Municipal Council, Jodhpur vs Parekh Automobiles Ltd. And Ors on 7 November, 1989

Equivalent citations: 1989 SCR, SUPL. (2) 49 1990 SCC (1) 367, AIRONLINE 1989 SC 32, 1990 (1) SCC 367, (1990) 1 COM LJ 1, 1990 SCC (TAX) 193, 1990 UJ(SC) 1 209, 1990 UJ(SC) 209

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, M.H. Kania

PETITIONER:
MUNICIPAL COUNCIL, JODHPUR

Vs.

RESPONDENT:
PAREKH AUTOMOBILES LTD. AND ORS.

DATE OF JUDGMENT07/11/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
KANIA, M.H.
RANGNATHAN, S.

CITATION:
1989 SCR Supl. (2) 49 1990 SCC (1) 367
JT 1989 Supl. 309 1989 SCALE (2)1349

ACT:
Rajasthan Municipalities Act 1959/Rajasthan Municipal Octroi Rules, 1962: Sections 104, 133 Rules, 6, 9 and 13--Octroi--Liability for--When arises.

HEADNOTE:
M/s. Parekh Automobiles Ltd., respondent No. 1, had been allotted retain outlet by Indian Oil Corporation, respondent No. 2, for sale of its petroleum products at Dangiawas, which was outside the limits of the appellant. Respondent No. 2 had its depot near Raikabag Station at Jodhpur where it stored petroleum products for supply to various pump stations situated within the limits of the appellant as well as situated outside its limits. Respondent No. 2, being a

public sector undertaking, was provided current account facilities under section 133 of the Rajasthan Municipalities Act, 1959, and so respondent No. 2 had not to pay octroi tax on such consignments at the time of entry of goods within the limits of the appellant. For this purpose, respondent No. 2 was provided with the export facilities and supplied with entry passes under Rule 13 of the Rajasthan Municipal Octroi Rules 1962. Under rule 13(4), the amount of duty payable, in the case or persons who had the current account facilities, was determined and collected on the basis of the total amount of goods that had come in as reduced by the total amount of goods that had gone out, the balance being presumed to have been consumed, used or sold within the municipal limits.

It was alleged that the appellant suspended the current account facility under section 133 of the Act and took the stand that octroi would be charged from Respondent No. 2 on the goods brought within the municipal limits if these were sold within the limits of the appellant although such goods were mean for use and consumption of the consumers outside the municipal limits. As a consequence of this action of the appellant, respondent No. 2 charged octroi duty on supplies made to respondent No. I at Dangiawas by adding the amount of octroi tax in the bills.

Respondent No. 1 filed a writ petition in the High Court praying inter alia for a direction or an order restraining the Municipal Council from realising any tax on diesel, etc. which were supplied to respondent No.1 at Dangiawas by respondent No. 2, and for refund of octroi tax already paid. It was contended on behalf of respondent No. 1, in the High Court, that the Municipal Council had no jurisdiction to levy octroi on the goods brought within the municipal limits but not sold, consumed or used therein and subsequently exported outside the said limits; that 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 municipa-
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lity of Jodhpur, and Municipal Council was not entitled to levy any octroi thereon; alternatively, even if the sale was held to have taken place at Jodhpur, still, octroi could not be levied as the goods so sold were meant for use of consumption outside the municipal limits; and that the word 'sale' occuring under s. 104 of the Municipalities Act could not be read without reference to use or consumption, as sale simplicitor by itself did not attract the levy of octroi, unless the goods were meant for use or consumption of the ultimate consumer in the area of the Municipal Council.

The defence of the Municipal Council was that because the sale took place at Jodhpur, octroi was chargeable irrespective of the fact where it was consumed or used; that as soon as the goods entered the octroi limits, it gave rise to taxable event unless a declaration as contemplated under

rule 9 had been made; that respondent No. 2 did not make the declaration as required by rule 9 and rule 13(4) of the Octroi Rules; and that under sub-rule (4) of rule 13 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 claim of refund was contested on the ground that there was no privity of contract between respondent No. 1 and the Municipal Council as the demand of octroi was not made from respondent No. 1.

The case of the Indian Oil Corporation, respondent No. 2, was that under the terms of the agreement respondent No. 2 was obliged to transport petroleum products out of its depots and supply petroleum products to its dealers at the destination in its own truck-tankers, and till the supplies were made at the destination, the goods were at the risk of respondents No. 2 and therefore the goods were sold at the retail outlet where the deliveries were made and not at Jodhpur.

