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INDIAN OIL CORPORATION

v.

MUNICIPAL CORPORATION, JULLUNDHAR AND ORS.

OCTOBER 20, 1992

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[J.S. VERMA AND DR. A.S. ANAND, JJ.]

Punjab Municipal Corporation Act, 1976 :

S. 113—Levy of Octroi—Indian Oil Corporation—Petroleum Products
C *—Transportation to depot within municipal limits for export therefrom to dealers outside municipal limits at risk of IOC—Held transaction of re-export—Octroi duty—Not chargeable on such transaction.*

Constitution of India, 1950 :

D *Article 246, Seventh Schedule, List II, Entry 52—Tax on entry of goods into local area for consumption use or sale therein—State Legislature—Power to legislate—Held Municipal Corporation cannot have authority more extensive than that of State Legislature.*

Words and Phrases:

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"Imported into the city"—S.113 of Punjab Municipal Corporation Act—Meaning of.

The appellant, Indian Oil Corporation (IOC), had a depot, comprising a pipeline terminal and LPG bottling plant, within the limits of
F **Municipal Corporation, Jullundhar. The IOC transported various petroleum products to the depot through underground pipelines.**

The respondent Municipal Corporation raised a demand on the IOC for octroi. The IOC deposited the octroi duty but filed appeals before
G **the appellate authority challenging the demand notice so far as it related to the petroleum products imported to the depot for export by the IOC therefrom to its dealers for the sale, use and consumption by persons other than the IOC, outside the octroi limits. The appeals were dismissed.**

In the writ petition before the High Court the IOC, besides impugn-
H **ing the judgment of the appellate authority, challenged the validity of s.**

113 of the Punjab Municipal Corporation Act, 1976 authorising levy of octroi on articles and animals imported within the municipal limits of the respondent Corporation without any reference to the use, consumption or sale of the said goods, as being beyond the power of the State Legislature in view of entry 52 of List II of Schedule VII to the Constitution of India. It was contended that the Municipal Corporation could not impose and demand octroi duty on the petroleum products imported by the IOC to its depot for being exported at the risk of the IOC to its dealers at their sale points situated outside the area of the Municipal Corporation in as much as the petroleum products in such transactions only entered the area of the Municipal Corporation for the purpose of re-export to the place of business of its dealers and the property in such petroleum products passes to the dealers only at their premises outside the Municipal limits and not at the depot of the IOC and as such it could not be said that any transaction takes place within the municipal limits of the respondents for use, consumption or sale of the imported petroleum products and thus attract any octroi duty.

A B C D

The respondent contended that the transactions by the IOC were sale simplicitor at the depot within the municipal limits of the Corporation and the export of the goods to the premises of the dealers outside the octroi limits was of no consequence, since the IOC received payment in advance as the sale proceeds from its various dealers and collected the local taxes etc. like the sales tax and MST from the dealers at its depot; that the IOC could not either in law or in equity retain the octroi duty so collected.

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The High Court held s. 113 of the Punjab Municipal Corporation Act, 1976 as *intra vires*, and upheld the levy and demand of octroi duty by the Municipal Corporation. It dismissed the writ petition holding that the property in the goods passed on to the dealers as and when the goods were laden in the truck/lorries and that the sale was complete at the depot of the IOC. The IOC filed the appeal by special leave.

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Allowing the appeal, this Court,

HELD : 1.1. Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature on the authority of Entry 52 of List II of Schedule VII to the Constitution. The municipality deriving its power to tax from the State Legislature cannot

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A have any authority more extensive than that of the State Legislature. Since the State Legislature under a legislation enacted in exercise of the powers conferred by Entry 52 of list II, is competent to levy a tax only on the entry of goods for "consumption, use or sale" into a local area, the municipality cannot under such a legislation, have the power to levy tax in respect of B goods brought into the local area for purposes other than consumption, use or sale. Section 113 of the Act has, therefore, reasonably to be read subject to the same limitations as are contained in Entry 52 List II of Schedule VII. [69-E-G]

