

in order to make it abundantly clear they have omitted the provision.

(9) We are, therefore, of the view that the loss claimed by the assessee is allowable. Accordingly, we answer the questions in respect of the Assessment Year 1974-75 in the affirmative and the question referred for the Assessment Year 1975-76 in the negative and in favour of the assessee. The assessee will be entitled to his costs. Counsel's fee Rs. 500 (one set).

S.C.K.

*Before S. S. Kang and J. S. Sekhon, JJ.*

INDIAN OIL CORPORATION,—*Petitioner.*

*versus*

MUNICIPAL CORPORATION, JULLUNDUR and others,—*Respondents.*

*Amended Civil Writ Petition No. 3361 of 1984.*

June 2, 1989.

*Punjab Municipal Corporation Act (XLII of 1976)—S. 113—Constitution of India, 1950—Entry 52, List II, Schedule VII—Levy of octroi—Legislative power of the State—Extent of that power—Validity of S. 113—Section held valid.*

*Held*, Entry 52 of List II of Schedule VII of the Constitution empowers the legislatures of the States to frame laws for imposing taxes on the entry of goods into local areas for consumption, use or sale therein. In other words, negatively put, the State Legislature do not possess the power and authority to enact laws imposing taxes on the entry of goods into local areas which are not meant for consumption, use or sale therein. The powers of the State Legislatures are circumscribed by the entries in List II of Schedule VII. The State Legislature cannot empower municipal committees to levy tax only on the entry of goods within the local areas even when those goods are not meant for consumption use or sale within the area. The authority of the State Legislature in these matters is subject to the restrictions imposed by Entry 52. If on exercising this authority, the State Legislature enacts a law on a permissible subject-matter, but in doing so employs words and phrases which are of wide content and general connotation, then such words and

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phrases are construed in such a manner that it is held that the State Legislature had intended to restrict those words and phrases in their meanings within the parameters of the competence of the State Legislature. The Legislature in such cases cannot be credited with the intention to out-step the restrictions imposed on its powers to frame laws by the Constitution. Applying this principle, the wide language employed in S. 113 can be read down to mean that a Corporation shall levy octroi on articles and animals imported into local area for consumption, use or sale therein. If the provisions of S. 113 are so construed, then they do not fly in the face of Entry 52 of List II of Schedule VII of the Constitution and are brought within the field reserved for legislation by the State Legislature. (Para 13).

*Sales of Goods Act (III of 1930)—Ss. 4 and 23—Contract of sale of unascertained goods—Goods separated and delivered to a carrier—Vesting of property in such goods—Sale when complete.*

Held, that the goods which had been separated in pursuance of the contract of sale had been ascertained and loaded in the tank lorries at the depot of the petitioner. They had been appropriated to the contract. The assent of the buyer is implicit in the agreement of dealership and the petitioner did not reserve or retain any right of disposal of the petroleum products for which the buyers had paid for the carriage thereof. The property in the goods passed on to the buyers as and when the goods were laden in the tank lorries, the sale was complete at the depot of the petitioner and did not take place at the respective places of business of the dealers. (Para 22).

*Writ petition under Articles 226 and 227 of the Constitution of India praying that :—*

- (a) *A writ in the nature of Certiorari or any other writ, order or direction appropriate in the circumstances of the case be issued quashing the Annexures P/2, P/3 and P/5 and P/6.*
- (b) *Any other relief to which the petitioner is found entitled in the facts and circumstances of the case may kindly be granted to the petitioner.*
- (c) *That filing of certified copies of the Annexures and Issuance of prior notice on the respondents may kindly be exempted; and*
- (d) *The writ petition may kindly be allowed with costs throughout. The service upon the respondents may be dispensed with at this stage.*

*It is further prayed that operation of the notice Annexures P/5 and P/6 may kindly be stayed during the pendency of the writ petition.*

Mr. S. C. Kapoor, Advocate G. S. Sahni and Naresh Katyal, Advocates with him, for the petitioner.

Mr. H. L. Sibal, Sr. Advocate with Mr. T. S. Doabia Advocate and Mr. Arun Nehra, Advocate, for the respondents, Mr. S. S. Kang, A.A.G., (Pb.), for the State.

