi and the importer shall be bound to comply with such demand."

23. A plain reading of Rule 2(7)(a) clearly indicates that where octroi is charged ad-valorem, the value of the articles would be ascertained from original invoice plus shipping dues, insurance, custom duties, excise duties, counter vailing duty, sales tax, transport fee, vend freight charges, carrier charges and all other incidental charges, exceeding octroi incurred or liable to be incurred by the importer till the articles are removed from the place of import. Further Rule 2(7)(b) provides for a situation where the value of the goods cannot be ascertained as per Rule 2(7)(a) on account of non-availability or non-production of the original invoices at the time of import or when the genuineness of the invoice produced is in doubt, in such a case, the wholesale cash price

less trade discount for which the articles of like kind or quality are sold or are capable of being sold at the time and place of import, without any abatement or deduction whatever except of the amount of Octroi payable on importation thereof shall be considered.

24. A plain reading of Section 18(1) mandates that the importer of articles on which octroi is leviable on value "Advalorem" shall produce the original invoice, bill or other documents showing the correct value of such articles along with a copy thereof and shall fill in and deliver to the Octroi Inspector or to any other officer appointed in that behalf, a declaration in Form "A". It further provides that if the contents in the invoice or bill etc., appear fair and reasonable to the said Octroi Inspector or to the said Officer, the same shall be accepted and the articles shall be assessed to Octroi as provided for in Rule 2(7). Sub-Rule (2) of Rule 18 also makes a provision that if the invoice, bill or other documents along with its copy is not produced by the importer at the time of import or whatever document is produced by the importer is not deemed reliable by the said Octroi Inspector or the said Officer or it is incomplete or if the importer refuses or is otherwise unable to declare the true value of the article in form "A", then in such case, the Octroi Inspector or the Officer concerned shall calculate and recover octroi according to the value fixed in this behalf by the Commissioner or by Dy.

A & C (O) with prior approval of the Deputy Municipal Commissioner concerned, from time to time. The value so fixed shall be shown in forms “A” & “B”. Sub-Rule (3)(i) further provides that in case the invoice, bill or other documents as produced by the importer are not accepted for the purposes of assessment of octroi, then if the importer makes a written complaint to the Commissioner or to such officer as may be appointed by the Commissioner about the excess recovery of octroi and undertakes to produce account books or such other documents to substantiate the value shown in the said invoice, bill or other documents, the Commissioner or the said Officer authorised by him, may, after being satisfied about the correctness and genuineness of the invoice, grant refund of excess amount of octroi recovered provided that such written complaint is made within a period of three months or within such longer period as may be approved by the Commissioner. Sur-Rule 3(ii) provides that in case of non-production of invoice, bill or other documents with its copy at the time of importation of the goods for which the complaint for refund has been made, the Commissioner may in his discretion grant refund on recovery of penalty not exceeding 10 per cent on refund amount due, provided the Commissioner is otherwise satisfied of the correctness of the claim.

25. From a reading of the clear statutory scheme of Rule 18 read with Rule 2(7)(a) and (b), it is clear that there is a primary requirement of producing the invoice, bill or other documents. The contention as urged on behalf of the petitioners that as Rule 18 and its sub-rules uses the words "or" when it refers to "invoice, bill" or "other documents", then necessarily STVs are permitted to be produced on which the value of the goods could be determined. This submission as made on behalf of the petitioners cannot be accepted. It is a well settled principle of law that when a statutory provision/rule uses such words as in the present case namely "invoice, bill" or "other documents", these words are required to be used *ejusdem generis.* This would mean that the words "other documents" would be required to be attributed the same meaning as to its preceding words namely "invoice or bills". This, for the reason that the words "other documents" are required to be interpreted in the context of its genus namely a category of documents of an invoice or a bill. On the applicability of the doctrine of *ejusdem generis*, it would be profitable to refer to the decision in **Tribhuban Parkash v. Union of India**[1]. The Supreme Court has observed thus:-

> "13. .... When in a statute there are general words following particular and specific words, the general words are sometimes construed as limited to things of the same kind as those specified. This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the appellant. This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a

1 AIR 1970 SC 540

> statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. Ejusdem Generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general words."