1.2. The expression "imported into the city" in Section 113, has to be C interpreted as meaning "imported into the municipal limits for purposes of consumption, use or sale" only. Thus, construed in the limited sense, Section 113 of the Municipal Act is not *ultra vires* Entry 52 of List II of Schedule VII. Interpreting the expression as meaning "imported into the city for any purpose and without any limitation", would amount to at- tributing to the legislature an intention to give a go-by to the restrictions D contained in Entry 52 of List II. That is not permissible. [69-G-H; 70 A-B]

1.3. The High Court was right in holding that the provisions of Section 113 of the Municipal Act are not beyond the competence of the State Legislature and the same are to be read along with Entry 52 of List E II of Schedule VII of the Constitution. [70-D-E]

2.1. The transaction whereunder the petroleum products trans-ported to the depot of the IOC are meant for export from its depot inside the octroi limits to outside the municipal limits to its dealers for sale, use and con- sumption by persons other than the IOC, outside the octroi limits, is a F transaction of re-export and the appropriation of the goods does not take place at the depot but at the outlets of the dealers or the agents outside the municipal limits. The octroi duty is, therefore, not chargeable on such a transaction. The levy and collection of the octroi duty on such goods by the Municipal Corporation is, therefore, not justified. [76-G-H; 77-A]

G *Burmah-Shell Oil Storage and Distributing Co. of India Ltd. Belgaum* v. *Belgaum Borough Municipality Belgaum,* AIR 1963 SC 906 and *Municipal Council, Jodhpur* v. *M/s. Parekh Automobiles Ltd. and Ors.,* [1990] 1 SCC 367, relied on.

H 2.2. The High Court erred in not considering various clauses of the

agreement or the effect of the affidavits filed by the IOC before the appellate authority or the categorical statement in the writ petition and rejoinder affidavit, showing that the risk till delivery of products to the dealers continues to remain with the IOC and the goods are re-exported at the risk of the IOC and not at the risk of the dealers; and that the property in the goods passed on to the dealers only on delivery of the products at their place of business and at no point of time prior thereto. This evidence had a material bearing on the case and deserved proper consideration and in the absence of any rebuttal should have been considered in its correct perspective. The Municipal Corporation took no steps to produce any material to show that the delivery of the goods outside the municipal limits was not at the risk and responsibility of the IOC. [72-C-D, G; 74-G-H; 75-A]

3.1. Since the IOC has collected the octroi duty from its dealers and agents, who have in turn passed on the burden to the consumer, there is no equity in favour of the IOC to claim a refund of the same. [77-B-C]

3.2. The appellant shall not be entitled to any refund of the octroi duty, already deposited by it with the Municipal Corporation. The IOC shall not be liable to pay the octroi duty, in respect of such transaction in future only on the condition that it does not collect any octroi duty from its dealers or agents in respect of the re-exported goods at the time of their appropriation outside the municipal limits. Should the IOC collect any such octroi duty from its dealers or agents, it shall remain liable to deposit the same with the Municipal Corporation and shall not retain any such octroi duty for its own benefit. [77-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 46 of 1990.

From the Judgment and Order dated 2.6.89 of the Punjab and Haryana High Court in C.W.P. No. 3361 of 1984.

A.N. Haksar, Ms. Ritu Bhalla and S.S. Shroff for the Appellant.

G.L. Sanghi, V.C. Mahajan, S.K. Mehta, Dhruv Mehta, Aman Vachhar, Tajinder Singh Dobia and Ms. Kamini Jaiswal (N.P.) for the Respondents.

The Judgment of the Court was delivered by

A **DR. A.S. ANAND, J.** The controversy in this appeal, by special leave, directed against the judgment of the Division Bench of the Punjab and Haryana High Court, dated 2nd of June 1989 in Writ Petition No. 3361 of 1984, is rather limited.

B The appellant (hereinafter IOC) set up a pipe-line terminal and LPG bottling plant at Suchi Pind in District Jullundhar. In 1983, the limits of the respondent, Municipal Corporation Jullundhar, (hereinafter the Municipal Corporation) were extended and depot of the appellant came to be included within the municipal limits. The appellant transports through underground pipelines various petroleum products to its depot situated C within the municipal limits of the Municipal Corporation. These petroleum products are meant :

(i) either for use or consumption by the IOC within the limits of the Municipal Corporation; or

D (ii) for sale by IOC through its dealers or by itself for consumption within the octroi limits, by persons other than the IOC; or

(iii) for sale by the IOC through its dealers or by itself E inside the octroi limits and the vendee, after completion of sale, take those products outside the octroi limits for sale, use or consumption; and

(iv) for export by the IOC from its depot inside the octroi limits to outside the municipal limits, to its dealers for F sale, use and consumption by persons other than the IOC, outside the octroi limits.