#### JUDGMENT

*Sukhdev Singh Kang, J.*

(1) Challenge by M/s. Indian Oil Corporation in this writ petition under Articles 226/227 of the Constitution is directed against orders of the authorities of Municipal Corporation, Jalandhar (hereinafter referred to as Respondent No. 1) imposing octroi duty and appellate order dated June 5, 1985 (Annexure P.6 to the writ petition) passed by the Commissioner, Jalandhar Division, Jalandhar, dismissing 19 appeals filed by the petitioner-Corporation. The petitioner also challenges the constitutional validity of Section 113 of the Punjab Municipal Corporation Act, 1976 (for short, 'the Act') being beyond the competence of the State Legislature. The circumstances which have led to the controversy may briefly be stated thus :

(2) The petitioner-Corporation has set up a Pipe Line Terminal and L.P.G. Bottling Plant at Suchi Pind in District Jalandhar in the State of Punjab. It constructed buildings and storage tanks and other installations for the purpose of the abovesaid plant. In those days, the area of village Suchi Pind wherein the establishment of the petitioner-Corporation was located, was not included within the municipal limits of respondent No. 1. Its limits were extended in the month of September, 1973 and the depot of the petitioner was included within the municipal limits. The petitioner imports through underground pipe-lines motor spirits, high-speed diesel, kerosene oil and other petroleum products within the territorial limits of respondent No. 1. The petroleum products are brought within the municipal limits of respondent No. 1 for use or consumption of itself or for sale jointly to its dealers and licensees who, in their turn, sell these to others. The petitioner in the normal course of its business operations appoints dealers and licensees for the sale of its petroleum products and supplies these products on certain stipulated terms and conditions. According to the petitioner, the goods brought by it

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within the territorial limits of respondent No. 1 can be divided into four separate categories :—

- (i) Goods consumed by the petitioner-Corporation;
- (ii) Goods sold by the petitioner-Corporation through its dealers or by itself and consumed within the octroi limits by persons other than the petitioner-Corporation;
- (iii) Goods sold by the petitioner-Corporation through its dealers or by itself inside the octroi limits to other persons who consumed them outside the octroi limits; and
- (iv) Goods sent by the petitioner-Corporation from its depot inside the octroi limits to extra municipal limits to its dealers where they are bought and consumed by persons other than the petitioner.

(3) Respondent No. 1 made a demand by sending Octroi Bills on the petitioner-Corporation for the period from September 7, 1983 till May, 1984. There was some misunderstanding at the Jalandhar office of the petitioner-Corporation inasmuch as the said office had taken the position that the goods supplied to dealers outside the municipal limits of respondent No. 1 were exempt from Octroi Duty irrespective of the fact whether the sale took place within or outside the municipal limits. On clarification, the Jalandhar office of the petitioner-Corporation had been advised to make payment of Octroi on the goods sold to dealers outside the municipal limits of respondent No. 1 when the sale had taken place within the municipal limits. Respondent No. 1,—*vide* its letter dated May 9, 1984 had also served a notice upon the petitioner-Corporation to pay Octroi to the tune of Rs. 40,26,230.17 within thirty days of the receipt of the said notice.

(4) The petitioner-Corporation challenged these notices through the present writ petition. Notice of motion was issued to the respondents. The respondents filed the written statement. The Motion Bench admitted the writ petition to be heard by a Division Bench and vacated the stay order earlier granted on certain terms. The Bench also permitted the petitioner-Corporation to file appeals within one month. The petitioner filed appeals and the Commissioner, Jalandhar Division,—*vide* impugned order Annexure P-6, dismissed the appeals. Consequently, the petitioner-Corporation has

amended the writ petition and has impugned the appellate order also.

(5) In the writ petition, the petitioner has pleaded that Section 113 of the Act has authorised the levy of Octroi on articles and animals imported within the municipal limits respondent No. 1 without any reference to the use, consumption or sale of the said goods. This is beyond the power of the State Legislature and the provisions have been enacted without legislative competence. It is further pleaded therein that Entry 52 of List II of Schedule VII of the Constitution does not authorise the State Legislature to enact a law authorising a Municipal Corporation to demand Octroi on the goods which do not enter into the local limits of the Municipal Corporation for consumption, use or sale therein. The Corporation cannot be invested with authority to levy and recover Octroi on the import of goods which are re-exported for sale outside the municipal limits. The petitioner-Corporation does not dispute its liability to pay Octroi in relation to the three categories enumerated in paragraph 2 of the judgment. The petitioner disputes the authority of respondent No. 1 to impose and demand Octroi duty on the petroleum products imported by the petitioner within the limits of Municipal Corporation, which are transmitted to its dealers at their sale points situated outside the area of respondent No. 1. It is contended that the petitioner-Corporation does not sell the petroleum products to such dealers within the area of respondent No. 1. These dealers place orders for unascertained petroleum products. The goods are carried in the tank lorries belonging to the petitioner-Corporation or engaged by it for the transportation of petroleum products and delivered at the petrol or diesel pumps of the dealers which are located outside the municipal limits of Jalandhar. The property in the petroleum products passes to the dealers at their premises and not at the depot of the petitioner and the sale of the petroleum products by the petitioner to its dealers is completed at the premises of the dealers situated outside the territorial limits of respondent No. 1. Such petroleum products are thus not imported within the local area of respondent No. 1 for consumption, use or sale therein. They enter the areas of respondent No. 1 only for the purpose of being re-exported to the places of business of its dealers/agents. So the entry of these goods within the area of respondent No. 1 does not attract imposition of any Octroi duty. The petitioner does not contest its liability to pay Octroi duty on the types of goods pertaining to categories (i) to (iii).

