

Municipal Council, Jodhpur

Vs

M/S. Parekh Automobiles Ltd. and Others

Civil Appeal No. 1552 of 1981

(Sabyasachi Kukharji, M. H. Kania, S. Ranganathan JJ)

07.11.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal by special leave is directed against the judgment and order of the High Court of Rajasthan at Jodhpur in D.B. Civil Special Appeals Nos. 9 and 31 of 1977 and which raised common questions of law and fact, and were disposed of together.

2. Writ Petition No. 17 of 1976 was filed by M/s. Parekh Automobiles, respondent 1 in C.A. No. 1552 of 1981. The said appeal may be take up and disposal of the same would lead to the disposal of other appeals. In the said writ petition, the petitioner prayed for a direction or an order restraining the respondents therein from realising any tax on diesel, etc. Which are supplied to the respondent herein at Dangiawas by the Indian Oil Corporation, being respondent 2 herein. It was further prayed that the respondents therein be ordered to refund the octroi tax as mentioned in the Schedule to the said petition which, it was alleged, had been illegally realised from the petitioner. It was further prayed that respondent 1 be directed to provide transport passes to the Indian Oil Corporation under Rule 13 of the Rajasthan Municipal Octroi Rules, 1962 read with Section 133 of Rajasthan Municipalities Act. It was the case of the petitioner in the High Court, respondent 1 herein, that the Municipal Council had no jurisdiction to levy octroi tax on the goods brought within the municipal limits but not sold, consumed or used therein and subsequently exported outside the said limits. The case of respondent 2 was that HSD (diesel) which was brought by the Indian Oil Corporation within the local limits of Jodhpur Municipality was ultimately exported and sold to respondent 1 at Dangiawas for use, consumption or sale outside the municipal limits and as such the Municipal Council had no jurisdiction to levy octroi tax on the same. In reply to the said writ petition, it was stated by the Municipal Council, being the appellant herein, that the sale of HSD (diesel) by respondent 2 to respondent 1 took place at Jodhpur, and only the delivery was effected at Dangiawas as respondent 1 did not have its own tankers but for this respondent 2 was charging, mileage for transmission of goods from its depot to Dangiawas. It was stated that the appellant was charging octroi from respondent 2 and not from respondent 1. It was stated that the question whether the contract of sale between respondent 2 and respondent 1 took place at Jodhpur or at Dangiawas was a disputed question of fact to be decided by reference to the original agreement qua each transaction. It was further stated that the disputed question of fact could not be adjudicated under Article 226 of the constitution. In reply to para 6, it was stated that the current account facility was still provided and had not been stopped, that respondent 2 did not make the declaration as required by Rule 9 and Rule 13(4) of the Rajasthan Municipal Octroi Rules, 1962 and that the goods exported were to be lessened only if such goods had not been sold within the municipal limits and were exported out within a period of six months from the date of entry. The relevant provisions of Section 104 of

Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act') are as follows :

"104. Obligatory taxes - Every Board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes namely :

#(1)##

(2) An octroi on goods and animals brought within the limits of the municipality for consumption use or sale therein; and

#(3)"

Section 133 of the Act provides as follows :

"133. Power to keep account current with Firm or Public Body in lieu of levying Octroi on introduction of Goods - (1) The Board if it thinks fit instead of requiring payment of octroi due from any mercantile firm or public body to be made at the time when the articles in respect of which it is leviable are introduced within the octroi limits of the municipality, at any time direct that an account current shall be kept on behalf of the Board of the octroi so due from any such firm or body as the Board specifies in this behalf.

(2) Every such account shall be settled at intervals not exceeding one month and such firm or public body shall make such deposit or furnish such security as the Board or any committee or officer authorised by it in this behalf shall consider sufficient to cover the amount which may at any time be due from such firm or body in respect of such dues. Every amount so due at the expiry of any such interval shall for the purpose of Chapter VIII be deemed to be and shall be recoverable in the same manner as amount claimed on account of any tax recoverable under the same chapter."

3. The Rules, being Rajasthan Municipal Octroi Rules 1962, framed thereunder are relevant and Rule 13 of the said Rules provides as follows :

"13. Facilities for Current Accounts - (1) The Board shall maintain a list in Form No. 6 of all persons whether firms or individuals allowed special facilities under Section 133 of the Act for the payment of octroi. The list shall be kept corrected up-to-date and a copy of the list signed by the Executive Officer shall be kept at each octroi outpost.

(2) The person to whom such facilities are given printed books of entry passes in duplicate shall be supplied in Form No. 7 on payment of such price as may be fixed by the Board. When such a person wishes to bring his goods into the municipality, he shall fill up the entry pass, the goods shall be dealt with under the ordinary rules. On receipt of the entry pass, the in-charge of the octroi out-post shall see that the person who has signed it is named on his list, and if so, he shall, after satisfying himself that the goods agree with the details entered in the entry pass, fill up the certificate at the foot thereof as well as the coupon. He shall then tear of the coupon, deliver it to the person who presents the entry pass, and admit the goods named in the pass. He shall

send the entry passes to the Octroi Superintendent, where they shall be examined that the certificate covers the details of the entry pass and the amount of octroi due shall be debited to the account of the person concerned.

(3) The persons to who special facilities have been given, a printed book of transport passes shall be supplied in Form No. 5 on payment of such a price as may be fixed by the Board. When such a person wishes to transport his goods from the municipality, he shall fill up a transport pass and send it with his goods to the octroi outpost of exit. On receipt of the transport pass, the in-charge of octroi outpost shall see that the person who has signed it is named on the list; and if, so he shall after satisfying himself that the goods to be transported agree with the details entered in the transport pass, fill up the certificate at the foot thereof as well as the coupon. He shall then tear of the coupon and deliver it to the person who presents the transport pass. He shall sent the transport passes to the Octroi Superintendent, where they shall be examined to see that the certificate covers the details of the transport pass and shall be filed separately under the name of each such person.

(4) In cases provided for sub-rule (3) amount of octroi duty payable shall be based on the total amount of the octroi as shown by the entry passes less the total amount of goods transported outside the municipal limits as shown by the transport passes :

Provided that in computing the octroi duty payable under sub-rule (4), the goods transported outside the municipal limits shall be lessened only if such goods have not been sold within the municipal limits and if they have been exported out of such limits within a period of six months from the date of their import in such limits.

(5) Payments by such person shall be made strictly in advance, and at the expiry of his period for which facilities have been given, the name of the person shall immediately be struck off."

4. Rule 6 deals with the payment of octroi duty and provides as follows :

"6. Payment of Octroi Duty - No goods liable to payment of octroi shall, except as otherwise provide in these rules, be brought within the municipal limits until the octroi duty leviable in respect of such goods has been paid at the octroi outpost situated on the route of entry as notified by the Board from time to time for the purpose."

Rule 9 deals with the declaration of goods brought into the municipal limits and provides as follows :

9. Declaration of goods brought into the Municipal Limits. - (1) Every person bringing within the municipal limits goods liable to payment of octroi shall produce such goods at the octroi outpost and shall declare whether goods are intended :

(i) for consumption, use or sale within the municipality; or

(ii) for immediate transportation outside the municipality; or

(iii) for temporary detention within municipal limits and eventual transportation

outside municipal limits.

(2) Declaration under clause (i) of sub-rule (1) may be oral, declaration under clause (ii) and (iii) shall be in writing in Form No. 1 and shall be tendered to the in-charge of the octroi outpost at the time of bringing the goods shall be treated as having been brought within the municipal limits for consumption, use or sale therein."