The Municipal Corporation raised a demand on the IOC for octroi for the period September 7, 1983 to May, 1984. The demand was to the G tune of Rs. 40,26,230.17. The IOC challenged the demand notice by filing a writ petition in the High Court of Punjab and Haryana. Since the IOC had approached the High Court without first exhausting the statutory remedies under the Punjab Municipal Act, the High Court allowed the appellant to file a statutory appeal under the Act against the demand notice before the Appellate Authority, Commissioner of Jullundhar Division and H kept the writ petition pending. The High Court, however, directed the IOC

to deposit arrears of octroi duty in order to avail of the remedy of statutory appeals and commanded the Appellate Authority to hear the appeals in accordance with law after condoning the delay in the filing of the appeals. Accordingly, after the deposit of the arrears of octroi duty, the appeals were filed before the Appellate Authority, Commissioner Jullundhar Division, Jullundhar. The appeals, after a contest on merits, were dismissed by the Appellate Authority. The IOC thereafter amended the writ petition and also challenged the order of the Appellate Authority before the High Court.

In the writ petition, the IOC *inter alia* challenged the validity of Section 113 of the Punjab Municipal Corporation Act, 1976 on the ground that it had authorised the levy of octroi on articles and animals imported within the municipal limits of the corporation without any reference to the use, consumption or sale of the said goods as being beyond the power of the State Legislature. Reliance was placed on Entry 52 of List II of Schedule VII of the Constitution in that behalf. The IOC did not dispute its liability to pay octroi duty in relation to the first three categories noticed above but it only disputed the authority of the Municipal Corporation to impose and demand octroi duty on the petroleum products imported by the IOC within the limits of the Corporation which are only exported to its dealers at their sale points situated outside the area of the Municipal Corporation. The IOC, in its writ-petition, explained the procedure involved in the sale of the goods to its dealers, outside the municipal limits of the Municpal Corporation and pointed out that the dealers placed orders for unascertained petroleum products which were carried in the tank lorries either belonging to the IOC or engaged by the IOC for transportation and delivery of the petroleum products at the outlets of its dealers, located outside the municipal limits. The precise case of the appellant-IOC was that the property in such of the petroleum products passes to the dealers only at their premises and not at the depot of the IOC and, as such, it could not be said that any transaction takes place within the municipal limits of the Municipal Corporation for the use, consumption or sale of the imported petroleum products. It was emphasized that the petroleum products in such transactions only entered the area of the Municipal Corporation for the purpose of being *re-exported* to the place of business of its dealers/agents and it was asserted that the transactions could not attract imposition of any octroi duty for no 'sale, use or consumption' took place within the octroi limits.

A The case of the Municipal Corporation on the other hand as pleaded and argued before the High Court was that though no octroi duty is leviable or levied in respect of articles brought by the IOC within the municipal limits of the Municipal Corporation for purposes other than consumption, use or sale therein, transactions in the instant case by the IOC were sale, simplistor at their depot within the municipal limits of the Corporation and B the export of the goods to the premises of the dealers outside the octroi limits was of no consequence. Reliance was place on certain circumstances in support of this assertion. It was pointed out by the Municipal Corporation that the IOC receives payment in advance either in cash or through a demand-draft, as the sale proceeds, from its various dealers at its depot C situated within the municipal limits of the Corporation; that the IOC also collects the local taxes etc. like the Sales Tax and MST from the dealers at their depots; that the IOC also collects delivery charges (based on kilometres covered) from its dealers at its depot for transportation of the products and from these circumstances it was sought to be argued that the D 'sale' to the dealers was complete within the municipal limits of the Corporation and the export of goods after the sale was complete could not effect the levy and collection of octroi duty. Reliance was placed on certain cash-memos also to show that the IOC had collected octroi duty and it was argued that the IOC could not either in law or in equity retain the octroi duty so collected.