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(6) In the written statement filed by respondent No. 1 it has been, *inter alia*, pleaded that the petitioner-Corporation imports petroleum products within the limits of the Municipal Corporation, Jalandhar, through Pipe Line and the delivery is received by it in huge tanks. The petitioner-Corporation receives payment in advance either in cash or through demand drafts as the sale proceeds from its various dealers. In this way the sale consideration is realised by the petitioner-Corporation at Jalandhar. Cash Memos issued to various dealers by the petitioner-Corporation (Annexures R-1, R-2 and R-3 to the written statement) bear out this submission. A perusal of these Cash Memos reveals that Cash Memo (Annexure R-1) was issued in favour of Jiwala Mukhi Filling Station, Chandigarh Road, Balachaur, District Hoshiarpur on March 13, 1985 and the payment of the amount had been received by the petitioner-Corporation from its dealer through Demand Draft dated March 9, 1985. It clearly indicates that the sale was effected on March 13, 1985 and the payment therefor was received through Demand Draft dated March 9, 1985. Similar position is revealed through other two Cash Memos. From this, it is clearly established that the sale of petroleum products had taken place within the territorial limits of respondent No. 1. The petitioner-Corporation had similar arrangement at Ambala and Kotkapura. Petroleum products are received by the petitioner-Corporation and these products are thereafter sold by it at these places to various dealers within as also outside the municipal limits, of the respective towns. The petitioner-Corporation is actually paying Octroi without any objection whatsoever. The process carried out by the petitioner is explained in the written statement. It is pleaded that Section 113 of the Act has to be read subject to the relevant provisions of the Constitution and, more particularly, Entry No. 52 of List II of Schedule Seven of the Constitution. The expression 'Octroi Duty' has a definite meaning and connotation acquired by long legislative practice. As held by the Supreme Court, Octroi Duty is leviable in respect of goods brought into the municipal area for consumption, use or sale therein.

(7) It has been explained that the petroleum products reach directly at the depot of the petitioner which is situated within the limits of the answering respondent through pipe-line. These petroleum products are then sold and transported to various places within as also outside the municipal limits. It may be seen that even where petroleum products are sent outside the municipal limits, the

factum of sale takes place within the municipal limits. The payments are received within the municipal limits. As such, all elements which constitute a sale take place within the limits of the respondent-Corporation. The petitioner-Corporation is thus liable to pay Octroi Duty.

(8) The exact procedure adopted by the petitioner-Corporation is that the dealers irrespective of the location of their place of business place their orders through prescribed indents with the petitioner-Corporation for the supply of petroleum products. The indent is accompanied by a bank draft; which represents the sale price including the transportation and other incidental charges and also local taxes of the product demanded by the dealer. This includes Octroi duty as well. The bank draft is payable to the Indian Oil Corporation Ltd. at Jalandhar. The indents submitted by the dealers are then passed by the prescribed officer of the Indian Oil Corporation Ltd. and thereafter the commodity, for which the price has been paid by the dealer, is loaded in the tank lorries from the tank of the petitioner-Corporation located within the limits of the Municipal Corporation. The goods are thus ascertained and appropriated within the municipal limits and as such the sale is complete, thus attracting levy of Octroi. These tank lorries are thereafter despatched to the place of business of the dealer and the petitioner-Corporation does not reserve the right of disposal or diversion thereof to any other dealer. As soon as the goods are ascertained and filled in the tank lorry, the sale is complete and the title in the goods passes to the concerned dealer. The mere fact that the petitioner-Corporation is also acting as a transporter would not make any difference. The act of transportation is different and takes place after the sale is completed at Jalandhar. This transportation has no bearing on the completion of sale. The transportation is not only done by the petitioner-Corporation but it is also done by private operators engaged by the petitioner. Some of the dealers have their own vehicles. In this view of the matter, the mere fact that some petroleum products are transported by the petitioner-Corporation would not affect the nature of the sale.