6. It was urged by the appellant that respondent 2 had not made the declaration as required by Rule 9 and that under Rule 13(4) of the Rules, the goods exported were only to be lessened if such goods had not been sold within the municipal limits and were exported out within a period of six months' from the date of entry. The Municipal Council also raised the plea that there was no privity of contract between respondent 1 and the Municipal Council as the demand of octroi tax was not made from respondent 1. The writ petition of respondent 1 along with another writ petition being No. 82 of 1976 filed by one Shri Sukh Sampat Raj was heard by the learned Single Judge of High Court of Rajasthan. The learned Single Judge by his judgment dated January 28, 1977 allowed the writ petition and restrained the appellant from charging or realising octroi on the goods brought within the municipal limits by the Indian Oil Corporation but re-exported outside the said municipal limits to its retail outlets for the use and consumption of the ultimate consumers outside the limits of the Municipal Council. The prayer for refund of the octroi tax was, however, refused. Appeals were filed therefrom against the judgment and order of the learned Single Judge. The appellant herein filed the Appeal No. 9 arising out of the Writ Petition No. 17 of 1976 and also Special Appeal No. 13 arising out of Writ Petition No. 82 of 1976. M/s. Parekh Automobiles also filed a special appeal being Special Appeal No. 31 of 1977. Thus, three appeals were filed. All the three appeals were heard by the Division Bench of the High Court and by its judgment and order dated February 1, 1980, the Division Bench dismissed the Special Appeals No. 9 and 13 filed by the appellant herein. The special appeal filed by M/s. Parekh Automobiles was partly allowed. It was directed that the Municipal Council would have to refund to the Indian Oil Corporation the amount of octroi duty paid on the petroleum products re-exported by it Dangiawas outlet for supply to the writ petitioner who would recover the same from the Indian Oil Corporation.

7. It is not necessary for the purpose of this appeal to deal with the facts agitated and found by the High Court. We will, however, refer to the same in brief. Respondent 1 had been allotted retail outlet by respondent 2, Indian Oil Corporation, for sale of petroleum products such as diesel oil, mobile oil, etc. at Dangiawas, which was outside the limits of Jodhpur Municipal Council, appellant herein. Respondent 2 had its depot near Raikabag Station at Jodhpur where it stored petroleum products. Respondent 2 from its depot at Jodhpur supplied the petroleum products to various pump stations situated within the limits of appellant as well situated outside the limits of appellant in several districts such as Districts of Jodhpur, Pali Barmer, Jalore, Nagaur, etc. including the retail outlet of the respondent 1 at Dangiawas. Respondent 2, being a public sector undertaking, was provided current account facilities under Section 133 of the Act, and so respondent 2 had not to pay octroi tax on such consignment at the time of entry of goods within the limits of appellant. It was alleged by respondent 1 that under Rule 13 of the said Rules, respondent 2 was supplied printed books for entry passes in duplicate in Form No. 7 appended to the said Rules. Rule 13 provides, as noted before, that if the goods which are imported within the municipal limits are not used, consumed or sold within the municipal limits and are exported out of municipal limits for supply at

various the retail outlets no octroi duty is charged on those goods for the reason that under Rule 13(4) octroi tax payable shall be based on the total amount of octroi tax as shown by the entry passed less the octroi tax on the total amount of goods transported outside the municipal limits. It was contended that the appellant had been following the aforesaid procedure till July 24, 1975, but all of a sudden on July 25, 1975, it was alleged, the appellant had suspended the transport facilities to respondent 2 and took the stand that octroi would be charged from respondent 2 on the goods brought within the municipal limits even though these were exported by it outside the municipal limits if these were sold within the limits of appellant although such goods were meant for use and consumption of the consumers outside the municipal limits. The appellant, it is alleged, cancelled the transport passes supplied to respondent 2 from July 25, 1975. As a consequence of this action of the appellant, 1 at Dangiawas by respondent 2 since July 25, 1975 by adding the amount of octroi tax in the bills for the supplies made to respondent 1's retail outlet at Dangiawas. Respondent 2 challenged the right of the appellant to charge the octroi on such goods approached the State Government. Upon that, the State Government by its letter wrote to the appellant that it having granted current account facilities under Section 133 of the Act to respondent 2 should charge octroi on the basis of petroleum products imported by respondent 2 minus the goods exported by it to its other distributing centers in Rajasthan. Respondent 1 also made representation to the appellant challenging its right to realise octroi on the petroleum products which were received at the depot of respondent 2 at Jodhpur but were transported by it to its retail outlets but of no avail. The case of respondent 1 was that the goods were not sold at Jodhpur but actually the sale took place at Dangiawas, the retail outlet of respondent 1. Secondly, even if the sale was held to have taken at Jodhpur merely on that account octroi could not be levied unless the goods so sold were meant for the use or consumption of the consumers within the octroi limits. Respondent 2, Indian Oil Corporation, supported the case of respondent 1. Respondent 2 is a public sector undertaking and has got vast network of retail outlets, i.e., distribution centers for distribution of petroleum products throughout India including Rajasthan. For the purpose of distribution, it had got its depots at various important places where it stored its petroleum products for supply to its various retail outlets, i.e., distributing centers. Likewise respondent 2 had got its depot situated near Raikabag Station, Jodhpur where it stored its petroleum products for sale and supply of its petroleum products to its numerous retail outlets situated within the district of Jodhpur, Pali, Barmer, Jalore, Jaisalmer, Nagaur, Sirohi, etc. It was further alleged by respondent 2 that it stored petroleum products in its depot at Jodhpur for purposes which might be classified into different classes, namely,

(1) for sale by respondent 2 to its consumers such as railways, police, etc. and to its dealers of retail outlets situated within municipal limits of Jodhpur city who distributed or sold the petroleum products within the area covered by municipal limits of Jodhpur city.

(2) for re-export by itself for supply to its dealers in charge of various retail outlets situated outside the municipal limits of Jodhpur city within the various districts specified above. Such retail outlets distributed or sold the petroleum products to ultimate consumers outside the limits of Jodhpur Municipal Council.

8. According to respondent 2, it had allotted the retail outlets to various dealers under dealers agreement. Under the terms of the said agreement, respondent 2 was obliged to transport petroleum products out of its depots and supplied petroleum products to its dealers at the destination in its own truck tankers or the tankers of its contractors and obtained the signatures of the dealers of the retail outlets in token of the delivery of the goods and till the supplies were made at the destination the goods were at the risk of respondent 2. It was further alleged by respondent 2 that the pump tank

and other outfits which were fitted at the retail outlets belonged to its and these were its property. It was therefore alleged that the goods supplied at retail outlets situated outside the limits of Municipal Council, Jodhpur were sold at the retail outlets where the deliveries were made and not at Jodhpur although the dealers were required to deposit the price of the petroleum products in respondent 2's account in the bank unless they were allowed credit facilities but the sale took place only when respondent 2 delivered its products at the dealers' retail outlets outside the municipal limits as per the terms of the dealer's agreement. The appellant, Municipal Council, had, however disputed the aforesaid position. It contended that whenever the sale was made at the Jodhpur depot at Jodhpur, octroi was chargeable irrespective of the fact where it was consumed or used. It was further contended that whether a contract of sale had taken place at Jodhpur or retail outlet is a question of fact and unless the contracts (agreements) were placed on the record respondent 1, the court should not decide whether the sale by respondent 2 had taken place at Jodhpur or at Dangiawas Rule 13(4) of the said Rules would be operative only in those cases where the goods had not been sold within the municipal limits or if they had been exported out of such limits within period of six months from the date of its import. The Municipal Council's further case was that respondent 2 sold the goods at Jodhpur. Respondent 2 never submitted its declaration as required by Rule 9 of the said Rules and therefore the goods brought within the limits of Municipal Council were, according to the appellant, liable to octroi. It was contended on behalf of respondent 1 that the appellant was not entitled to levy the octroi on the petroleum products which were re-exported by respondent 2 to the retail outlet of respondent 1 at Dangiawas as the goods were neither brought for consumption or use in the limits of Municipal Council of Jodhpur, nor sold in the municipal area. It was further contended that even if it was assumed that the petroleum products which had been exported to respondent 1's outlet at Dangiawas have been sold at Jodhpur then too the appellant had no jurisdiction to levy the octroi and realise the same as goods so sold were not meant for the use of ultimate consumer in the municipal area. The taxable event for the purpose of levy of octroi duty takes place, according to respondent 1, only if the entry of the goods in the limits of appellant was meant for the use of ultimate consumer or user. It was contended that the petroleum products which had been exported to respondent 1's retail outlet at Dangiawas were meant for the use of ultimate consumer for use outside the limits of the Municipal Council so these were not chargeable to octroi. It is not necessary in view of the findings of the High Court to deal with the preliminary objections of the appellant, namely, respondent 1 was a firm and not competent to bring the writ petition, that respondent 1 had no locus standi to file the writ petition, or that there was an alternative remedy under Rule 40 of the said Rules and as such writ petition would not be maintainable. The learned Single Judge of the High Court rejected these contentions of the appellant. Two main contentions involved before the High Court and us were and are, namely, where the taxable event took place and whether respondent 1, in the facts and circumstances of this case, was liable to pay octroi duty and secondly, whether in view of the maintenance of the current account facilities, as mentioned hereinbefore, the Municipal Council was entitled to charge the octroi duty in the manner it has purported to do from July 25, 1975 and whether that the appellant was liable to refund the said duty.

