IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4906 OF 2008

M/s. Bharat Petroleum Corporation Ltd. … Petitioner

Vs

1. The State of Maharashtra
2. The Secretary to the Government of Maharashtra, Urban Development Department, Mantralaya.
3. The Manmad Municipal Council, Manmad
4. The Chief Officer, Manmad Municipal Council, Manmad, Dist. Nashik … Respondents

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Ms. Eesha Jaifalkar i/b. Mr. S.R. Page for the petitioner.
Ms. P.J. Gavhane, AGP for respondent nos. 1 and 2/State.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 18 JUNE, 2026.

Oral Judgment: (Per G.S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:

> "a) rule be issued and record and proceedings be called for from the office of the respondent no. 4.
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> b) this Hon'ble Court be pleased to pass appropriate order by issuing writ of certiorari and/or any other writ and/or direction as against respondent no. 4, directing respondent no. 4 to produce the entire record pertaining to the facts of the present case and after examining the legality, validity and/or propriety of the said impugned action of respondent no. 4 of attachment and seizure of the oil depots of the petitioner corporation situated at Panewadi on 23.5.2008 and the impugned demand notices and municipal bills dated 15 May 2008, this Hon'ble Court be pleased to quash and set aside the same .
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> Prayers b(i) to b(vii) amended as per order of this Hon'ble Court dated 26 Feburary, 2009
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> b(i) In view of the fact that the octroi tax is abolished by 1999 amendment to Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965, this Hon'ble Court be pleased to hold and declare

that the Octroi Rules and bye-laws dealing with octroi export fee ceased to have any legal effect and that the respondent-Municipal Council is not entitled to charge any octroi/export fee after 1/5/1999.

b(ii) Without prejudice to the above and in the alternative, this Hon'ble Court be pleased to hold and declare that the respondent-Municipal Council is entitled to charge only 0.05 paise per ltr. and not 5 paise per ltr. and that every year the increase of 10% should be on the basis of 0.05 paise per ltr. and not 5 paiise per ltr.

b(iii) Without prejudice to the above contentions and in the alternative, this Hon'ble Court be pleased to hold and declare that the octroi/export fee charged by the respondent-Municipal Council on the tank lorry carrying oil and oil products is arbitrary, unreasonable and violative of the rights of the petitioners under Article 14 of the Constitution of India.

b(iv) The Respondent-Municipal Council be restrained by an order of injunction from this Hon'ble Court from raising any further octroi fee demands against the petitioner in respect of period after 1/5/1999 export fee by permanent order of injunction of this Hon'ble Court.

b(v) Without prejudice to the above and in the alternative, this Hon'ble Court be pleased to issue under Article 226 of the Constitution of India a writ of mandamus directing Respondent-Municipal Council to charge octroi/export fee at the rates of 0.05 paise per ltr. and only on the quantity of oil passing through the roads of Manmad Municipal Council upto 30/4/1999.

b(vi) Without prejudice to the above and in the alternative, the respondent-Municipal Council be directed by a writ of mandamus under Article 226 of the Constitution of India to issue fresh bills on the basis of actual quantity of oil passed through the roads of municipal council as indicated in Exh. 'H' to the writ petition and to charge @ 0.05 paise per ltr. after adjusting a sum fo approx. Rs.21,00,000/- paid by the petitioners to the respondent-Municipal Council."

2. The facts lie in a narrow compass. The petitioner has approached this Court being aggrieved by the demand/levy of octroi by respondent nos. 3 and 4, namely, the Manmad Municipal Council (for short "**Municipal Council"**). The case of the petitioner is that it deals in petroleum products through its oil depots, which, according to the petitioner, are not situated within the jurisdiction of the Municipal Council, hence there could not be any levy of octroi on the petroleum products of the petitioner, which were brought within the municipal jurisdiction

for use, consumption and sale. The petitioner was issued impugned bill dated 15 May, 2008 demanding a sum of Rs. 23,37,16,110/- towards the octroi charges for the period of 1 June, 1998 to 31 March, 2008. It is in these circumstances, the present petition came to be urgently moved at the relevant time.