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The High Court noticed that the parties were at variance as to whether the property in the goods is conditionally appropriated to the contract and passed on to the buyer at the depot of IOC at Jullundhar or at the dealers outlets and after considering the submissions made and the F pleadings of the parties held that the property in the goods passed on to the dealers as and when the goods were laden in the tank lorries and that the sale was complete at the depot of the IOC and that it did not take place at the respective places of business of the dealers and as such octroi duty was rightly levied and demanded.

G The High Court after extracting the provisions of Section 113 of the Municpal Act and Entry 52 of List II of the VII Schedule, which read thus:

> "113. *Levy of Octroi.* – Except as hereinafter provided, the Corporation shall levy octroi on articles and animals im- H ported into the city, at such rates as may be specified by

the Government". A

Entry 52 of List II provides :

"Taxes on the entry of goods into the local area for consumption, use or sale therein."

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opined that the words and phrases employed in Section 113 of the Municipal Act were of wide content and general connotation and since the power of the State Legislature are circumscribed by List II of Schedule VII, the State Legislature could not empower the municipal committees to levy tax only on the entry of goods within the local area when those goods C were not meant for consumption, use or sale within that area. It rightly held that the authority of the State Legislature in those matters is subject to the restrictions imposed by Entry 52 and since source of power of Section 113 of the Municipal Act is traceable to Entry 52, the wide language employed in Section 113 of the Municipal Act had to be read down to mean that the Municipal Corporation could levy octroi on articles and animals imported D into a local area for consumption, use or sale therein and construing the provisions of Section 113 in that manner held the same to be *intra-vires*.

We are in agreement with the High Court that the provisions of Section 113 of the Municipal Act are not beyond the competence of the E State Legislature and the same are to be read alongwith Entry 52 of List II of Schedule VII of the Constitution.

Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature on the authority of Entry 52 of List II of Schedule VII. The municipality derives its power to tax from F the State Legislature and it obviously cannot have any authority more extensive than the authority of the State Legislature. Since, the State Legislature in view of Entry 52 of List II of Schedule VII is competent to levy a tax only on the entry of goods for "consumption, use or sale" into a local area, the municipality cannot under a legislation, enacted in exercise G of the powers conferred by Entry 52 of List II, have the power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale. Section 113 of the Act has, therefore, reasonably to be read subject to the same limitations as are contained in Entry 52 of List II of Schedule VII. The expression "imported into the city" used in Section 113 of the Act, as meaning "imported into the city for any purpose H

A and without any limitation", would amount to attributing to the legislature an intention to give a go-by to the restrictions contained in Entry 52 of List II. That is not permissible. The expression "imported into the city" in Section 113, therefore, has to be interpreted as meaning "imported into the municipal limits for purposes of consumption, use or sale" only. Thus, construed in the limited sense, Section 113 of the Municipal Act is not *ultra vires* Entry 52 of List II of Schedule VII. In fairness to the learned counsel for the appellant, it must be recorded, that the finding of the High Court regarding vires of Section 113 of the Municipal Act was not seriously questioned before us.

C There is no dispute before us on the legal issue, namely, that no octroi is leviable on the goods re-exported by the IOC from its depot inside the octroi limits to outside such limits to its dealers where those goods are meant 'for use, consumption or sale' by the consumers outside the octroi limits.

D The only controversy before us is whether the transaction within the municipal limits reflected in category (4) above, in the facts and circumstances of the case, can be treated to be sale to the dealers at the depot or is only in the nature of re-export. Learned counsel for the respondent-Municipal Corporation did not dispute that if the transaction is only in the E nature of re-export, it is not exigible to the levy of the octroi duty but he asserted that the finding recorded by the High Court on that aspect did not call for any interference and that the nature of the transaction could not be said to be 're-export'.

F With a view to resolve the controversy, we shall have to examine the agreement executed between the IOC and its dealers and other relevant material produced before the authorities as also the pleadings of the parties. We must, however, hasten to add that the pleadings, both before the High Court as also before the appellate authority, were neither clear non specific on this issue and left much to be desire. But mere vagueness G of the pleadings or their confused state cannot relieve us of our obligation to sift the material and ascertain the true nature of the transaction.