9. Section 104 of the Act by sub-section (2) provides that an octroi on goods and animals brought within the limits of the municipality for consumption, use or sale therein, is liable to be charged by the State Government. It was contended on behalf of respondent 1 that the taxable event in respect of the goods supplied at its retail outlet at Dangiawas had not taken place within the limits of the appellant. It was submitted that the goods brought by respondent 2 and exported to respondent 1's retail outlet at Dangiawas were in the first place not sold at all within the municipal limits; secondly, even if the sale of the goods so exported was held to have taken place within the municipal limits then too the taxable event had not taken place such goods were not meant for sale or use or

consumption of the ultimate consumer residing within the local limits of the appellant but were meant for the consumption of the ultimate consumer residing outside the local limits of the appellant, It was contended that the word 'sale' occurring under Section 104 of the Act cannot be read without reference to use or consumption. Sale simpliciter by itself did not attract the levy of octroi, it was submitted, unless the goods were meant for use or consumption of the ultimate consumer in the area of the appellant. Reference was made before the High court as before us to the decision of this court in *Burmah shell oil Storage & Distributing co. India Ltd. v. Belgaum Borough Municipality* (1963 Supp 2 SCR 216 : AIR 1963 SC 906) as well as the decision of this court in *Hiralal Thakorlal Dalal v. Broach Municipality* ((1976) 3 SCC 398 : 1976 SCC (Tax) 314 : 1976 Supp SCR 82). In *Burmah Shell case* ((1963) Supp 2 SCR 216 : AIR 1963 SC 906), the company was the dealer in petrol and petroleum products which it manufactured in its refinery situated outside the octroi limits of Belgaum Municipality. It brought those products inside that area either for use or consumption by itself or for sale generally to its dealers and the licensees who in their turn sold these to other. According to the company, the goods brought by it within the octroi limits could be divided into four separate categories, namely,

- (i) goods consumed by the company within the octroi limits,
- (ii) goods sold by the company through its dealers or by itself and consumed within the octroi limits by persons other than the company,
- (iii) goods sold by the company through its dealers or by itself inside the octroi limits to other persons to be consumed by them outside the octroi limits,
- (iv) goods sent by the company from its depot inside the octroi limits to extra-municipal points where these were brought and consumed by persons other than the company.

10. In that case, the company had objected to the levy of octroi on the goods which were sent by it out of the octroi limits for the outside ultimate consumers and claimed refund of the amount so charged as octroi. Clause (4) of sub-section (1) of Section 73 of the *Bombay Municipal Boroughs Act, 1925* which, was under consideration in that case was analogous to sub-section (2) of Section 104 of the present Act in question. The words 'use or sale' was substituted for the words 'for use' by the *Bombay Act of 35 of 1954*. This Court examined the scheme of the taxation under the *Bombay Boroughs Act* and the rules and bye laws made by the municipality for the levy of octroi. After examining the history of octroi, this court in that decision held 'octroi were tax on good brought into the local area for consumption, use or sale and that they were leviable in respect of goods put to some use or other in the area but only if they were meant for such user'. This court specifically clarified that the word 'sale' was included only in 1954 in order to bring the description of the octroi in the Act in line with the Constitution of India. While doing so this court further observed that the expression 'consumption', and 'use' together 'connote' the bringing in of the goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in manner which destroys, wastes out uses them up. This court further observed in that case that octroi and terminal tax resemble each other in the sense that they are both leviable in respect of goods brought into a local area. Otherwise, these are quite different from each other, While trinomial taxes are leviable on goods 'imported or exported' from municipal limits denoting thereby that they are connected with the traffic of goods, octroi are leviable in respect of the goods brought into a municipal area for consumption or use or sale. The history of these two taxes showed that while terminal taxes were a kind of octroi which were

concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octroi were taxes on goods brought into the area for consumption, use or sale. These were leviable in respect of the goods put to some use or the other in the area but only if these were meant for such user. Another difference between the two is that there is no system of refund under terminal tax but that is so for octroi. This court held that the sale by it directly to consumer or dealers were merely the means for putting the goods in the way of use or consumption and that the word therein does not mean that all the acts of consumption must take place in the area of the municipality. Hidayatullah, J. (as the learned chief Justice then was) speaking for this Court observed at p. 233 of the report as follows :

"In other words, a sale of the goods brought inside, even though not expressly mentioned in the description of octroi as it stood formerly, was implicit, provided the goods were not re-exported out of the area but were bought inside for use or consumption by buyers inside the area. In this sense the amplification of the description both in the Government of India Act, 1935 and the constitution did not make any addition to the true concept of 'octroi' as explained above. That concept included the bringing in of goods in a local area so that the goods come to a repose there. When the Government of India Act, 1935 was enacted. The word 'octroi' was deliberately avoided and a disruption added to forestall any dispute of the nature which has been raised in this case. In other words, even without the description the tax was on goods brought for 'consumption, use or sale,. The word 'octroi' was also avoided because terminal taxes are also a kind of octroi and the two were to be allocated to different legislatures.

In our opinion, even without the word, 'sale' in the Boroughs Act the position was the same provided the goods were sold in the local area to a consumer who bought them for the purpose of use or consumption or even for resale to others for the purpose of use or consumption by them in the area. It was only when the goods were re-exported out of the area that the tax could not legitimately be levied and in this case the municipality has agreed to refund the amount of tax on goods re-exported without being used or consumed in the municipal area. In this view of the matter it was not necessary for the municipality to follow the procedure for imposing taxes when the section was amended. The tax still remained the same. Its nature, incidence or rate were not altered."

11. The aforesaid observations were approved by this Court in *Hiralal Thakorlal Dalal v. Broach Municipality* ((1976) 3 SCC 398 : 1976 SCC (Tax) 314 : 1976 Supp SCR 82) on the basis of the aforesaid decisions of this court, the Division Bench of the High court in the instant case in appeal filed from the aforesaid judgment of the learned single judge held that sale simpliciter would not attract the levy of the octroi. The word 'sale' in this context, has to be read in reference to the use or consumption, according to the Division Bench and 'use, consumption and sale' have to be read in disjunctive manner. Reference, in this connection, was made to Rule 6 of the said Rules, which provides that no goods liable to payment of octroi shall except as otherwise provided in these Rules be brought within the municipal limits until the octroi duty leviable in respect of such goods have been paid at the octroi outpost situated on the route of the entry as notified by the Board from time to time. Rule 9 of the said Rules further provides that every person bringing within the municipal limits goods liable to payment of octroi shall produce such goods at the octroi outpost and shall declare whether the goods are intended. (i) for consumption, use or sale within the municipality, or (ii) for immediate transport outside the municipality or (iii) for temporary detention within

municipal limits and eventual transportation outside the municipal limits. It further provides that if no such declaration is made the goods shall be treated as having been brought within the municipal limits for consumption, use or sale therein. On the basis of these rules, it was contended before the Division Bench that as soon as the goods enter within the octroi limits it gives rise to taxable event unless a declaration as contemplated under Rule 9 has been made by the person bringing such goods. It was submitted that no such declaration had been made in this case, and therefore, a conclusive presumption arose that the goods should be treated as having been brought within the municipal limits for consumption, use or sale therein, The Division Bench was unable to accept this submission. The Division Bench was of the view that this argument ignored the import of Rule 13. Rule 13 dispensed with the requirements of Rules 6 and 9 and it was a special rule applicable to the persons, firms and individuals under Section 133 of the Act. Section 133 of the Act provides that the Board if it thinks fit instead of requiring payment of octroi due from any mercantile firm or public body it may at the time when the article in respect of which it is leviable are introduced within the octroi limits of the municipality, direct that an account current shall be kept on behalf of the Board of the octroi so due from any such firm or public body as the Board specifies in this behalf. It further provides that every such account shall be settled at the intervals not exceeding one month and such firm or public body shall make such deposit or furnish such security as the Board or any committee or officer authorised by it in this behalf shall consider it sufficient to cover the amount which any at any time be due to such firm or body in respect of such dues, Rule 13, therefore, dispense with the requirement of Rule 6, It further dispense with the requirements of Rule 9 in regard to declaration. The Division Bench of the High court also referred to sub-rule (3) of Rule 13, which has been set out before, The High Court held that Rule 13 is a special provision in regard to the persons who had been granted current account facilities and this rule is not subject to either Rule 6 or Rule 9 but is an overriding rule independent of Rules 6 and 9. The High court found that respondent 2 had been granted current account facilities and, therefore, the octroi duty shall be charged from it under sub-rule (4) of Rule 13 on the goods brought by it in the municipal area minus the goods transported by it outside the municipal limit. Therefore, the contention of the appellant herein on Rules 6 and 9 was rejected. It is, therefore, necessary for these appeals to consider the validity or otherwise of the said finding of the High court in these appeals.