3. Before referring to the orders passed by the Court in the present proceedings, it is necessary to note a significant aspect of the proceedings, namely, that this is not the first petition filed by the petitioner arising from the same cause of action. Earlier, the petitioner had filed Writ Petition No. 625 of 1999, which was disposed of by a Division Bench of this Court by an order dated 20 April, 2005. The said order reads thus:

> ". The learned A.G.P. on instructions from Mr. D.B. Ubale, Tax Superintendent of Manmad Municipal Council, Respondent No. 3 seeks leave to withdraw the demand for octroi and export fee which is subject matter of the present petition with liberty to issue fresh demand in view of the agreement between Manmad Municipal Council and three panchayats. It may be made clear that considering various contentions urged by the Petitioner, it will be advisable that their demand as presently served would indicate octroi as demanded in respect of each panchayat and Manmad Municipal Counsel separately as also the demand for export fee so that the Petitioners will be in a position to know the basis for the demand.
>
> With above, petition dismissed as withdrawn with liberty as prayed for."
>
> (emphasis supplied)

4. Thereafter, the Municipal Council issued a bill for a sum of Rs.19,80,645.60 towards octroi/export fee on petroleum products of the petitioner used, consumed and sold during the relevant months. A copy of the said bill is annexed to the petition as Exhibit "F". Being aggrieved by such bill, the petitioner once again approached this Court by filing Writ Petition No. 5102 of 2005, which was disposed of by the Division Bench of this Court by an order

dated 7 March, 2006, which reads thus;

> "1. Learned counsel Mr. Balkrishna Joshi, appearing for respondent No. 3 – Manmad Municipal Council – states that the Chief Officer will issue a fresh notice, in lieu of the impugned demand notice, to the petitioner, setting out the grounds for levy of Export Fee and the provisions of law in respect of such demand, within four weeks from today. The petitioner shall submit its reply / objection to the Chief Officer within two weeks from the date of the notice. The Chief Officer of the Manmad Municipal Council shall consider the objection and pass a reasoned order, after furnishing an opportunity of being heard to the representative of the petitioner, and shall communicate his decision to the petitioner within four weeks thereafter.
>
> 2. Learned counsel for the petitioner has agreed to deposit Rs.5,00,000/- (Rupees Five Lakhs only) with respondent No. 3 towards the demand within two weeks from today, without prejudice to its rights and contentions. It is made clear that this deposit shall be subject to the decision that may be rendered by the Chief Officer, who is going to take a decision in the matter. Needless to say that if any decision adverse to the petitioner is rendered, the petitioner can challenge the same before the appropriate authority.
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> 3. With the above directions and observations, the petition stands disposed of."
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> (emphasis supplied)

5. On the backdrop of the aforesaid orders passed by this Court, it is not in dispute that a notice came to be issued to the petitioner as also an order dated 8 June, 2006 passed by the Chief Officer, Manmad Municipal Council, which hold the petitioner liable to pay the fees in question. Aggrieved by the said order, the petitioner again approached this Court by filing a third petition, being Writ Petition No. 8387 of 2006. By an order dated 13 April, 2007, a Division Bench of this Court dismissed the said petition in the following terms:

> "1. Heard.
>
> 2. Even though a depot of Bharat Petroleum Corporation Limited is located outside the Municipal limits, however, in order to transport oil and petroleum to the said depot, the oil and petroleum is required to be taken by the roads which are constructed by the Municipal Council and for the use of the said road facility and for the purposes of export of the goods from the Municipal limits, five paise per litre has been charged as export fee. We, therefore, find that there is a nexus of charging export fee with the service rendered by the Municipal Council. Therefore, rightly the claim has been decided by the Chief Officer of the Manmad Municipal Council after giving a hearing to the petitioner.

3. No interference is called for. Petition is hereby rejected."

6. The petitioner filed Review Petition No. 41 of 2008 seeking review of the the aforesaid order dated 13 April, 2007 passed by the Division Bench, which also came to be rejected. Consequent thereto, the Municipal Council raised a demand and called upon the petitioner to pay the outstanding fees, failing which coercive measures of attaching the petitioner's property, would be undertaken. Aggrieved by the said action, the present petition was filed.