(9) It is further highlighted that all Sales-tax dues regarding the total sales are paid by the petitioner-Corporation to the Sales tax authorities at Jalandhar. This is because the petitioner-Corporation has accepted that the factum of sale takes place within the municipal limits of respondent-Corporation. Insurance premium is paid by the carrier when the petroleum products are transported

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from the Jalandhar Depot to other places. This is so because the sale has already taken place. The sale price of the petroleum products by the petitioner-Corporation to the dealers and then by the dealers to the customers is fixed by the petitioner-Corporation. It is reiterated that the petitioner-Corporation receives the sale consideration within the municipal limits; the bills are raised within the municipal limits; all incidents of sale take place within the municipal limits and as such the Octroi has been rightly levied on the import of the petroleum products within municipal limits. Respondent No. 1 has not levied, much less demanded, payment of any Octroi duty in respect of articles brought by the petitioner-Corporation within the municipal limits for purposes other than consumption, use or sale therein. It is made clear that it has not levied and does not purport to levy any duty on transfer of stock by the petitioner-Corporation to its depots located outside the limits of respondent No. 1. The learned Commissioner came to the conclusion that the sale took place at the depots of the petitioner located within the municipal limits. The transaction of sale stands completed within the limits of Municipal Corporation. No fault can be found with these findings. The respondents have also appended with the written statement Annexure R-7 (copy of the model Agreement which is entered into by the petitioner-Corporation with its various dealers) to support its contention that the property in goods passes within the territorial limits of respondent No. 1.

(10) The petitioner then filed a replication to the written statement, wherein it has reiterated the stand taken in the writ petition. It has been added that the realisation of sale consideration at Jalandhar is absolutely irrelevant for determining the controversy. The petroleum products are delivered at destination on the risk of the petitioner-Corporation. The title in the goods passes to the purchaser on delivery at the destination. The petitioner-Corporation is responsible for transit losses and gives credit to its dealers in case of shortage. So, the petitioner-Corporation also retains full control over the supplies and at occasions diverts the same to different dealers. In support of these assertions the bill and the credit vouchers Annexure P-7, P-8, P-9, P-10 and P-11, were appended with the replication. It is asserted that the petitioner-Corporation exercises control over the goods and title does not pass to its dealers at Jalandhar.



(11) It has been contended by Shri Subhash Kapoor, learned counsel for the petitioner-Corporation, that Section 113 of the Act authorises the levy of octroi duty on articles and animals imported into the local area without any reference to the use or consumption of the said articles and animals within those local areas. It authorises the imposition and recovery of Octroi on goods which enter the local areas for purposes other than consumption, use or sale. The State Legislature is not competent to frame such legislation. Entry 52 of List II of Schedule VII of the Constitution is referred in this connection.

(12) In order to appreciate this submission, it will be apposite to read Section 113 of the Act and Entry 52 at this stage :

“113. *Levy of Octroi.*—Except as herein-after provided, the Corporation shall levy octroi on articles and animals imported into the city, at such rates as may be specified by the Government.”

*Entry 52.*

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

(13) Every enactment imposing a tax on the citizens has to be *intra vires* the State Legislature. For its validity it has to be referable to an entry in List II of Schedule VII of the Constitution if framed by the State Legislature. Entry, 52 of List II of Schedule VII of the Constitution empowers the legislatures of the States to frame laws for imposing taxes on the entry of goods into local areas for consumption, use or sale therein. In other words, negatively put, the State Legislatures do not possess the power and authority to enact laws imposing taxes on the entry of goods into local areas which are not meant for consumption, use or sale therein. The powers of the State Legislatures are circumscribed by the entries in List II of Schedule VII. The State Legislature cannot empower municipal committees to levy tax only on the entry of goods within the local areas even when those goods are not meant for consumption use or sale within that area. The authority of the State Legislature in these matters is subject to the restrictions imposed by Entry 52. If on exercising this authority, the State Legislature enacts a law on a permissible subject-matter, but in doing so employs words and phrases which are of wide content and general connotation, then such words and phrases are construed in such a manner

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that it is held that the State Legislature had intended to restrict those words and phrases in their meanings within the parameters of the competence of the State Legislature. The Legislature in such cases cannot be credited with the intention to out-step the restrictions imposed on its powers to frame laws by the Constitution. Applying this principle, the wide language employed in Section 113 can be read down to mean that a Corporation shall levy Octroi on articles and animals imported into local area for consumption, use or sale therein. If the provisions of Section 113 are so construed, then they do not fly in the face of Entry 52 of List II of Schedule VII of the Constitution and are brought within the field reserved for legislation by the State Legislature.