26. Admittedly a stock transfer memo can never partake a character of an "invoice or bill". It would also not be determinative of the actual value of the goods as contemplated by Rule 2(7)(a) of the Octroi Rules. As rightly contended on behalf of the corporation STVs could not have been accepted as per provisions of Rule 2(7)(a) read with Rule 18 of the Octroi Rules, for determination of the actual value of the goods being imported by the petitioners. Thus the contentions as urged on behalf of the petitioners, that the corporation was in an error, in the facts of the case, to rely on Rule 2(7)(b) read with Rule 18 to assess the levy of octroi, whenever the petitioners have not produced the original invoices cannot be accepted. Further considering the provisions of Rule 2(7)(a) and (b) read with Rule 18 of the octroi rules, it cannot be accepted that the STVs as being presented by the petitioners could be accepted as documents on which the value of the goods could be determined. The municipal officers would not be in any error to take recourse of Rule 2(7)(b) to determine the correct value of the goods for the purpose of levy of octroi if documents which are not within the purview of sub-rule

2(7)(a) were presented by the petitioners. On a perusal of the order dated 24 June 2003 passed in pursuance of the impugned interim directions passed by the Deputy Assessor, I do not find that there is anything arbitrary or illegal for the said order to be set aside. The order is based on correct application on the octroi rules in relation to the facts of the case. In my clear opinion, the petitioners clearly do not make out any case for grant of the reliefs as prayed for.

27. It needs to be mentioned that the pursuit of this petition by the petitioners is quite mis-adventurous. This for the reason that it is well established that each import for the purpose of levy of octroi was required to be considered on its own merits as per rules as noted above. The scheme as contained in the rules constitutes a complete code. It is difficult to conceive a straight jacket formula as being suggested by the petitioners of accepting STVs in regard to all its import and on insistence that STVs ought to be held as conclusive in regard to the value of the goods. Certainly there cannot be a straight jacket formula for valuation of the goods as suggested by the petitioners. Each import within the corporation limits is required to be based on its independent documents along with the requisite forms to be submitted by the importer as mandated by the rules and in case any dispute arises, then subject to the recourse to a determination by a Commissioner, an appeal can be filed

by the importer under Section 217 of the Act before the Small Causes Court disputing the levy.

28. It may also be observed that in fact, by virtue of the interim order dated 9 June 2003 passed by the Division Bench of this Court, this petition ought to have come to an end and thereafter on each of the import, the petitioners could have very well disputed the levy of octroi duty in regard to any of the imports on which the petitioner had a complaint or a dispute by resorting to statutory remedies. It also appears that the petitioners were clearly aware about this as clear from the petitioners writing to the Commissioner that the provisions of Rule 2(7)(a) read with Rule 18 be applied. However, on being called upon to furnish the details, the petitioners again immediately took a somersault.

29. The decision in **Tata Engineering & Locomotive Company Limited** (supra) would also not assist the petitioners. The facts of the said care are completely different. In the facts of the case, it felt into a category as provided under the rule where the municipal corporation permitted to keep a current account. The petitioner therein was permitted by the municipal corporation to keep the dutiable goods in a bonded warehouse of their own with a 'current account facility' as per Rule 10 of the Maharashtra Municipalities (Octroi) Rules. Further there

was a declaration submitted in that regard by the petitioners therein. Considering the current account scheme, the Court's observations in regard to the production of an original invoice would not be applicable as under the current account procedure the invoices, if any and all the other documents are verified when the goods reach the warehouse with reference to the description of the goods, weight/quantity, value and other particulars and it is only after verification the octroi duty leviable is determined and amount is debited in the account current and the demand also is issued. Such are not the facts in the present case.

30. On a query being made to the learned Counsel for the petitioners, it is informed that in fact, the entire octroi duty on the different imports is already paid and there is no proceeding filed by the petitioners assailing the statutory remedy. This clearly fortifies the above observations.

31. In view of the above discussion with certitude, I am of the opinion that the petition lacks merits. It is accordingly dismissed. However, there shall be no order as to costs.

[G.S. KULKARNI, J.]