12. The High court dealt with the contentions based on sub-rule (4) of Rule 13 and considered if the sale of the goods had taken place within the municipal limits to see if the octroi shall be leviable or not. The High Court felt that the rule had to be construed in consonance with Section 104 of the Act. As mentioned hereinbefore, Section 104 of the Act was analogous to Section 73 of the Bombay Boroughs Act which had been interpreted by this Court in the aforesaid two decision, wherein it was held that the sale in order to attract levy of octroi should be for the purpose of use or consumption of the ultimate consumer in the area. The High court further observed that the meaning of the word 'sale', therefore, has to be given as per this court's view and any other meaning to 'sale', contained in the rules shall not be justified as it will be repugnant to Section 104 of the Act. The High Court found that the goods were re-exported by the Indian Oil corporation from its depot to its retail outlet for the use or consumption of the ultimate consumer outside the municipal limits. The Municipal Council was not entitled to levy octroi on goods so exported by respondent 2 to its retail outlet for use and consumption by the ultimate consumer outside the local limits of the Municipal Council. Therefore, it was held that the Municipal council had no jurisdiction to levy octroi on the goods re-exported by respondent 2, the Indian Oil corporation to the retail outlets of its dealers located outside the municipal limits for the use of the ultimate consumers outside the municipal limits. Though the aforesaid finding of the High court has been assailed before us in this appeal, in view of the decision of this Court referred to hereinbefore and in view of the principles laid down therein

and the language of Section 104 of the Act and the facts, we are unable to accept the challenge on behalf of the appellant herein. It, was, however, contended by respondent 1 before the High Court that the taxable event had taken place at Dangiawas and not at the octroi limits of Jodhpur as the sale had not taken place in the octroi limits but had taken place at Dangiawas. It was contended by respondent 1 that goods were supplied by respondent 2 in its tankers at Dangiawas and till the goods were supplied at respondent 1's outlet at Dangiawas, the risk in respect of the goods was with respondent 2, the Indian Oil Corporation, This fact, it was stated, had been admitted by the Corporation in its return wherein it had been clearly admitted that till the goods are supplied to respondent 1's outlet station the goods were at the risk of respondent 2. It was, therefore, contended that till the goods were delivered at Dangiawas, there was no contract for sale. The contract for sale it was contended, had taken place at Dangiawas where the goods were delivered at respondent 1's outlet and receipt was obtained from respondent 1's acknowledging the delivery of the goods at that place. In this connection, reference was made to para 25 of the model agreement Ex, B. 1. According to para 25, the quantity of petroleum and other allied products shall be delivered by the Corporation as measured by the Corporation's measuring device and a receipt signed by or on behalf of the dealer at the time of delivery by the Corporation would be conclusive evidence that the petroleum product mentioned therein were in fact delivered to the dealer. It was submitted that the delivery was made by respondent 2's tankers at Dangiawas and the receipt obtained there. On the other hand before the High Court, as mentioned hereinbefore, it was contended on behalf of the appellant that this question involved disputed questions of facts, which was beyond the pale of jurisdiction under article 226 of the Constitution, It was submitted that neither invoices in regard to the transactions of sale had been produced nor there was any evidence as to the quantities for which the sale had taken place and in the absence of material documents it was not possible to determine the question as to where the sale had taken place. It further appeared that respondent 1 used to deposit the amount in advance against the supplies to be made to its retail outlet at Jodhpur. According to the appellant, as the material and relevant evidence had to be produced on the record, it would be hazardous to reach a definite conclusion as to where the contract of sale had taken place. The High court held that it was difficult and inappropriate to go into it under Article 226 of the Constitution, The High court referred to certain decisions. The High court, however, rested on the view that even if the sale took place within the octroi limits of Jodhpur Municipal Council for the use or consumption of the ultimate consumer outside the octroi limits of Jodhpur then the taxable event did not take place in the octroi limits of Jodhpur. In those circumstances, the High court held that the Municipal Council had no jurisdiction to levy octroi on the goods so exported. We have considered the submissions of the appellant on this point. We are, however, in view of the facts and circumstances of the case, of the opinion that the High court was right. The High Court issued an order of restraint, It directed that the Municipal Council be restrained by way of mandamus not to levy octroi on the goods exported by respondent 2 for the use of the ultimate user outside the octroi limit of Municipal Council even if the sale took place within the octroi limits of Municipal Council, Jodhpur.

13. The next aspect of the matter, is, whether respondent 1 was entitled to refund of the octroi realised from respondent 2, It had been contended by respondent 1 that although the octroi had been realised directly from respondent 2 but in fact and in reality it was respondent 1 who had been made to pay the octroi as the same had been realised by respondent 2 by adding the octroi realised by the Municipal Council in its bills for the supply of the goods made to respondent 1. It was contended on behalf of the appellant that there was no privity of obligation between respondent 1 and the appellant and therefore, respondent 1 had no right to ask for a refund of the octroi. Secondly, it was urged that respondent 1 has realised the amount of octroi while selling the petroleum products to the

retail consumers by adding the same in the retail price charged from the consumers. So far as the first contention is concerned, the Division Bench found that there was no privity of obligation between respondent 1 and the appellant. The same had not been realised from respondent 1, It was, therefore, held that there being no privity of obligation between respondent 1 and the appellant, respondent 1 could not ask for a refund of the money which it had not paid to the appellant, There was no provision for refund in the Act or the Rules which enabled respondent 1 to claim refund from the appellant even though it had been paid by respondent 1 indirectly. There was, however, an undertaking given to the High Court by the appellant on February 3, 1976 in the High Court. On that date, the appellant had given an undertaking that the appellant would refund the octroi charged from respondent 1 on the diesel re-exported outside the municipal limits of Jodhpur in case the writ petitions were allowed. The undertaking is however, confined to the refund of the amount charged from respondent 1 by the appellant and not from respondent 2. The basis for refund of the amount undertaken (sic) from respondent 2 has not been established. To that extent, the writ petition was bound to fail, the High court held. If that was the position, there cannot be any basis for refund of the same on the basis of the undertaking. The Division Bench of the High court held that as the challenge in this case was that the words 'use or sale' could not make any difference so far as the event of taxability was concerned, as according to this court, 'sale' simpliciter would not attract the levy of the octroi. The sine qua non for levy of octroi is consumption, according to this court. Therefore, no octroi could be levied in respect of goods which were re-exported for consumption or use outside the municipal limits, the Division Bench held. In that view of the matter, the Division Bench of the High court held that in view of the decisions of this court, no octroi was leviable on petroleum product re-exported to the retail outlets situated outside the municipal limits for consumption and use outside the limits. In our opinion, the Division Bench is right insofar as it held as aforesaid.

