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CIVIL APPELLATE JURISDICTION@@
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CIVIL APPEAL NO.2930 OF 1996@@
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Municipal Corporation, Faridabad ...Appellant(s)

versus

Nitco Roadways & Anr. ...Respondent(s)

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The order under appeal was passed by a Division Bench of the High Court of Punjab and Haryana rejecting, summarily, the writ petition filed by the present appellant in these circumstances:

The appellant is the Municipal Corporation of Faridabad. The first respondent is a trucking company. On 24th May, 1994 a truck of the first respondent, carrying gases of the value of Rs.5,90,425-36, crossed the appellants' municipal limits without payment of octroi. It had penetrated 4 Kms. within those limits before it was intercepted by the Octroi Department's flying squad. The flying squad seized the gases and impounded the truck. On the same day, the first respondent deposited the octroi amount of Rs.23,617.02 and wrote a letter to the Administrator of the appellants. The letter said that its truck had crossed into the appellants' municipal limits without payment of octroi because the driver of the truck ...2/-

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was new. The appellants were requested to release the truck on the assurance that such a mistake would not happen again. The letter ended with the sentence, "We are ready to compromise." On the basis of the said letter, a composition fee was calculated in the sum of ten times the octroi payable, at Rs.2,36,170-20. On 27th May, 1994 the first respondent made a representation to the Zonal Taxation Officer of the appellants. The letter now stated that the new truck driver had passed the octroi barrier and had stopped to enquire where it was when he was spotted and the truck seized. The letter assured the Zonal Taxation Officer that the respondents "would not like to evade octroi in future.", and again, "I on behalf of my Company assure you that we will not evade any octroi in future." On 3rd June, 1994, a Director of the first respondent met the Commissioner, Municipal Corporation and sought the waiver of the composition fee. Acceding to his request, the appellants' Commissioner reduced the composition fee to twice the amount of the octroi payable. On 4th June, 1994, the respondents again represented against this order and now claimed that what had been deposited as composition fee had been deposited under protest. The first respondent was informed that the compounding having been made at its request, no further action could be taken. Unfazed, the

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first respondent filed an appeal before the Commissioner, Gurgaon Division and he, by his order dated 16th September, 1994, allowed the appeal. In his view, the appellants were not justified in requiring the first respondent to pay "such big amount of fine for the fault of the driver especially when the reputation of the appellant/firm is far from any blemish." The order of the Commissioner, Gurgaon Division was impugned in the writ petition that the appellants filed before the High Court, which writ petition was summarily dismissed.

It was submitted by learned counsel for the appellants that the entry of the first respondent's truck into the octroi limits without payment of octroi was admitted and that the first respondent had itself sought composition. There was no warrant for the appeal against such composition and for the order thereon. In the submission of learned counsel for the respondents, the order of the Commissioner, Gurgaon Division was justified because there was no intention to evade octroi on the part of the respondents.

In our view, there was no warrant for the appeal by the first respondent to the Commissioner, Gurgaon, and no warrant for the order thereon, having regard to the fact that the first respondent admitted that its truck had

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penetrated into the municipal limits of the appellants without the payment of octroi and it had, thereafter, sought composition of the offence. When it was in a hurry to get the truck and the goods in it released, the first respondent wrote the first letter and, having got the same released, embroidered on the facts stated therein; that, among other things, the amount of the composition fee had been paid under protest. We think, therefore, that the High court was wrong in dismissing the writ petition, and that order is set aside. Rather than sending the matter back, having regard to what has been stated above, we allow the writ petition and set aside the order of the Commissioner, Gurgaon Division, which is impugned therein.

Order on the appeal accordingly. The respondents shall pay to the appellants the costs of the appeal.

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(SHIVARAJ V. PATIL)@@
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New Delhi, @@
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April 10, 2002. @@

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