7. On 23 May, 2008, when the present petition was urgently moved before the Court when a Division Bench of this Court passed an order issuing notices making the following observations:

> "1. This petition is moved before us urgently because the oil depot of the petitioners situated at Penewadi Village, Manmad, is sealed by respondents 3 and 4 on the ground that the petitioners have not paid the export fees. The bill is annexed to the petition. Learned counsel for the petitioners states that because of this, supply of petrol, diesel and kerosene to entire Marathwada, Khandesh and Vidharbha, Kota, Indore, Haryana and Delhi will be stopped.
>
> 2. Learned A.G.P. waives service for respondents 1 and 2. In the circumstances, we issue notices to respondents 3 and 4. We direct the petitioners to serve notices on respondents 3 and 4 asking them to ensure that their representatives remain present in the court tomorrow i.e. on 24/5/2008 at 3.00 p.m. If respondents 3 and 4 are not served as aforesaid, the petition will be placed before the learned Vacation Judges on Monday i.e. on 26/5/2008 at 11.00 a.m. considering the urgency."

8. Thereafter, on 9 July, 2008, the following order was passed:

> ". Draft amendment filed in Court today taken on record and marked "X" for identification. Amendment allowed with just exceptions.
>
> 2. Issue notice to the Respondents. The learned Counsel appearing for Respondent Nos.1 and 2 accepts notice and waives service. He prays for time to file reply affidavit. Reply affidavit to be filed within two weeks from today. Rejoinder, if any, within one week thereafter.
>
> 3. Issue Court's notice to Respondent Nos.3 and 4 returnable on 30th July 2008.

> 4. **In the meanwhile, no coercive steps will be taken in furtherance to the demand.**
>
> 5. Stand over to 30th July 2008."
>
> (emphasis supplied)

9. On the aforesaid backdrop, by an order dated 11 June, 2009, this petition was admitted by the Division Bench for Final Hearing. It is in the aforesaid circumstances, the proceedings are before this Court.

10. Reply affidavit on behalf of the Municipal Council has been filed by the Chief Officer opposing the petition. It is primarily contended that the petition is not maintainable in view of the fact that the earlier three petitions involving the same issue were considered and disposed of by this Court. It is also contended that Writ Petition No. 8387 of 2006 was disposed of by an order dated 13 April, 2007 and that Review Petition No. 41 of 2008, filed against the said order, was also dismissed. Also, there is an opposition on merits justifying the jurisdiction, which is conferred on the Municipal Council to levy fee. The relevant extract of the affidavit is required to be noted, which reads thus:

> "4. I say and submit that before the writ petition filed by the petitioner and orders passed on the same as stated hereinabove, the petitioner had filed earlier writ petition no. 5102 of 2005 on the same prayers made in the present petition. The said writ petition came up for hearing before the then Chief Justice Shri Kshitij Vyas and Dr. Justice Chandrachud on 7th March, 2006. At the relevant time, Their Lordships were pleased to observe the validity of levy of the export fee by the Manmad Municipal Council and if the petitioners had any grievance, they were directed to raise the same before the then Chief Officer of respondent no. 3. It is pertinent to note that in all the above mentioned proceedings, this Hon'ble High Court had upheld the levy of export fee by the Manmad Municipal Council on the petitioners and, therefore, the present writ petition filed by the petitioners on similar grounds and same reliefs is not maintainable in law and, therefore, the same may be rejected with costs.
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> 5. I say and submit that if some grounds were not raised by the petitioners in the earlier writ petition, then it amounts to waiver and now the petitioners are estopped from raising the same in this Hon'ble Court in the above mentioned writ petition. I, therefore, say and submit that on this ground also

the above mentioned writ petition is not maintainable in law and, therefore, deserves to be rejected with costs.

6. I say and submit that in respect of additional grounds raised by the petitioners in paragraph 10 of the petition, this Hon'ble High Court has already decided all the grounds in the earlier writ petition which this Hon'ble Court was pleased to reject by a speaking order. I further say and submit that the Hon'ble Court has also upheld the levy of export fee at 5 paise per liter as legal and valid and, therefore, the petitioners are estopped from raising the same ground again and again and it amounts to abuse of the process of this Hon'ble High Court.