14. It was, however, submitted that the ratio of the decisions of this Court had no application because of Rules 6 and 9 of the Said Rules here. We have referred to the said Rules. The contention of the appellant of the basis of the aforesaid rule was that since the goods were brought within the octroi limits, these became liable to octroi unless a declaration as contemplated by Rule 9 had been made by the person bringing such goods. It was submitted by the appellant that no such declaration had been made in the present case. According to the High court Rule 13 contemplates, as we have noticed, special facilities for current account under which in case of a person to whom such facilities are given, amount of octroi duty payable is determined by deducting the total amount of goods transported outside the municipal limits as shown by the transport passes from the total amount of octroi as shown by the entry passes. The High court noted that Section 133 of the Act confers power on the Board to direct that current accounts may be kept on behalf of the Board with the firm or public body in lieu of octroi on introduction of goods. The Division Bench was of the opinion that Section 133 of the Act along with Rule 13 of the said Rules left no doubt that no conclusive presumption of the goods having been brought within the municipal limits for consumption, use or sale therein, could be drawn in cases either special current account facilities were given to a person. In the instant case, special facilities for current accounts had been given to respondent 2. Therefore, Rule 9 had no application according to the Division Bench. Learned counsel for respondent 1 had contended before the Division bench that at the time of entry of petrol or diesel, it was not possible for the Indian Oil Corporation to give a declaration as to how much would be re-exported to retail outlets situated outside the municipal limits. The Division Bench found that the argument on behalf of the Municipal Council regarding necessity of giving a declaration was vital. The appeal filed by the Municipal Council was, therefore, dismissed. Coming to the appeal for refund, it was ruled before the Division Bench that Municipal Council had given an undertaking that it would refund

the octroi charged from respondent 1 on the petroleum products re-exported outside the municipal limits of Jodhpur. The Division Bench noted that the learned Single Judge had disallowed this firstly on the ground that the octroi had been charged from respondent 2 and not from respondent 1 and, secondly, respondent 1 had not succeeded in establishing his claim for refund against respondent 2. The Division Bench held that the refund was not possible. In this connection, reliance was placed on the decisions of this Court in *M/s. Motilal Padampat Sugar Mills Co. Ltd., v. State of Uttar Pradesh* ((1979) 2 SCC 409 : 1979 SCC (Tax) 144 : AIR 1979 SC 621) and *State of Madhya Pradesh v. Bhailal Bhai* (AIR 1964 SC 1006 : (1964) 15 STC 450 : 1964 MPLJ 705). The Division Bench of the High Court, a therefore, held that the claim for refund is not sustainable but the High court found that the octroi had been paid by the India Oil Corporation and not by respondent 1 and therefore, directed that the Municipal Council would have to refund to the Indian Oil Corporation the amount of octroi paid on the petroleum products re-exported by it to Dangiawas outlet for supply to respondent 1 and respondent 1 may recover the same from the Indian Oil Corporation. The appeals were allowed to the extent indicated above. Otherwise, the decision of the learned Single Judge was confirmed, As mentioned hereinbefore, being aggrieved, the appellant came up for appeal by special leave to this Court.

15. On behalf of the appellant, Shri Soli J. Sorabjee and Shri Tapash Ray made their submissions. On the main point as held by the Division Bench of the High Court there was not much substantial challenge. We agree with the High Court, It was. However, contended that during the period in respect of which the claim had been made by the respondent, there was no continuation of the current account facilities in favour of respondent 2, Indian Oil Corporation as provided under Section 133 of the Act read with the Rule 13 of the said Rules, and the question was whether the goods brought within the municipal limit by the Indian Oil Corporation were liable to payment of octroi because of non-compliance with the procedure in Rules 6 and 9 of the said Rules. The other question which required consideration is that assuming that current account facilities in favour of respondent 2 existed, whether by reason of such, respondent 2 was exempt from complying with the Rules 6 and 9 of the said Rules. Counsel submitted that it was strange that respondent 1 was purporting to make out a case that the current account facility to respondent 2 by the appellant was not withdrawn and the same was still continuing. An affidavit in support of this contention was filed by one Shri R. C. Parekh after the conclusion of the hearing in this case on September 30, 1988. The case was reargued again in February 1989. It was contended that the writ petition in *M/s. Parekh Automobiles* case showed beyond doubt that the writ petition was made on a positive case that all of a sudden on July 25, 1975, the appellant had suspended the current account facilities in respect also of the goods which were exported out of Jodhpur municipal limit by respondent 2 and supplied to respondent 1 at Dangiawas. It was rather the case of *M/s. Parekh Automobiles* that upon suspending such current account facility the municipality was charging octroi on all petroleum product brought by respondent 2 within the municipal limits without making a distinction amongst goods which were exported outside the municipal limits. In this connection, reference was made to paragraph 9 of the writ petition. On behalf of the appellant, it was contended that the terms 'export facilities' used in that paragraph was to mean 'current account facility' as it appeared from the pleading of respondent 1 in paragraph 16 of the said writ petition. Reference was also made to other paragraph of the writ petition, namely, paragraph 10, paragraph 11 and paragraph 12 which proceeded on the basis that current account facilities had been withdrawn and complaint was made on that basis. Reference was also made to the paragraph 17 at p. 107 of the appeal paper book. The municipal Council, Jodhpur filed a reply to the writ petition where also statements were made. It was submitted that reading of the said pleadings make it clear that respondent 2 was not making any declaration under Rule 9 of the said Rules. A declaration under Rule 9 of the said Rules was to be

made in Form No. 1. A specimen copy of which was enclosed to the written argument. It was further stated that in the affidavit of the Indian Oil Corporation, nowhere it was stated that said current account facility had not been suspended and was still continuing. It was the case of the appellant that current account facilities were not provided to respondent 2 as contemplated under Section 133 of the Act. It was the case of the municipality that even now the facilities are provided to a public sector undertaking provided they act in compliance with the provisions of Section 104 of the Act read with Rules 6 and 9 of the said Rules. But so far as the facts of this case are concerned, it was submitted that during the period in dispute as also today there is no facility to respondent 2 under Rule 13 of the said Rules and as admittedly, respondent 2 was not complying with the requirement of Rules 6 and 9 of the said Rules and was not filling any declaration, the municipality had the right to treat the good, brought within the municipal limits, as those brought for consumption, use or sale under sub-rule (2) of Rule 9 of the said Rules and thereby attracting octroi. The Division Bench of the High Court, it was contended by the appellant, failed to appreciate the implication of the aforesaid provision of law and the fact that in respect of the period in question, admittedly, the current account facility was not available with the Indian Oil Corporation and as admittedly, the Indian Oil Corporation did not file any declaration under Rule 9 of the said Rules, the petroleum products brought within the municipal limits by the Indian Oil Corporation were to be presumed to be for consumption, use or sale and as such liable to octroi duty. The High Court, according to Shri Ray for the appellant, should have appreciated that the question raised, gone into but the question decided by the High Court, were not germane to the issue and as such were not required to be gone into and decided. On this aspect, it was submitted that the appeals should be allowed so far as refund was concerned, and the impugned decision of the High court should be set aside. It was further submitted that an analysis of law while dealing with this point would indicate that a declaration under Section 133 of the Act read with Rule 13 of the said Rules cannot be interpreted as one dispensing with the requirement of the declaration under Rule 9 of the Rules and if that be so then the presumption of non-declaration would be available to the municipality. It would, therefore, be a case of deemed use or consumption. It was submitted that the aspect whether sale alone would be sufficient to levy octroi or along with sale there should be consumption or use within the municipal limits, would require consideration. It was submitted that conceivable goods can be brought within the municipal limits of a municipality for the purposes of (i) use, consumption or sale; or (ii) for immediate transportation outside the municipality; or (iii) for temporary detention within the municipal limits and eventual transportation outside the municipal limits; or (iv) goods brought by a travelling agent for sale or exhibiting them for the purposes of securing orders for sale thereafter. Octroi, it was submitted, can only be levied on goods which are brought within the municipal limits for the purpose of consumption, use or sale therein. No octroi can be charge on any goods which are brought within the municipal limits either for immediate transportation outside the municipality or for temporary detention within the municipal limits or for sale or exhibition by a travelling agent, it was submitted. The provision of the Act and the Rules have been made for the different categories in different way, it was submitted. Section 104 of the Act is the charging section and authorises municipality to impose octroi on goods and animals brought within the limits of the municipality for consumption, use or sale. The said section, it was submitted, is to be read with Rule 6 providing for payment of octroi duty on goods liable to payment of octroi. Rule 6 of the said Rules, would indicate that octroi is to be paid only on goods liable to payment of octroi and not on other goods. Rule 7 indicates that import of the goods should be through prescribed routes. This has been made for preventing clandestine importation of goods. Rule 8 provides that the importers are to furnish documents and information in respect of the dutiable goods to be brought. Rule 9 enjoins that the person bringing within the municipal limits good liable to payment of octroi, shall produce such goods at the octroi outpost and shall declare