The learned Single Judge 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 facts 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 was taken to have been effected within Jodhpur, no octroi was leviable as admittedly the goods had been sold in Jodhpur only for their onward trans-mission for use and consumption in Dangiawas outside the municipal limits. The prayer for refund of the octroi tax was, however, refused.

The Division Bench dismissed the appellant's appeal and partly allowed the appeal filed by respondent No. 1. On the basis of the judgments of this Court in Burmah Shell Oil Storage & Distribution Co. India Ltd. v. The Belgaum Borough Municipality, [1963] Supp. 2 SCR 216 and Hiralal Thakorlal Dalai v. Broach Municipality, [1976] Supp. SCR 82 wherein it was held that the sine qua non for levy of octroi was con-sumption, and that the sale in order to attract levy of octroi shall be for the purpose of use or consumption
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of the ultimate consumer, the Division Bench held that sale simplicitor would ot attract the levy of the octroi, that the word 'sale' in this context had to be read with refer-ence to the use or consumption and 'use, consumption and sale' had to read in a disjunctive manner.

The Division Bench further held that rule 13 was a special provision in regard to; the persons who had been granted current account facilities and this rule was not subject to either rule 6 or rule 9 but was an overriding rule independent of rules 6 and 9. The Division Bench was of the opinion that s. 133 of the Municipalities Act, alongwith

rule 13 of the octroi 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 where special current account facilities had been given to a person.

The Division Bench also held that the claim of refund by respondent No. 1 was not maintainable. The Bench however directed that the Municipal Council would have to refund to the Indian Oil Corporation, respondent No. 2, the amount of octroi duty paid on the petroleum products re-exported by it to Dangiawas outlet for supply to respondent No. 1, who would recover the same from the Indian Oil Corporation.

M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors., AIR 1979 SC 621 and State of Madhya Pradesh & Anr. v. Bhailal Bhai, AIR 1964 SC 1006, relied upon.

Before this Court, the parties reiterated their contentions raised before the High Court. In addition, it was contended on behalf of the appellant that there was nothing in the two judgments of this Court to the effect that if goods were brought into a local area for sale to a dealer who then transported the goods outside the local area for sale to consumers, no octroi would be chargeable. It was further contended that during the period in dispute, as also today, there was no current account facility to the respondent No. 2 under rule 13 of the Octroi Rules and as admittedly the respondent No. 2 was not complying with the requirements of rules 6 and 9 of the said Rules and not filing any declaration, the Municipal Council had the right to treat the goods 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. On the other hand, it was contended on behalf of the respondents that it was incorrect to say that the current account facility was suspended or withdrawn.

Dismissing the appeal, this Court,

HELD: (Sabyasachi Mukharji and M.H. Kania, JJ.--Per Sabyasachi Mukharji, J).

(1) The High Court was right in holding that it was difficult and inappropriate under Article 226 to determine the question as to where the sale

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took place, and 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 even did not take place in the octroi limits of Jodhpur. [66F-G]

(2) In view of the decisions of this Court and in view of the language of section 104 of the Municipalities Act and the facts, the High Court was right in holding that no octroi was leviable on petroleum products re-exported outside the municipal limits for consumption and use outside the municipal limits. [65F]

Burmah Shell Oil Storage & Distributing Co. Ltd. v. The Belgaum Borough Municipality, [1963] Supp. 2 SCR 216 and Hiralal Thakorelal Dalai v. Broach Municipality & Ors., [1976] Sup. SCR 82, followed.

(3) 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. If the goods were brought within the municipal limis for the purpose of sale (sale means passing of the title to the purchaser), then different considerations might have applied. [73D]

(4) Analysis of Section 133 and the current account facility therein indicates that only on the goods for use, consumption or sale, octroi is leviable. Under this provision, octroi tax is paid at the tune of settlement of periodical account, say after every month. Thus, question of complying with rule 6 or rule 9 does not arise as they apply when octroi tax is paid at the time of entry of goods. 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. [73H; 74A]

(5) A perusal of section 133 would show that current account facility is provided by substantive section, whereas rule 13 is procedure provided with' the object of providing facility of settlement of account of payment of octroi tax. In other words, according to rule 13(4), octroi tax is charged on quantity mentioned in entry passed minus the quantity mentioned in transport passes, i.e., on quantity of petroleum products used or consumed within the Municipal limits of Jodhpur Municipality. [75A-B]

(6) In view of the confused state of pleadings and averments, it was 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. [75E]

Per Ranganathan, J.