The High Court referred to the copy of the Memorandum of Agreement between the IOC and its dealers, which had been filed by the H Municipal Corporation as Annexure R-7 to the written statement and

observed that the agreement did not contain any clause which could lead to the conclusion that the property in the goods did not pass to the dealers when the goods contracted to be supplied were separated from the main bulk and loaded in the tank lorries. Observed the High Court that the goods, on their separation from the unascertained bulk, became ascertained and the property in such ascertained goods passed on to the dealers as soon as they got ascertained. The High Court also opined that the terms of the contract did not lend themselves to the construction that the property in the goods was not transferred to the dealer at the time the goods were loaded in the tank lorries for transmission to the buyers. It found that the IOC had not placed on the file any document to show that the IOC had reserved the right of disposal of the goods even after they had been delivered to the carrier for the purpose of supply to the buyer which could have altered the nature of the transaction. Relying upon the bills and cash memos prepared and the payments received by the IOC within the municipal limits of Jullundhar, the High Court held that the sale was complete at the depot of IOC and did not take place at the respective places of business of the dealers outside the municipal limits. The Court held that the property in the goods passes to the dealers at the depot of IOC and rejected the case of the IOC to the effect that the property in the goods passes to the dealers only on their delivery at the place of business outside the municipal limits and that the sale takes place at the time of delivery only. The High Court then went on to say that since the goods were not re-exported as contended by the IOC, it was liable to pay the octroi duty on the sale of their products within the municipal limits of Jullundhar Municipality to their dealers, irrespective of the fact whether the goods were ultimately sold, used and/or consumed by persons, other than the IOC and the dealers, outside the municipal limits.

In our opinion, the circumstances relied upon by the High Court to negative the case of the IOC were not sufficient much less clinching to come to the conclusion that the transaction, as per the fourth category, in the facts and circumstances of this case, was not 're-export'.

From a perusal of the order of the appellate authority, we find that some affidavits had been filed by the IOC of their dealers to establish that the title in the property of the goods passes on to the dealers only after delivery and till that time the goods remained in the ownership of IOC. In

A reply, the Municipal Corporation had only submitted before the appellate authority that the affidavits were 'not correct' and that it had been wrongly stated in the affidavits that the petroleum products were supplied at the responsibility of IOC or that any loss or damage in the transportation was to be made good by the IOC till they reach the dealer. No material was
B placed by the Municipal Corporation to controvert the averments made in the affidavits of the dealers. The appellate authority, however, did not express any opinion on the correctness or otherwise of those affidavits. It virtually ignored the same without assigning any reasons, much less satisfactory ones. Even the High Court did not advert to, much less consider
C and discuss, the effect of the affidavits. In the affidavits, it had been clearly stated that the goods were transported from the depot to the outlets of the dealers at the risk of IOC and the property in the goods passed on to the dealers only on delivery of the products at their place of business and at no point of time prior thereto. This evidence had a material bearing on the case and deserved proper consideration and in the absence of any rebuttal
D should have been considered in its correct perspective. In the writ petition, in para (5) also, it had been asserted by IOC that the goods were sold outside the municipal limits and delivered to the dealers at the risk and responsibility of the IOC. In para (ii) of the writ petition also, it was averred as follows:

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> ".....It is, thus, clear that there is neither any consumption nor sale of the said quantity within the Octroi limits of the respondent Corporation, and the respondent Corporation cannot make a demand for octroi."

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While reply to paragraph 5 of the writ petition was simply to the effect that the contents were 'not correct', the reply to paragraph (ii) in the counter affidavit also did not controvert the position and the Municipal Corporation remained content by stating that 'the IOC be directed to place on record documents and bills through which the sales are conducted'. The
G Municipal Corporation was aware of the affidavits which had been filed by the dealers before the appellate authority yet it took no steps to produce any material to show that the delivery of the goods outside the municipal limits was *not* at the risk and responsibility of the IOC. Reference in this connection may also be made to the replication/rejoinder, filed by IOC to
H the written statement, in which *inter alia* it was stated:

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"..... It may again be mentioned here that transit losses is the responsibility of the petitioner Corporation and the dealer measures the quantity received by him at his destination and claims credit for the short fall. In fact, at the delivery voucher the shortage is recorded as is clear from Annexure P-7. There are many other incidents where for shortage credit has been given to the dealer and also where the supplies have been diverted. It is incorrect to say that the transportation is done by the dealers and they have their own arrangements for the said purpose. *The transportation is done by the Indian Oil Corporation and by the transport contractors of the Indian Oil Corporation*..... It is absolutely incorrect to suggest that the supplies are insured and that insurance premium is paid by the carriers. The supplies are never insured. Of course, the vehicles are insured and insurance premium is paid by the owner of the vehicle. It is, therefore, wrong to assert that the sale takes place within the municipal limits. The Municipal Corporation has no right to levy octroi on the supplies which are neither consumed nor used or sold within its territorial limits."

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Indeed the pleadings, as already observed, are vague and non-specific but the High Court did not deal with the pleadings at all and dismissed the case of the petitioners by simply stating that "we are not impressed". We cannot concur with the approach. The High Court should have considered the totality of the material on the record including the pleadings and other material, before coming to any final conclusion. The observation that the agreement (Ex. R-7) did not have any clause from which it could be said that the title in the goods passed on at the outlet of the dealers or that the IOC was under no obligation to make good any loss incurred during transportation of the goods from the depot to the places of business of the dealers, is not justified on a careful reading of the terms of the agreement. The terms of the agreement executed between the IOC and its dealers (Ex. R-7) and particularly paras 25, 26 and 34 which read as follows :

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"25. The quantities of petroleum and other allied products stated to be delivered by the Corporation as measured by

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A the Corporation's measuring devices of means shall be final and binding upon the parties hereto. A receipt signed by or on behalf of the Dealer at the time of delivery by the Corporation of petroleum products will be conclusive evidence that the products mentioned therein were in fact
B delivered to the Dealer, that such products were in (accord) with the specification therefor mentioned hereunder and that the quantities of such mentioned in the receipt are correct, and the Dealer shall thereafter be precluded from any claim against the Corporation for compensation or otherwise on the ground of short (quantification) of such
C products.

26. The Dealer shall be responsible for all loss, contamination, damage or shortage of or to the products whether partial or entire and no claim will be entertained by the
D Corporation therefor under any circumstances except in cases where the Corporation is satisfied that loss arose from leakage from underground tank or pipes which the Dealer could not reasonably have discovered and of which the Dealer gave immediate notice to the Corporation on discovery.

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34. All expenses in connection with or incidental to the storage, handling, sale and distribution of the Corporation's products shall be borne by the Dealer. The Dealer shall be solely responsible for the payment of all
F local and other taxes in respect of the sale of the Corporation's products."

lend credence to the case as set up by the IOC and go to show that in respect of the goods which were re-exported by the IOC to its dealers
G outside the municipal limits, the risk, till the delivery of the goods at the premises of the dealers, continued to remain with the IOC which was also obliged to make good any loss during transit and therefor the transaction by the IOC with the dealers or agents as reflected in category four (supra) did not amount to any sale at the depot within the municipal limits of the Municipal Corporation. The High Court did not consider various clauses
H of the agreement referred to herein above or the effect of the affidavits

which had been filed by IOC before the Appellate Commissioner or the categorical statement in the writ petition and rejoinder affidavit, showing that the risk till delivery of the products to the dealers continues to remain with the IOC and the goods are re-exported at the risk of the IOC and not at the risk of the dealers while rejecting the case of the IOC.

In *Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Belgaum.* v. *Belgaum Borough Municipality, Belgaum,* AIR 1963 SC 906 a somewhat similar question arose. A Constitution Bench of this Court held that the company which dealt with petroleum products was liable to pay octroi tax on goods brought into the local area (a) to be consumed by itself or sold by it to consumers and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal limits irrespective of whether such consumers brought them for use in the area or outside it but that the company was "not liable to octroi in respect of goods which it brought into the local area and which were re-exported."