whether the goods are intended for consumption, use or sale within the municipality or for immediate transportation outside the municipality or for temporary detention within the municipal limits. Referring to the scheme of the Act and the Rules, it was submitted on behalf of the appellant that an analysis of section 133 and the current account facility therein indicate that only on the goods for use consumption or sale octroi is leviable. Grant of current account facility does not mean providing facility to bring within municipal limits which are liable to payment of octroi without complying with the other rules specifically applicable in respect of such goods. It was submitted that respondent 1 knew well that current account is in respect of those goods which are brought within the municipal limits for use, consumption and sale. In this connection, reference was made to certain paragraphs in the pleadings. There was no current account facility, according to the appellant. It was submitted that when the writ petition was moved at that particular point of time the current account facility stood suspended. Xerox copy of the order sheet of the trial court was relied upon. It would appear from that the trial court did not grant any stay because there was nothing to be stayed as by the time the writ petition was moved the current account facility stood suspended, it was submitted. If the court desired, a mandatory order reviving the current account facility was required to be made. That was not done. Therefore, the court of first instance heard the writ petition and disposed of the same. The court of first instance did not grant any relief to the writ petitioner and as such the writ petitioner filed the appeal before the Division Bench. In the appeal the appellate court refused to stay the operation of the writ issued by the learned Single Judge. Therefore, by reason of that order also, there was no revival of the current account facility to respondent 2, according to the appellant. The Division Bench, as appears from the said order dated April 1, 1977, restrained the payment of the octroi duty by respondent 2 to the municipality pending the said appeal and directed the Indian Oil Corporation to maintain a separate account in respect of the same and to keep the same in a separate bank account with the State Bank of India, Jodhpur. The said order speaks of deposit of the octroi tax payable in respect of such dispatches. As the Division Bench partly allowed the writ petition, the municipality moved this Court and this Court Stayed the operation of that order. Therefore, when the petitioner moved this Court, the current account facility stood suspended, according to the appellant, and at no stage thereafter till now the same stood revived by any order or otherwise.

16. But it may be noted, as mentioned hereinbefore, that an affidavit was filed by one Shri R. C. Parekh. It was stated that current account facility as mentioned in Section 133 of the Act was provided to respondent 2, but the said facility was never discontinued even after July 25, 1975 and is still being provided till the date of the hearing of the matter before this Court. The current accounts facility under Section 133 of the Act is not to recover octroi tax on goods at the time of entry but to keep current account and recover it periodically. Reference was made to paragraph 6 of the writ petition and in reply, the Municipal Council admitted paragraph 6 of the writ petition and stated the facilities are still provided and has not been stopped. Therefore, it is clear, according to the deponent, and according to the respondent, that according to the Municipal Council, Jodhpur itself current facilities as provide under Section 133 of the Act were never withdrawn and therefore, any submission made by the Municipal Council to the contrary is totally unfounded. It could not have been withdrawn unilaterally without notice to the Indian Oil Corporation. According to the deponent, the petitioner never stated that the current account facility provided to the Indian Oil Corporation had been withdrawn by the Municipal Council. It only stated in paragraph 9 of the writ petition that suddenly on July 25, 1975, the Municipal Council, Jodhpur suspended the export facilities provided to respondent 2 and informed respondent 2 that henceforth octroi tax would be charged from the respondent even on those goods which were exported outside the municipal limits and which were not used or consumed within the municipal limits. The export facility, i.e., facility

on the issue of transport passes under Rule 13 of the said Rules was only with the object to ascertain that quantity of petroleum product that have been exported out of Jodhpur municipal limits and it did not amount to withdrawal of current account facilities. The object of current account facilities is not to realise octroi tax on each consignment of goods at time of its entry in municipal limits of Jodhpur, but to keep current account and realise octroi tax after specified time periodically. It is the case of respondent 1 that the current account facility was never discontinued and it is still continuing. In fact it is the duty of the Municipal Council to provide passes under Rule 13 to persons who have been provided current account facility. In reply to paragraph 9 of the writ petition, it was stated by the Municipal Council that it never suspended the export facilities of Indian Oil Corporation. It was further stated that it was decided between the officers of the Indian Oil Corporation and Administrator that export facility shall remain in force only for goods exported to such distribution centres in respect of goods of which no sale is done at Jodhpur. Therefore, the affidavit stated that there was no suspension. Reference was made to the order of the High Court dated February 9, 1976 and other orders.

17. Shri Soli J. Sorabjee referred to the scheme of the Act and submitted that the two decisions of this Court referred to by the High Court were not applicable. Neither of these cases, it was submitted, was concerned with the situation where the goods were sold within the octroi limits and thereafter exported for consumption outside the said limits. In the *Burmah Shell* case ((1963) Supp 2 SCR 216 : AIR 1963 SC 906), there was no sales by the company to its dealers. The company sold goods through its dealers to the customers both within and out consider the local area. He submitted that the observations of this Court of the effect that octroi is chargeable on goods brought into the area for sale to consumers must be under stood in that context. It was submitted that there was nothing in the said Judgments of this Court to the effect that if goods are brought into a local area for sale to a dealer who then transports the goods outside the local area for sale to consumers, no octroi would be chargeable. It was submitted that as the goods were brought into the local area for sale within that area, octroi would be chargeable. It is significant to note, it was submitted, that the *Burmah Shell* case ((1963) Supp 2 SCR 216 : AIR 1963 SC 906) makes it clear that to attract liability to pay octroi duty it is not necessary that the goods should be consumed within the octroi limits.

18. We are, however, unable to accept these contents. If the goods were brought within the municipal limits for the purpose of sale (sale means pausing of the title to the purchaser), then different considerations might have applied.

19. But in view of the facts of this case, the title passed to the goods outside the municipal limits even in respect of the petroleum products which were sold within the municipal limits. It was contended by Shri Sorabjee that Rule 13 had no application. Shri Sorabjee drew our attention to certain paragraphs of the writ petition, in particular to paragraph 18(b) where it was stated that it is obligatory for respondent 1 to grant respondent 2 transport passes and it had no jurisdiction to withdraw that facility. It was submitted with reference to that and other paragraphs that it was the case of respondent 1 that facility was withdrawn and suspended and prayer was made for restoration of that facility. It was, therefore, submitted on behalf of the appellant that in the absence of facilities being granted under Rule 13, it was incumbent on the parties to make a declaration under Rule 9 of the said Rules. As no such declarations had admittedly been made, Rule 9(2) of the said Rules was attracted. Accordingly, the goods in the present case were to be treated as having been brought within the municipal limits for consumption, use or sale therein and as such liable for octroi duty, according to the appellant. Therefore, Shri Sorabjee submitted that this appeal should only be confined to the applicability of Rule 9(2) of the said Rules.

20. On the other hand, it was disputed by Shri Dalveer Bhandari and others that it is incorrect to say that the facility was suspended or withdrawn. Reading of the pleadings, according to Shri Bhandari, would make it clear that these were not suspended or withdrawn. Reference was made to paragraphs 6 and 7 of the reply to the writ petition at p. 116 of the paper book to the effect that it was the case of the appellant that facilities provided to the Indian Oil Corporation were never stopped and this submission has been repeated several times. It was further submitted that when current account facility has been provided, there is no question of payment of octroi at the time of entry of petroleum, products. On the other hand, the octroi tax is paid at the time of settlement of periodical account, say after every month. Thus, question of complying with Rule 6 or Rule 9 of the said Rules does not arise as they apply when octroi tax is paid at the time of entry of goods. In fact, the account of petroleum products imported and exported is kept by delivery of entry passes and transport passes by Indian Oil Corporation at octroi outpost, which passes are given by Municipal Council. In fact, it is obligatory duty, according to counsel, of Municipal Council to provide entry passes and transport passes to Indian Oil Corporation which have been provided current account facilities. The delivery of entry passes and transport passes is only to facilitate settlement of octroi account on goods which have been retained in municipal area for use and consumption. If municipality does not provide transport passes, it cannot take advantage of its own default, according to Shri Bhandari. It is obligatory duty of municipality, it was urged, to provide transport and entry passes to companies and persons who have been provided current account facilities. In any way, even if transport passes are not given by the Municipal Council, the quantity exported can be ascertained by other means also.