(1) When goods arrive at an octroi outpost, they may be coming in either for consumption, use or sale within the municipal limits or for transportation outside these limits. Rule 9 requires every person bringing goods within the municipal limits to make a declaration as to what the goods are intended for. [77E]

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(2) Under the normal procedure for the assessment and collection of octroi duty, the declaration under Rule 9 becomes important and the terms of the declaration determines the incidence of the duty. Rule 13, however, contemplates a totally different scheme for the assessment and collection of octroi for the special type of cases. [78C-D]

(3) A comparison of the two sets of provisions will make it clear that they are two independent and mutually exclu-

sive modes of assessment and collection of duty. Under the cash system of payment, a declaration under rule 9 is absolutely essential. 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 straightaway 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. [79E-G]

(4) The High Court was fully justified in holding that the terms of rules 6 and 9 have no relevance to the payment of duty in cases covered by the current account facility envisaged under rule 13, and 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. In cases where rule 13 applies, rule 9 is excluded. [80B]

(5) The present case is governed by the terms of rule 13 and the Indian Oil Corporation 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, 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. [80G]

(6) The appellant should not be permitted to raise at this stage a new plea that the current account facility granted to the Indian Oil Corporation had been revoked when all along, in the earlier proceedings in the High Court, the case had proceeded on the footing that the Indian Oil Corporation had been having and continued to have current account facilities. [81C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1552 of 1981.

From the Judgment and Order dated 1.2.1980 of the Jodh- pur High Court in D.B. Civil Appeal No. 9 & 31 of 1977. Soli J. Sorabji, Tapas Ray, L.C. Agarwal, Mrs. Pratibha Jain, Pradeep Aggarwal, Sushil Kumar Jain, Sudhansu Atreya and S.D. Sharma for the Appellant.

Dalveer Bhandari, Badridas Sharma, B.Y. Kulkarni, S.K. Mehta, D. Mehta, S.M. Satin, Aman Vathher, Atul Nanda, Mrs. P.S. Shroff, R. Sasiprabhu, S.S. Shroff, S.A. Shroff, R.Jagannath Goulay and D. Goburdhan for the Respondents.

The Judgments of the Court were delivered by SABYASACHI MUKHARJI, J. 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.

Writ Petition No. 17 of 1976 was filed by M/s Parekh Automobiles, respondent No. 1 in C.A. No. 1552/81. The said appeal may be taken 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 restrain- ing the respondents therein from realising any tax on die- sel, etc. which are supplied to the respondent herein at Dangiawas by the Indian Oil Corporation. being the respond- ent No. 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 the respondent No. 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 No. 1 here- in, 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 the respondent No. 2 was that H.S.D. (diesel) which was brought by the Indian Oil Corporation within the local limits of Jodhpur Municipality was ultimately exported and sold to respondent No. 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 H.S.D. (diesel) by the respondent No. 2 to respondent No. 1 took place at Jodhpur, and only the delivery was effected at Dangiawas as respondent No. 1 did not have its own tankers but for this the respondent No. 2 was charging mileage for transmission of goods from its depot to Dangiawas. It was stated that the appellant was charging octroi from the respondent No. 2 and not from respondent No. 1. It was stated that the question whether the contract of sale between the respondent No. 2 and respondent No. 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 No. 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 s. 104 of the Rajasthan Municipalities Act, 1959 (herein- after referred to as 'the Act') are as follows:

> "Sec. 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:
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> (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:

The Board if it thinks fit instead of requiting 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 purposes 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." The Rules, being Rajasthan Municipal Octroi Rules, 1962, framed thereunder are relevant and rule 13 of the said Rules provided as follows:

"13. FACILITIES FOR CURRENT ACCOUNTS: (1)The Board shall maintain a list, in Form 6, of all persons whether firms Or individuals allowed special facilities under s. 133 of the Act for the payment of octroi. The list shall be kept corrected upto date and a copy of the list signed by the Executive Officer shall be kept at each octroi out-post.