Again, in *Municipal Council, Jodhpur* v. *M/s. Parekh Automobiles Ltd. and ors.*, [1990] 1 SCC 367, the precise question which was involved was as to whether octroi was leviable on the goods imported within the municipal limits, stored in its depot there and exported therefrom for use or consumption of the ultimate consumer outside the municipal limits. That case related to the sale of petroleum products by the IOC from its depot within the municipal limits of Jodhpur, Rajasthan, to its dealers outside the municipal limits. After considering the facts and circumstances of the case and various clauses of the agreement (which is identical to the agreement in the present case) Sabyasachi Mukharji, J. (as His Lordship then was) dealt with the case put up by the Indian Oil Corporation Respondent No. 2 and Noticed :

> "According to respondent 2, it had allotted the retail outlets to various dealers under dealer's agreement. Under the terms of the said agreement, respondent 2 was obliged to transport petroleum products out of its depots and supplied petroleum products to its dealers at the destination in its own truck tankers or the tankers of its contractors and obtained the signatures of the dealers of the retail outlet in token of the delivery of the goods and till the

A supplies were made at the destination the goods were at the risk of respondent 2. It was further alleged by respondent 2 that the pump tank and other outfits which were fitted at the retail outlets belonged to it and these were its property. It was, therefore, alleged that the goods supplied
B at retail outlets situated outside the limits of Municipal Council, Jodhpur were sold at the retail outlets where the deliveries were made and not at Jodhpur although the dealers were required to deposit the price of the petroleum products in respondent 2's account in the bank unless they were allowed credit facilities but the sale took place only
C when respondent 2 delivered its products at the dealers' retail outlets outside the municipal limits as per the terms of the dealer's agreemant. The appellant, Municipal Council, had, however, disputed the aforesaid position. It contended that whenever the sale was made at the Jodhpur
D depot at Jodhpur, octroi was chargeable irrespective of the fact where it was consumed or used....."

The Court then referred to the finding of the High Court that the Municipal Corporation had no jurisdiction to levy octroi on the goods so exported and accorded its approval of that finding. It upheld the order of
E the High Court restraining the Municipal Corporation to levy octroi on goods re-exported by IOC to its dealers or agents for the use of ultimate user outside the octroi limits of Municipal Corporation.

Both the above noted judgments clearly support the case of the
F appellant.

On a consideration of the peculiar facts and circumstances of the case, we are of the opinion that both the judgments of this Court, noticed above, have direct application to the facts and circumstances of this case.
G On the basis of the material on record, we are satisfied that the transaction covered by category (4) above, viz., where the petroleum products transported to the depot of the IOC are meant for export from its depot inside the octroi limits to outside the municipal limits to its dealers for sale, use and consumption by persons other than the IOC, outside the octroi limits, is a transaction of re-export and that the appropriation of the goods does
H not take place at the depot but at the outlets of the dealers or the agents

outside the municipal limits. The octroi duty is, therefore, not chargeable on such a transaction. The levy and collection of the octroi duty on such goods by the Municipal Corporation is, therefore, not justified. The judgement in Writ Petition No. 3361 of 1984 is, therefore, set aside and the appeal accordingly allowed but without any order as to costs.

Before parting with the appeal, we would however, like to take note of the submission made on behalf of the Municipal Corporation with regard to the question of refund of the octroi duty, already deposited by the appellant. The question of refund, in our opnion, does not arise. The IOC has collected the octroi duty from its dealers and agents, who have in turn passed on the burden to the consumer. Thus, having collected the octroi duty, there is no equity in favour of the IOC to claim a refund of the same. Learned counsel for the appellant also conceded that the question of refund, in the facts and circumstances of the case, does not arise and we, therefore, hold that the appellant shall not be entitled to any refund of the octroi duty, already deposited by the appellant with the Municipal Corporation. We also clarify that the IOC shall not be liable to pay the octroi duty, in respect of the transaction covered by the 4th category, hereafter, only on the condition that the IOC does not collect any octroi duty from its dealers or agents in respect of the re-exported goods at the time of their appropriation outside the municipal limits. Should the IOC collect any such octroi duty from its dealers or agents, it shall remain liable to deposit the same with the Municipal Corporation and shall not retain any such octroi duty for its own benefit.

R.P. Appeal allowed.