7. With reference to grounds A.11 of the petition, I deny that by virtue of the abolition of octroi by the State Government by their notification dated 30 April, 1999, respondent nos. 3 and 4 are not entitled to demand any amount from the petitioner Corporation towards export fee. As a matter of fact though by the amendment to the Maharashtra Municipal Council Act, levy of octroi was abolished but still levy of export fee was not specifically abolished by virtue of the said Government Resolution dated 30th April, 1999. It is pertinent to note that in the earlier writ petition which was rejected by this Hon'ble High Court, this ground was not raised by the petitioner and, therefore, it amounts to waiver and now the petitioners are estopped from raising the same in the present writ petition. I say and submit that the byelaws by virtue of which export fee was levied on the petitioner were framed under section 322 of the Maharashtra Municipal Council, Nagar Panchayat ant Industrial Township Act, 1965 and they were duly approved by the State Government and, therefore, the Municipal Council has every right to charge export fee to the goods brought by the petitioners in the limits of Manmad Municipal Council. It is also pertinent to note that as per Section 108(a) of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, the Municipal Council is authorized to impose for the purposes of this Act a tax on all vehicles, boats or animals used for riding, brought or burden and kept for use within the Municipal area whether they are actually kept within or outside such Municipal area. I say that it is an admitted position that export fee rules framed by the Manmad Municipal Council is duly approved by the State Government by its special orders and, therefore, even under section 108 of the said Act, the export fee charged by the Manmad Municipal Council can be said to be legal fees as per law."

11. Learned counsel for the petitioner has limited submissions. It is contended that the impugned action of the Municipal Council is arbitrary and unreasonable, inasmuch as the Municipal Council would not have any authority to raise the said demand against the petitioner for the reason that considering the location of the petitioner's oil depot, no such levy could have been imposed. It is further submitted that the present petition was filed in urgency, as an action was resorted to attach the petitioner's property. Learned counsel for the petitioner, however,

fairly conceded that the present petition has been filed in the backdrop of the dismissal of the earlier petitions and that the petitioner cannot disregard the fact that the same cause of action, whether actual or constructive, had already arisen and been agitated in the earlier proceedings.

12. With the assistance of the learned counsel for the petitioner and the learned AGP, we have perused the record as also as the orders passed in the present proceedings. At the outset, we find much substance in the contentions as urged on behalf of the Municipal Council that the present petition was not maintainable, more particularly in view of the order dated 13 April, 2007 passed by the Division Bench on Writ Petition No. 8387 of 2006. We find that the petitioner had approached this Court on earlier occasions in three successive proceedings challenging the levy in question. By the last order, which we have noted hereinabove, the Division Bench did not find any merit in the petitioner's contention that the levy was in any manner illegal. In fact, the order dated 8 June, 2006 passed by the Chief Officer, pursuant to the order passed by this Court, is a reasoned order justifying the levy, and the same continues to operate, having not been set aside by this Court. In such circumstances, merely because steps were subsequently taken in accordance with law for recovery of the octroi dues would not entitle the petitioner to maintain a fresh Writ Petition of the present nature.

13. This is thus a clear case where the principles of *constructive res judicata* were staring at the petitioner in the petitioner resorting to file the present

petition. The principles underlying the doctrine of res judicata are based on considerations of public policy and more particularly that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities. The other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to consideration of fair play and justice (see: **Daryao vs. State of Uttar Pradesh**[1] and **Devilal Modi vs. Sales Tax Officer**[2] (paragraph 7).

14. The principles of constructive res judicata which fall under Explanation IV of the Code of Civil Procedure are applicable even to proceedings of a Writ Petition filed under Article 226 of the Constitution.

15. In **State of Karnataka vs. All India Manufacturers Organisation**[3], the Supreme Court held that the principle behind the doctrine of res judicata is to prevent an abuse of process of Court and elaborating such principle, the following observations of Somervell, L.J. in **Greenhalgh vs. Mallard**[4] were quoted:

> "39. …. I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceedings to be started in respect of them.