(2) The person to whom such facilities are given, printed books of entry passes in dupli-

cate shall be supplied in Form No. 7 on pay-

ment 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 Incharge 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 the at foot thereof as well as the coupon. He shall then tear off 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 whom 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 h*is goods from the Municipality, he shall fill up a transport pass and send it with his good to the octroi gut-post of exit. On re-

ceipt of the Transport pass, the Incharge of octroi out-post 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 off the coupon and deliver it to the person who presents the Transport pass. He shall send the transport passes to the Octroi Superintendent, where they shall be examined to see that the certif- icate covers the details of the transport pass and shall be filed separately under the name of each such person.

(4) In cases provided for in 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.
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> (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."

Rule 6 deals with the payment of octroi duty and provide as follows:

> "6. PAYMENT OF OCTROI DUTY: 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 levi- able in respect of such goods has been paid at the octroi out-post 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 oUt-post and shall declare whether goods are intended:-
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> (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 clauses

(ii) and (iii) shall be, in writing in Form No. 1 and shall be tendered to the incharge 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."

It was urged by the appellant that the respondent No. 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 only if such goods had not bee 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 No. 1 and the Municipal Council as the demand of octroi tax was not made from respondent No. 1. The Writ petition of the respondent No. 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 28th January, 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 Counsel. The prayer for refund of the octroi tax was, however, refused. Appeals were filed there- from 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 1st February, 1980, the Division Bench dismissed the Special Appeal Nos. 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 to Dangiawas outlet for supply to the writ petitioner who would recover the same from the Indian Oil Corporation. 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 No. 1 had been allotted retail outlet allotted by the respondent No. 2, Indian Oil Corporation, for sale of petroleum products such as diesel oil, mobile, iii, etc. at Dangiawas, which was outside the limits of Jodhpur Municipal Council, appellant herein. The respondent No. 2 had its depot ear Raikabag Station at Jodhpur where it stored petroleum products. The respondent No. 2 from its depot at Jodhpur supplied the petroleum products to various pump stations situated within the limits of appellant as well as situated outside the limits of appellant in several districts such as Districts of Jodhpur, Pali, Barmet, Jalore, Nagaur, etc. including the retail outlet of the appellant at Dangiawas. The respondent No. 2, being a public sector undertaking, was provided current account facilities under s. 133 of the Act, and so the respondent No. 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 No. 1 that under rule 13 of the said Rules, respondent No. 2 was sup- plied 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 other 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 passes less the octroi tax on the total amount of goods transported outside the Munici- pal limits. It was contended that the appellant had been following the aforesaid procedure till 24th July, 1975, but a11 of a sudden on 25th July, 1975, it was alleged, the appellant had suspended the transport facilities to the respondent No. 2 and took the stand that octroi would be charged from respondent No. 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 con- sumption of the consumers outside the Municipal limits. The appellant, it is alleged, cancelled the transport passes supplied to the respondent No. 2 from 25th July, 1975. As a consequence of this action of the appellant, the respondent No. 1 was charged octroi duty on supplies made to the re- spondent No. 1 at Dangiawas by the respondent No. 2 since 25the July, 1975 by adding the amount of octroi tax in the bills for the supplies made to the respondent No. 1's retail outlet at Dangiawas. The respondent No. 2 challenged the right of the appellant to charge the octroi on such goods and approached the State Government. Upon that, the State Govt. by its letter wrote to the appellant that it having granted current account facilities under s. 133 of the Act to the respondent No. 2 should charge octroi on the basis of petroleum products imported by respondent No. 2 minus the goods exported by it to its other distributing centres in Rajasthan. The respondent No. 1 also made representation to the appellant challenging its right to realise octroi on the petroleum products which were received at the depot of the respondent No. 2 at Jodhpur but were transported by it to its retail outlets but of no avail. The case of the respond- ent No. 1 was that the goods were not sold at Jodhpur but actually the sale took place at Dangiawas, the retail outlet of the respondent No. 1 Secondly, even if the sale was held to have taken place 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 No. 2, Indian Oil Corporation, supported the case of respondent No. l. Respondent No. 2 is a public sector undertaking and has got vast network of retail out- lets, i.e., distribution centres for distribution of petro- leum products throughout Indian 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 centres. Likewise the respondent No. 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 districts of Jodhpur, Pali, Barmet, Jalore, Jaisalmer, Nagaur, Sirohi, etc. It was further alleged by respondent No. 2 that it stored petroleum products in its depot at Jodhpur for purposes which might be classified into differ- ent classes, namely.