21. In the present case, there is no dispute regarding diesel exported to Dangiawas from Jodhpur Municipality. The Municipal Council has not refuted in its reply in paragraph 11 at p. 117 of the paper book, the quantity of petroleum products exported to Dangiawas as mentioned in Schedule 'A' (p. 104 of paper book) from July 25, 1975 to date of writ petition. The Municipal Council gave an undertaking to refund the octroi tax charged from the petitioner on the diesel exported to Dangiawas outside the limits of Municipal Council, Jodhpur as will be clear from the order of the learned Single Judge dated February 7, 1976. It was also stated that the Division Bench vide its order dated April 1, 1977 has already ordered that respondent 2 would deposit the octroi tax on diesel exported to Dangiawas. Thus, the octroi tax which became due on diesel exported to Dangiawas from April 1, 1977 up to date is being deposited in the bank account and there is no dispute regarding quantity of diesel exported to Dangiawas. Thus, it appears to us that the controversy raised by Municipal Council referring to cancellation of transport passes is unfounded. The object of the transport passes was to ascertain the quantity of diesel exported to Dangiawas. There appears to be no dispute regarding quantity of diesel exported to Dangiawas from July 25, 1975. The Depot Superintendent of Indian Oil Corporation, Jodhpur had disposed that current account facilities to Indian Oil Corporation is being continued till today. It was stated that the octroi is paid periodically on settlement of account between Municipal Council and Indian Oil Corporation and not at the time of entry of petroleum products. It appears that the contention that cancellation of transport passes is equivalent to cancellation of current account facilities, made on behalf of the appellant, is incorrect. A perusal of Section 133 would show that current account facility is provided by substantive section, whereas Rule 13 of the said Rules is procedure provided with the object of providing facility of settlement account of payment of octroi tax. In other words, according to Rule 13 (4), octroi tax is charged on quantity mentioned in entry passes minus the quantity mentioned in transport passes, i.e., on quantity of petroleum products used or consumed within the municipal limits of Jodhpur Municipality. It is also unsustainable, according to Shri Bhandari to contend that M/s. Parekh Automobiles has recovered octroi tax from consumers. It has been asserted in the writ

petition on oath as well as before this Court on filing affidavit that no octroi was recovered by M/s. Parekh Automobiles from consumers. On the other hand, it is the case of M/s. Parekh automobiles that it had to pay octroi taxes out of commission which it received from Indian Oil Corporation on sale of diesel. This fact, according to Shri Bhandari was never refuted by the Municipal Council or the Indian Oil corporation. Thus there is no question of unjust enrichment, and as such M/s. Parekh Automobiles is entitled to octroi tax which was recovered from it and which is lying deposited in separate bank account by the Indian Oil Corporation as per order of Division Bench dated April 1, 1977 up to date. For period before April 1, 1977, the Municipal Council has already given an undertaking to refund octroi tax.

22. Pleadings in this case and the averment are rather confusing. On the consideration of all the facts and the circumstances of the case, we are of the opinion that the principles of the aforesaid two decisions of this Court have been correctly applied by the High Court in the facts and the circumstances of the case. The octroi duty is, therefore, not chargeable on the transactions mentioned herein. We are further of the opinion that in view of the confused state of the pleadings and averment, it is not possible to hold that current account facilities were withdrawn or cancelled. If that is the position, then there is no question that the High Court was right in the order it passed and the direction it gave.

23. In view of the aforesaid, appeals must fail and are accordingly dismissed. In the facts and the circumstances of the case, however, we make no orders as to costs.

RANGANATHAN, J. (concurring) ♦

I have gone through the judgment proposed to be delivered in the above cases by my learned brother Sabyasachi Mukharji, J. I agree but I would like to add a few words on one of the questions raised.

25. The controversy before us - I shall refer only to the facts in C.A. No. 1552 of 1981 for purposes of the discussion - relates to the claim of the Municipal Council, Jodhpur (appellant) to octroi on the petroleum products sent from the depot of the Indian Oil Corporation (IOC) at Jodhpur, to retail outlets at Dangiawas where they are sold by Parekh Automobiles Co. (hereinafter referred to as 'the dealer') for sale at Dangiawas. Dangiawas is admittedly situated outside the limits of Jodhpur Municipal Council. The case of IOC and the dealer is that the goods in question are not sold at Jodhpur. According to them, the actual sale took place only at Dangiawas and, since neither the sale nor the consumption nor the use of the petroleum products in question took place within the limits of the municipality of Jodhpur, the appellant council was not entitled to levy any octroi thereon. Alternatively, it was contended that, even if the sale is held to have taken place at Jodhpur, still, octroi cannot be levied as the goods so sold were meant for use or consumption outside the municipal limits, in view of the decision of this Court in *Burmah Shell Oil Storage & Distributing Co. India Ltd. v. Belgaum Borough Municipality* ((1963) Supp 2 SCR 216 : AIR 1963 SC 906), as followed in *Hiralal Thakorlal Dalal v. Broach Municipality* ((1976) 3 SCC 398 : 1976 SCC (Tax) 314 : 1976 Supp SCR 82). The learned Single Judge in the High Court did not permit the petitioners to raise the question that the sale took place only outside the municipal limits of Jodhpur since that involved an investigation into fact which could not be undertaken in a writ petition and proceeded on the footing that the sale of the products in question took place within the limits of Jodhpur. He, however, accepted the contention of IOC and the dealer that even if the sale is taken to have been effected within Jodhpur, no octroi was leviable as admittedly the goods had been sold in Jodhpur only for their onward transmission for use and consumption in Dangiawas outside the municipal limits. The Division Bench of the High Court has also approved of this conclusion and, in our

opinion, rightly. As pointed out by my learned brother in his detailed discussion on this aspect, this issue is covered by the two decisions of the Supreme Court which have already been referred to. I have nothing to add, so far as this part of the case is concerned.

26. It was urged before the High Court, on behalf of the Municipal Council, that the levy of octroi could be justified on the terms of Rule 9 of the Rajasthan Municipalities (Octroi) Rules, 1962, (hereinafter referred to as 'the Rules'). It is unnecessary to set out again the terms of this rule which have already been extracted in the judgment of my learned brother. Under sub-rule (1) of this rule, every person bringing his goods within the municipal limits should make a declaration in terms thereof. In the present case, it is common ground that no such declaration had been made. It is, therefore, urged that by virtue of the closing words of Rule 9(2), the goods in question should be treated "as having been brought within the municipal limits for consumption, use or sale therein" and thus attract the charge of the tax under clause (2) of sub section (1) of Section 104 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act'). The respondents have attempted to counter this argument by urging that this provision regarding declaration does not apply in their case. Their argument is that their case is covered by Section 133 of the Act read with Rule 13 of the rules. The argument is that Rule 13 is a special provision applicable to a class of persons which has been allowed current account facilities under Section 133 of the Act and that the procedure under Rule 13 overrides the requirements of Rules 9. This argument has been accepted by the High Court. The question is whether the High Court, conclusion on this issue is correct. I think that the High Court rightly accepted this argument and I should like to elaborate a little my reasons for this conclusion.