16. The decision in **Greenhalgh vs. Mallard** (supra) was approved by the Supreme Court in **State of Uttar Pradesh vs. Nawab Hussain**[5] when in paragraph

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1 AIR 1961 SC 1457
2 AIR 1965 SC 1150
3 (2006) 4 SCC 683
4 (1947) 2 All ER 255 (CA)
5 (1977) 2 SCC 806

4, the Court held as under:

> "4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in *Greenhalgh vs. Mallard":*
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> .....
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> This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle.

17. In **Direct Recruit Class II Engg. Officers Association vs. State of Maharashtra[6],** the Supreme Court held that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation. It was held that every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence cannot be re-agitated in subsequent proceedings *inter se* between the same parties. The Court also recognized the principles of constructive res judicata being applied to Writ Petitions.

18. In **Nagabhushana vs. State of Karnataka & Ors.[7]**, the Supreme Court held that in view of the authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 of CPC, are also applicable to writ petitions.

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6 (1990) 2 SCC 715

7 (2011) 3 SCC 408

19. In a recent decision of the Supreme Court in **Channappa(D) through LRs vs. Parvatewwa (D) thr. LRs**[8], the Supreme Court referring to the decision in **Forward Construction Co. vs. Prabhat Mandal (Regd.)**[9] as also the decision in **Alka Gupta vs. Narender Kumar Gupta**[10], held that any matter which might and ought to have been made ground of attack in the former proceedings shall be deemed to have been a matter directly and substantially in issue in such proceedings. Considering the settled principle that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. It recognizes the principle underlying Explanation IV that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It was also recognized that where a matter has been constructively in issue, it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided.

20. In a judgment rendered by the Supreme Court few days back in **Makardhwaj Ram vs. Jagdish Rai (Dead) thr. LRs. & Anr.**[11], the Supreme Court has reiterated the principles of constructive res judicata referring to the decisions

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8 2026 SCC OnLine SC 552
9 1986 1 SCC 100
10 (2010) 10 SCC 141
11 Civil Appeal No. 2950 of 2011 dated 11 June, 2026

in **Kameswar Pershad vs. Rajkumari Ruttun Koer**[12], **Daryao vs. State of U.P.** (supra), **State of Karnataka vs. All India Manufactures Organization**[13], **Samir Kumar Majumder vs. Union of India**[14] in laying down six principles on the doctrine of constructive res judicata. It would be imperative to note the observations as made by the Supreme Court in such context:

> "6. Section 11 of the Code of Civil Procedure 19084 deals with res judicata. It reads as under:
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> > "11. Res judicata.-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."
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> Explanation IV thereof provides for rule of constructive res judicata which is as follows:
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> > "Explanation IV. Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."
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> 7. The concept of constructive res judicata has been extensively dealt with by Chis Court as also the Privy Council in its judgments. Some of those judgments are referred to hereinbelow to facilitate an understanding:
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> 7.1 Morris LJ in **Kameswar Pershad v. Rajkumari Ruttun Koer.** observed:
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> > That it "might have been, made a ground of attack is clear. That it "ought" to have been, appears to their Lordships to depend upon the particular fact of each case. Where matters are so dissimilar that their union might lead to confusion, the construction of the word "ought" would become important...
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> 7.2 In **Daryao v. State of U.P.**, it was held that the principle of res judicata applies to writ proceedings as well. Regarding the nature of the rule, it has been observed as follows:
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> > 9. But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical, but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to

12 1892 SCC OnLine PC 16
13 (2006) 4 SCC 683
14 (2024) 16 SCC 738

the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation, If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32."