(1) for sale by respondent No. 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 distrib- uted or sold the petroleum products to ulti-

mate consumers outside the limits of Jodhpur Municipal Council. According to the respondent No. 2, it had allotted the retail outlets to various dealers under dealers agreement. Under the terms of the said agreement, the respondent No. 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 outlet in token of the delivery of the goods and till the supplies were made at the destination the goods were at the risk of the respondent No. 2. It was further alleged by respondent No. 2 that the pump tank and other outfits which were fitted at the retail outlets belonged to it 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 the respondent No. 2's account in the bank unless they were allowed credit facili- ties but the sale took place only when the respondent No. 2 delivered its products at the dealers' retail outlets out- side the municipal limits as per the terms of the dealers' 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 con- sumed 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 by the respondent No. 1, the Court should not decide whether the sale by the respondent No. 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 a period of six months from the date of its import. The Municipal Council's further case was that the respondent No. 2 sold the goods at Jodhpur. The respondent No. 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 the respondent No. 1 that the appellant was not entitled to levy the octroi on the petro- leum products which were re-exported by the respondent No. 2 to the retail outlet of the respondent No. 1 at Dangiawas as the goods were neither brought for consumption or use in the limits of the 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 the respondent No. 1's outlet at Dangiawas have been sold at Jodhpur then to the appellant had no jurisdiction to levy the octroi and realise the same as good 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 No. 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 export- ed to the respondent No. 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 No. 1 was a firm and not competent to bring the writ petition, that the respondent No. 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 even took place and whether respondent No. 1, in the facts and the 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 hereinbe- fore, the Municipal Council was entitled to charge the octroi duty in the manner it has purported to do from the 25th July, 1975 and whether that the appellant was liable to refund the said duty.

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 con- tended on behalf of the respondent No. 1 that the taxable event in respect of the goods supplied at its real outlet at Dangiawas had not taken place within the limits of the appellant. It was submitted that the goods brought by the respondent No. 2 and exported to the respondent No. 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 than too the taxable event had not taken place as 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 con- sumption of the ultimate consumer residing outside the local limits of the appellant. It was contended that the word 'sale' occurring under s. 104 of the Act cannot be read without reference to use or consumption. Sale simplicitor 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. The Belgaum Borough Municipality, [1963] SCR Supp. 2 216 as well as the decision of this Court in Hiralal Thakorlal Dalai v. Broach Municipality & Ors., [1976] Supp. SCR 82. In Burmah Shell's case (supra), the company was a dealer in petrol and petroleum products which it manufac- tured 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 others. 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 munic-

ipal points where these were brought and consumed by persons other than the company.

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-sec- tion (1) of section 73 of the Bombay Municipal Boroughs Act, 1925 which was under consideration in that case was analo- gous to subsection (2) of section 104 of the present Act in question. The words 'use or sale' were 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 Municipali- ty for the levy of octroi. After examining the history of octroi, this Court in that decision held octrois were tax on goods 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 Con- stitution of India. While doing so this Court further ob- served 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 con- sumption in manner which destroys, wastes or 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 terminal taxes are leviable on goods 'imported or exported' from municipal limits denoting thereby that they are con- nected with the traffic of goods, octrois 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, octrois were taxes on goods brought into the area for con- sumption, 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 was 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 former- ly, 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 description 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 termi- nal taxes are also a kind of octroi and the two were to be allocated to different legisla- tures.

> 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 mat- ter, 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."

The aforesaid observations were approved by this Court in Hiralal Thakorlal Dalal v. Broach Municipality & Ors., (supra). 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 simplicitor 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 'sue, 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 Divi- sion Bench that as soon as the goods enter within the octroi limits it gives rise to taxable event unless a declaration as contemplated 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 presump- tion 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 requiting payment of octroi due from any mercantile firm or public body it may at the time when the articles in respect of which it is levi- able are introduced within the octroi limits of the munici- pality, 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. It further provides that every such account shall be settled at the intervals not exceeding one month and such firm of public body shall make such deposit or furnish such security as the

Board of any committee or officer authorised by it in this behalf shall consider it sufficient to cover the amount which may at any time be due to such firm or body in respect of such dues. Rule 13, therefore, dispenses with the re- quirement of rule 6. It further dispenses with the require- ments 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 a over-riding rule independent of rules 6 and 9. The High Court found that respondent No. 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 limits. 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 findings of the High Court in these appeals.