27. Chapter II of the Rules provide for the manner of assessment and collection of octroi duty. Rules 3 to 5 provide for the establishment of octroi outposts with powers to the inspecting staff to stop the vehicles at the outposts. Rule 6 lay down that no goods liable payment of octroi shall, except as otherwise provided in these rules, be brought within the municipal limits until the octroi duty leviable in respect of such goods has been paid at the octroi outposts. Where goods arrive at an octroi outpost, they may be coming in either for consumption, use or sale within the municipal limits or for transpiration outside those limits, whether immediately or after a period of time. If they have come in merely for the purpose of transportation, they are not liable to pay octroi duty. If, therefore, became necessary to make a detailed provision as to the manner of assessment and collection of duty having regard to this consideration. That is why Rule 9 requires every person bringing goods with the municipal limits to make a declaration as to what the goods are intended for. If however, the goods are intended for immediate or eventual transportation outside the municipality, a written declaration should be filed by the importer. In respect of goods declared intended for immediate transportation, the office-in-charge of the octroi outpost receives by way of deposit such amount as may be equivalent to the duty payable thereon and issues a transit pass to the importer. The importer should transport the goods outside the municipal limits within a period not exceeding eight hours (which can be extended to 24 hours at the most). On such transportation being effected, the amount of octroi deposited in respect of the goods so transported is returned to the importer and the transit pass taken back. This is the procedure envisaged in Rule 11. (Certain refinements in procedure in the case of travelling agents is provided for in Rules 11-A and 11-B with which we are not concerned). Where, however, the goods are not immediately to be transported outside the municipal limits but are to be temporarily detained within the municipal limit and eventually transported outside the municipal limits, Rule 12 is attracted. In the case of such goods they have to be sent to a bonded warehouse. The goods may be withdrawn from time to time either on payment of octroi in the event of their being consumed, used or sold within the municipal limits or without any payment of octroi duty in case of their being transported outside the municipal

limits. This procedure is outlined in Rules 12 and 16 to 22. But one important condition is that the maximum period for which the goods can be placed in the bonded warehouse is six months. If the goods are not removed within the said time limit, they are liable to be sold by public auction and the warehouse charges and octroi recovered from the sale proceeds. This is the normal procedure for the assessment and collection of octroi duty. It is in respect of this procedure that the declaration in Rule 9 becomes important. The terms of the declaration determine the incidence of the duty. Regarding the first category goods, mentioned in Rule 9(1) the collection of duty is immediate; regarding the second category, a deposit is demanded which can be refunded on transportation within a few hours; and in respect of the third, duty has to be paid unless the goods are transported outside the municipal limits within six months.

28. Rule 13 however, contemplates a totally different scheme for the assessment and collection of octroi for the special type of cases envisaged therein. From the terms of Section 133, it would appear to be intended to cover mercantile firms or bodies which may be bringing goods into, or taking goods out of, the municipal limits frequently and, perhaps, also firms or bodies about whose capacity to pay the duty in due course the Municipal Board has confidence. These persons are given the facility of having a current account with the municipality and the amount of duty payable by such a person is determined and collected from time to time. Such an account is opened on the firm or body making such deposit or furnishing such security as the municipality may require, for the due discharge of its liabilities under the Act and the Rules. When this facilities provided, the procedure to be followed is set out in Rule 13, Here what is done is that the firm or body is given a books of entry passes and a book of transport passes from time to time. As and when the firm or body brings goods into the municipality, it is required to fills in one of the entry passes setting out the details of the goods which are being brought in under any particular consignment and present the same at octroi outpost of entry. After verifying that the details of the goods brought in tally with the details of the goods entered in the entry pass, the details are passed on the octroi Superintendent who debits is the account of the person concerned with the amount of octroi payable in respect of the goods listed in the pass. As and when the firm or body wishes to transport the goods out of the municipality, it fills up a transport pass containing the details of the goods proposed to be transported outside and presents it to the octroi outpost of exit. The officer at the outpost verifies that the goods mentioned in the pass and the goods sought to be transported tally with each other. Then the transport as duly certified by him is passed on to the Octroi Superintendent. The Octroi Superintendent, after verification, files the certificates of export separately in respect of each such body or firm. The amount of octroi payable in these cases is based on the total amount of octroi on the good shown by the entry passes less the goods transported out under the transport passes. In other words, in the case of persons who have the current account facilities, the duty is calculated on the basis of the total amount of goods that have come in as reduced by the total amount of the goods that have gone out, the balance being presumed to have been consumed, used or sold within the municipal limits. In order to ensure that there is a correspondence between the good that have come in and those that have gone out, the proviso to sub-rule (4) of Rule 13 provides that, in computing the octroi duty payable, the goods transported outside the municipal limits shall be lessened only if (a) such goods have not been sold within the municipal limits, and (b) they have been transported out of such limits within a period of six months from the data of their import.

29. A comparison of the above two sets of provision will make it clear that they are two independent and mutually exclusive modes of assessment and collection of duty. Under the cash system of payment, a declaration under Rule 9 is absolutely essential because of the official at the outpost will have to determine the mode of dealing with the goods on the basis of such declaration. The octroi duty has to be collected then and there in respect of the goods which are to be consumed,

used or sold within the municipal limits; a depots has to be taken in respect of those goods which are intended to be immediately transported outside; and the rest of the goods on which the transportation is to be effected on a future time, have to be directed to a bonded warehouse. The mode of collection of duty in respect of a person having current account facilities, however, does not depend upon any such declaration or upon the mode of utilisation of the goods as indicated in such declaration, because, in the case of the current account holders, the duty payable in respect of the entirety of the goods brought in is straightway debited to his account on the basis of entry passes. The duty payable in respect of the goods transported outside is later on credited to his account on the basis of the transport passes. The difference is the amount of the duty payable by him and this is recovered from the person concerned from time to time either by adjustment out of the deposits earlier obtained from him or by other processes of recovery. The procedure as to issue of transit passes or storage in a warehouse are also irrelevant for the purpose of dealing with the goods under Rule 13.

30. It, therefore, appears, appears to me that High Court was fully justified in holding that the terms of Rules 6 and 9 have no reliance to the payment of duty in cases covered by the current account facility envisaged under Rule 13. The High Court was, therefore, right in holding that the present case cannot be brought within the terms of proviso to Rule 9(2) on the basis of a deemed consumption. Use or sale within the municipal limits.

31. It is true that the proviso to sub-rule (4) of Rule 13 also envisages the exclusion from levy of octroi duty only where the goods are not sold within the municipal limits. It may be contended that, in the present case, as the IOC had sold the goods within the municipal limits and the subsequent transport to Dangiawas, though effected by the IOC was really on behalf of the dealer the goods so transported and entered in the transport passes of the IOC should be excluded from dedication under sub-rule (4) of Rule 13. But this construction, in my view, cannot be accepted. The expressions used in the proviso to sub-rule (4) cannot be interpreted differently from the words used in Section 104, on the basis of which chargeability to duty arises. If as we have held, there can be no octroi duty at all levied by the Jodhpur Municipality in respect of the good sold by the IOC within, but clearly intended to be transported for use or consumption outside, the municipal limits, then this statutory limitation cannot be defeated by interpreting the proviso in such a way as to make all goods sold within the municipality liable to duty even if the sale is in pursuance of a clear intention that the goods are to be dispatched outside. The terms of the proviso and the main section have to be read harmoniously.

32. The result of the above discussion is that the present case is governed by the terms of Rules 13 and the IOC is entitled to go on paying octroi duty on the basis of the goods brought by it within the municipality less the goods transported outside the municipality even where the transport outside the municipality may be in pursuance of a sale within the municipality so long as such sale is in pursuance of an intention that the goods should be consumed or used outside the municipal limits. As we have already said, in cases where Rule 13 applies, Rule 9 is excluded and, therefore, the High Court rightly held the octroi charged on the IOC in respect of the impugned sales was not justified.

33. Before concluding I wish to refer to three aspects. The first is as to whether even assuming that Rule 9 was applicable to a case where the current account facility has been provided, the terms of that rule can be read in such a manner as to militate against the very concept of octroi duty as explained in the *Burmah Shell case* ((1963) Supp 2 SCR 216 : AIR 1963 SC 906). A question may arise whether the terms of Rule 9(2) so interpreted would be *intra vires* the rule making power of the legislature. I express no opinion on this issue as I have already expressed my view that Rule 9

has no application to the present case. The second aspect, which I wish to touch upon, is a point sought to be raised on behalf of the appellant in the course of the present hearing that the current account facility granted to the IOC had been revoked. My learned brother has referred to the pleadings in this regard at great length and, as pointed out by him. The factual position is by no means clear. I do not think that the appellant should be permitted to raise at this stage a new plea when all along, in the earlier proceedings in the High Court, the case has proceeded on the footing that the IOC had been having and continues to have current account facilities. The third aspect to which I would like to make a reference is that we have principally passed our decision only on the facts in regard to the sales to Parekh Automobiles Ltd. We are told that there are a number of suits, other than those before us today, which are pending at various stages in which various pleas have been raised. I would only like to make it clear that we express no opinion regarding the factual position in those cases and those cases will have to be disposed of in the light of the legal position set out in our judgment. Except for the above clarifications I have nothing to add to what my learned brother Mukharji, J. has said and I respectfully agree with his conclusion that the appeals must fail and are dismissed.

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