(emphasis supplied)

7.3 In State of **Karnataka v. All India Manufacturers Organisation**, B.N. Srikrishna J., writing for the Court, while dealing with this issue referred to a number of English judgments in the following manner:

"38. The spirit behind Explanation IV is brought out in the pithy words of Wigram, V.C. in Henderson v. Henderson [(1843-60) All ER Rep 378: (1843) 3 Hare 100: 67 ER 313] as follows: (All ER pp. 381 1-382 A)

> "The plea of res judicata applies, except in special case (sic), not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." [Ibid., at pp. 381-82]

39. In Greenhalgh v. Mallard [(1947) 2 All ER 255 (CA)] (hereinafter "Greenhalgh [(1947) 2 All ER 255 (CA)] "), Somervell, L.J. observed thus:

> "I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them." [Ibid., at p. 257 H (emphasis supplied)]

40. The judgment in Greenhalgh [(1947) 2 All ER 255 (CA)] was approvingly referred to by this Court in State of U.P. v. Nawab Hussain [(1977) 2 SCC 806 at p. 809, para 4: 1977 SCC (L&S) 362]. Combining all these principles, a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715: 1990 SCC (L&S) 339: (1990) 13 ATC 348] expounded on the principle laid down in Forward Construction Co. [(1986) 1 SCC 100] by holding that:

> "[A]n adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case, We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata." [Ibid., at p. 741, para 35, per L.M. Sharma, J.J

7.4 Recently, in **Samir Kumar Majumder v. Union of India**, K.V. Viswanathan J., considered the law on constructive res judicata while dealing with an employment dispute as follows:

"Law on constructive res judicata

> 33. Almost two centuries ago, in Henderson v. Henderson [Henderson v. Henderson, (1843) 3 Hare 100: 67 ER 313]. the Vice-Chancellor Sir James Wigram felicitously puts the principle thus: (ER p. 319)
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> > "In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

8. From a considered perusal of the above judgments, the following aspect of constructive res judicata can be highlighted:

> 8.1 Constructive res judicata mandates that all grounds that might and ought to have been employed in the proceedings, should be employed to avoid multiplicity of proceedings.
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> 8.2 It is a deeming fiction of law, but its application is not uniform and instead is dependent on the facts and circumstances of a particular case with 'due regard to ambit of the earlier proceedings' and 'the nexus which the matter bears to the nature of the controversy'.
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> 8.3 This principle is founded on public policy. It is a generally acceptable rule that one person should not be "vexed twice over" for the same kind of litigation. As such, it also applies to the proceedings under Article 226/32 of the Constitution of India.
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> 8.4 In respect of 'ought' referred above, the said word implies the threshold to be above mere possibility.
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> 8.5 The parties while conducting litigation are expected to apply reasonable diligence', 'legitimate purview'. It is from this lens that it shall be adjudicated whether all issues that were properly arising to the litigation; which ought to have been raised; were raised or not?
>
> 8.6 The principle applies with equal force in cases where the ground that might and ought to have been raised was not done, on account of negligence, inadvertence or accident. In other words, might and ought to apply cumulatively with full force, without exception. The party therefore commits these errors at their own peril."

21. The aforesaid principles of law on constructive res judicata were fully applicable to the facts and circumstances of the present case. Hence, the petitioner

could not have re-agitated its assertion in regard to any non-liability in payment of the octroi/export fees after having failed to secure any relief in the earlier three Writ Petitions. Moreover, the order dated 13 April, 2007 passed in Writ Petition No. 8387 of 2006 was accepted by the petitioner. There is nothing on record to indicate that the said order (supra) has been set aside and /or is not subsisting as the law would recognize. It cannot be disputed that the petitioner when filing the present petition was not asserting rights which were not available to the petitioner at the relevant point of time or in other words, no new rights have been asserted which were not and could not have been subject matter of the prior three proceedings. Thus, as to how the petitioner can assert and re-assert the same rights in the teeth of the conclusion of the earlier proceedings is the question. The answer to which squarely lies in the bar, the law would create by application of principles of res judicata and constructive res judicata. The petition would thus be barred by the application of such principles.

22. In the aforesaid circumstances, no relief can be granted to the petitioner in this petition. Writ Petition is accordingly rejected.

23. In pursuance of any interim order, if any amount remains deposited in this Court, liberty to the Municipal Council to withdraw the amount and grant the credit of the same to the petitioner.

24. Rule is accordingly discharged. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)