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 s. 104 of the Act As mentioned hereinbefore, section 104 of the Act was anologous to s. 73 of the Bombay Boroughs Act which had been interpreted by this Court in the aforesaid two deci- sions, wherein it was held that the sale in order to attract levy of octroi should be for the purpose o fuse or consump- tion of the ultimate consumer in the area. (Emphasis sup- plied). 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 s. 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. (Emphasis supplied). The Municipal Council was not entitled to levy octroi on goods so exported by respondent No. 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 the respondent No. 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 s. 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 the respondent No. 1 before the High Court that the taxable even 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 the respondent No. 1 that goods were supplied by the respondent No. 2 in its tankers at Dangiawas and till the goods were supplied at the respondent no. 1's outlet at Dangiawas, the risk in respect of the goods was with the respondent no. 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 the respondent No. 1's outlet stations the goods were at the risk of respondent no. 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 contend- ed, had taken place at Dangiawas where the goods were delivered at the respondent no. 1's outlet and receipt was obtained from the respondent no. 1's outlet

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 products mentioned therein were in fact delivered to the dealer. It was submitted that the delivery was made by the respondent No. 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 indents 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 the respondent No. 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 not been 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 under Article 226 of the Constitu- tion. 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 appel- lant 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 re- straint. It directed that the Municipal Council be re- strained by way of Mandamus not to levy octroi on the goods exported by the respondent No. 2 for the use of the ultimate user outside the octroi limits of Municipal Council even if the sale took place within the octroi limits of Municipal Council, Jodhpur.

The next aspect of the matter, is, whether the respond- ent No. 1 was entitled to refund of the octroi realised from respondent No. 2. It had been contended by the respondent No.1 that although the octroi had been realised directly from the respondent No. 2 but in fact and in reality it was the respondent No. 1 who had been made to pay the octroi as the same had been realised by the respondent No. 2 by adding the octroi realised by the Municipal Council in its bills for the supply of the goods made to respondent No. 1. It was contended on behalf of the appellant that there was no privity of obligation between respondent No. 1 and the appellant and therefore, respondent No. 1 had no right to ask for a refund of the octroi. Secondly, it was urged that the respondent No.1 had 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 re- spondent No. 1 and the appellant. The same had not been realised from the respondent No. 1. It was, therefore, held that there being no privity of obligation between respondent No. 1 and the appellant, the respondent No. 1 could not ask for a refund of the money which it has not paid to the appellant. There was no provision for refund in the Act or in the Rules which enabled the respondent No. 1 to claim refund from the appellant even though it had been paid by the respondent No. 1 indirectly. There was,

however, an undertaking given to the High Court by the appellant on 3rd February, 1976 in the High Court. On that date, the appel- lant had given an undertaking that the appellant would refund the octroi charged from the respondent No. 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 the respondent No. 1 by the appellant and not from respond- ent No. 2. The basis for refund of the amount undertaking from respondent No. 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 con- cerned, as according to this Court, 'sale' simplicitor 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 levi- able on petroleum prod acts re-exported to the retail out- lets 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. It was, however, submitted that the ratio of the deci- sions of this Court had no application because of rules 6 and 9 of the said Rules. We have referred to the said rules. The contention of the appellant on the basis of the afore- said rule was that since the goods were brought within the octroi limits, these became liable to octroi unless a decla- ration 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 s. 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 s. 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 where special current account facilities were given to a person. In the instant case, special facilities for cur- rent accounts had been given to the respondent No. 2. There- fore, rule 9 had no application according to the Division Bench. Learned counsel for the respondent No. 1 had contend- ed 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 urged before the Division Bench that Munici- pal Council had given an undertaking that it would refund the octroi charged from the respondent No. 1 on the petrole- um 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 the respondent No. 2 and not from the respondent No. 1 and, secondly, the respondent No. 1 had not succeeded in establishing his claim for refund against the respondent No.

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 Padarnpat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors., AIR 1979 SC 621 and State of Madhya Pradesh & Anr. v. Bhailal Bhai etc., AIR 1964 SC 1006. The Division Bench of the High Court, therefore, held that the claim for refund is not sustainable but the High Court found that the octroi had been paid by the Indian Oil Corporation and not by the respondent No. 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 the re- spondent No. 1 and the respondent No. 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 hereinbe- fore, being aggrieved, the appellant came up for appeal by special leave to this Court.

On behalf of the appellant, Shri Soli 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 the respondent No. 2, Indian Oil Corporation as provided under s. 133 of the Act read with 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 proce- dure 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 No. 2 existed, whether by reason of such, respondent No. 2 was exempted from complying with the rules 6 and 9 of the said Rules. Council submitted that it was strange that the respondent No. 1 was purporting to make out a case that the current account facility to the respondent No. 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 the 30th September, 1988. The case was reargued again in Feb. 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 25th July, 1975, the appellant had suspended the current account facilities in respect of also the goods which were exported out of Jodhpur Municipal limit by the respondent No. 2 and supplied to respondent No. 1 at Dangia- was. It was further the case of M/s Parekh Automobiles that upon suspending such current account facility the municipal-ity was charging octroi on all petroleum products brought by respondent No. 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 appel- lant, it was contended that the term 'export facilities' used in that paragraph was to mean 'current account facili- ty' as it appeared from the pleadings of the respondent No. 1 in paragraph 16 of the said writ petition. Reference was also made to other paragraphs of the writ petition, namely, paragraph 10, paragraph 11 and paragraph 12 which proceeded on the basis that current account facilities had been with- drawn and a 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 sub- mitted that reading of the said pleadings make it clear that the respondent No. 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 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 the 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 the respondent No. 2 as contemplated under s. 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 provi- sions of s. 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 the re- spondent No. 2 under rule 13 of the said Rules and as admit- tedly, the respondent No. 2 was not complying with the requirements of rules 6 and 9 of the said Rules and was not filing any declaration, the Municipality had the right to treat the goods, 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 con- tended by the appellant, failed to appreciate the implica- tion of the aforesaid provisions 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 questions raised, gone into but the questions decided by the High Court were not germane to the issue and as such were not required to be gone into the decided. On this aspect, it was submitted that the appeals should be allowed so far as refund was concerned, and the impugned decisions 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 declara- tion under s. 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 conceivably goods can be brought within the municipal limits of a municipality for the purposes of (i) use, consumption or sale; or (ii) for immediate transporta- tion outside the Municipality; or (iii) for temporary deten- tion 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 pur- poses 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 charged 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 provisions of the Act and the Rules have been made for the different categories in different ways. it was submitted. S. 104 of the Act is the charging section and authorises munic- ipality 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 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 s. 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 No. 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 the 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 petition- er 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 the respondent No. 2, according to the appellant. The Division Bench, as appears from the said order dated 1st April, 1977, restrained the payment of the octroi duty by the respondent No. 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 des- patches. 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.

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 s. 133 of the Act was provided to the respondent No. 2, but the said facility was never discontinued even after 25th July, 1975 and is still being provided till the date of the hearing of the matter before this Court. The current account 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 para No. 6 of the writ petition and stated that 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 provided under s. 133 of the Act were never withdrawn and therefore, any submissions made by the Municipal Council to the contrary are 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 sudden- ly on 25th July, 1975, the Municipal Council, Jodhpur sus- pended the export facilities provided to the respondent No. 2 and informed the respondent No. 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 products 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 the time of its entry in Municipal limits of Jodhpur, but to keep current account and realise octroi tax after specified time periodi- cally. It is the case of the respondent No. 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 person who have been provided current account facility. In reply to para 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. There- fore, the affidavit stated that there was no suspension. Reference was made to the order of the High Court dated 9th February, 1976 and other orders.

Shri Soli 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's case (supra), there was no sales by the company to its dealers. The company sold goods through its dealers to the customers both within and outside the local area. He submitted that the observations of this Court to 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's case (supra) makes it clear that to attract liabili- ty to pay octroi duty it is not necessary that the goods should be consumed within the octroi limits. We are, however, unable to accept these contentions. If the goods were brought within the municipal limits for the purpose of sale (sale means passing of the title to the purchaser), then different considerations might have ap- plied.

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 the respondent No. 1 to grant respondent No. 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 the respondent No. 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 grant- ed 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.

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 plead- ings, 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 petro- leum 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 outpose, 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 obligato- ry 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 it transport passes are not given by the Municipal Council, the quantity exported can be ascertain by other means also. 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 para 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 25th July, 1975 to date of writ peti- tion. 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 Coun- cil, Jodhpur as will be clear from the order of the learned Single Judge dated 7th February, 1976. It was also stated that the Division Bench vide its order dated 1st April, 1977 has already ordered that respondent No. 2 would deposit the octroi tax on diesel exported to Dangiawas. Thus, the octroi tax which became due on diesel exported to Dangiawas from 1st April, 1977 upto 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 cancel- lation 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 re- garding quantity of diesel exported to Dangiawas

from 25th July, 1975. The Depot Superintendent of Indian Oil Corpora- tion, Jodhpur had deposed 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 ot s. 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 recov- ered 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 Automo- biles from consumers. On the other hand, it is the case of M/s Parekh Automobiles that it had to pay octroi tax 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 1st April, 1977 upto date. For period before 1st April, 1977, the Municipal Council has already given an undertaking to refund octroi tax. Pleadings in this case and the averments 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, there- fore, not chargeable on the transactions mentioned herein. We are further of the opinion that in view of the confused state of the pleadings and averments, it is not possible to hold that current account facilities were withdrawn or cancelled. If that is the position, then there is no ques- tion that the High Court was right in the order it passed and the direction it gave.

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. I have gone through the judgment pro- posed 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. The controversy before us--I shall refer only to the facts in CA. 1552/1981 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 ques- tion 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. The Belgaum Borough Munici- pality, [1963] Supp. (2) SCR 216 as followed in Hiralal Thakorlal Dalal v. Broach Municipality & Ors., [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 facts 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.

It was urged before the High Court. on behalf of the Municipal Council, that the levy of octroi could be justi- fied 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 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 sec- tion 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 proce- dure under rule 13 overrides the requirements of rule 9. This argument has been accepted by the High Court. The question is whether the High Court's conclusion on this issue is correct. I think that the High Court rightly ac- cepted this argument and I should like to elaborate a little my reasons for this conclusion.

Chapter II of 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 inspect- ing staff to stop the vehicles at the outposts. Rule 6 lays down 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 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 transportation 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. It, 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 within the municipal limits to make a declaration as to what the goods are intended for. If any of the goods are intended for consumption, use or sale within the Municipality, a declaration could be made orally to this effect; thereupon the octroi would be collected then and there in respect of those goods. If, however, the goods are intended for immedi- ate or eventual transportation outside the Municipality, a written declaration should be filed by the importer. In respect of goods declared intended for immediate transporta- tion, the officer-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 im- porter. 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 deposit- ed in respect of the goods so transported is returned to.the importer and the transit pass taken back. This is the proce- dure envisaged in rule 11. (Certain refinements in procedure in the case of travelling agents is provided for in rules 11A & 11B, 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 limits 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 Munici- pal 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 6 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 pro- ceeds. This is the normal procedure for the assessment and collection of octroi duty. It is in respect of this proce- dure that the declaration in rule 9 becomes important. The terms of the declaration determine the incidents of the duty. Regarding the first category of 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 re- spect of the third, duty has to be paid unless the goods are transported outside the municipal limits within 6 months. 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 S. 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 facility is 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 book 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 fill 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 the 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 to the octroi Superintendent who debits 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 pass duly certified by him is passed on to the octroi Superin- tendent. 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 goods 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 goods 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 6 months from the date of their import.

A comparison of the above two sets of provisions 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 the officials 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 deposit 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 straightaway 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 trans- port passes. The difference is the amount of the duty pay- able by him and this is recovered from the person concerned from time to time either by ad- justment 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 purposes of dealing with the goods under rule 13. It, therefore, appears to me that High Court was fully justified in holding that the terms of rules 6 and 9 have no relevance 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.

It is true that the proviso to sub-rue 4 of rule 13 also envisaged 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 has 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 exclud- ed from deduction 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 inter- preted 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 goods solo by the IOC within, but clearly intended to be transported for use or consumption outside, the Municipal limits, then this statu- tory 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 despatched outside. The terms of the proviso and the main section have to be read harmoniously.

The result of the above discussion is that the present case is governed by the terms of rule 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 trans- port 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, there- fore, the High Court rightly held that the octroi charged on the IOC in respect of the impugned sales was not justified.

Before concluding I wish to refer to three aspects. The first is as to whether even assuming that rule 9 was ap- plicable 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. 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 based out 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 off 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 respect- fully agree with his conclusion that the appeals must fail and are dismissed.

R.S.S. Appeals dismissed.