(14) The final Court had an occasion to similarly construe the provisions of Section 126 of the Calicut City Municipal Act (Kerala Act 30 of 1961) in *Jothi Timber Mart, etc. v. The Corporation of Calicut and another* (1). It was held :

“Section 126 is not *ultra vires* Entry 52 of List II, Sch. VII and it does not violate the restrictions imposed upon State Legislature by the Constitution.

Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature. No authority to impose a general levy of tax on entry of goods into a local area is conferred on the State Legislature by Item 52 of List II of Schedule VII of the Constitution. The Municipality derives its power to tax from the State Legislature and can obviously not have authority more extensive than the authority of the State Legislature. If the State Legislature 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 of the power conferred by Item 52, List II, have power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale. The authority of the State Legislature itself being subject to a restriction in that behalf, Section 126 may reasonably be read as subject to the same limitations. When the power of the Legislature with

(1) A.I.R. 1970 S.C. 264

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limited authority is exercised in respect of a subject-matter, but words of wide and general import are used, it may reasonably be presumed that the Legislature was using the words in regard to that activity in respect of which it is competent to legislate and to no other; and that the Legislature did not intend to transgress the limits imposed by the Constitution. To interpret the expression "brought into the city" used in Section 126(1) as meaning 'brought into the city for any purpose and without any limitations' would amount to attributing to the Legislature an intention to ignore the constitutional limitations. The expression 'brought into the city' in Section 126 must, therefore, be interpreted as meaning brought into the municipal limits for purposes of consumption, use or sale and not for any other purpose."

To the same effect is the decision of the apex Court in *The All Saints High School etc. v. The Government of Andhra Pradesh and others etc.* (2) wherein it was held:

"It is well settled rule that in interpreting the provisions of a statute the Court will presume that the legislation was intended to be *intra vires* and also reasonable. The rule followed is that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power."

(15) Read down as we have done, provisions of Section 113 of the Act are not beyond the competence of the State Legislature and can fairly be referred to Entry 52 of List II of Schedule VII of the Constitution for validity. The first submission of Mr. Kapoor fails.

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(16) From the pleadings of the parties, a few facts clearly emerge the dealers of the petitioner-Corporation irrespective of their places of business place their orders through prescribed indent with the petitioner Corporation for the supply of petroleum products. These orders are generally accompanied by bank draft representing the sale price, including transportation and other incidental charges as also local taxes leviable/payable on the petroleum products ordered by the dealer. This includes Octroi also. The bank drafts are payable to the Indian Oil Corporation Ltd. Jalandhar. The orders are processed and passed at Jalandhar. Thereafter the petroleum products ordered, the quality and quantity of which has been specified in the order, are separated and ascertained from and out of the petroleum products stored by the petitioner at its depot. These goods are then loaded in the tank lorries, some of which are owned by the petitioner-Corporation and others belonging to the private carriers engaged by the petitioner-Corporation. The parties are, however, at variance as to whether the property in the goods is unconditionally appropriated to the contract and the property in the goods passed on to the buyer at the depot of the petitioner at Jalandhar. The case of the petitioner is that the petitioner receives orders for the sale of unascertained goods though description of the goods is mentioned in the order. The goods are then ascertained and loaded in the tank-lorries and are delivered to the concerned dealer at his place of business, which for the purposes of this petition is outside the municipal limits of Jalandhar. The property in the goods does not pass to the buyer in the depot of the petitioner when the petroleum products ordered by the dealers are loaded in the tank-lorries. Even after the loading of the petroleum products for onward transport to the dealers, the petitioner reserves a right of disposal of the petroleum products and the property in the goods passes only on their delivery to the concerned dealer at his place of business outside the municipal limits of Jalandhar and the sale takes place at that point of time. The sale does not take place at the depot of the petitioner or within the territorial limits of respondent No. 1.

(17) On the other hand, the case of respondent No. 1, which has been accepted by the learned Commissioner, Jalandhar Division also, is that the petitioner receives the order for supply of specified goods at Jalandhar, receives the sale consideration there; the goods ordered are ascertained and separated from the bulk of the goods

stored at the petitioner's depot and they are loaded in the tank-lorries; the goods are unconditionally appropriated to the contract with the assent of the dealers and the petitioner does not retain or reserve the right of disposal of these goods.

(18) In order to determine this issue it will be expedient to refer to a few provisions, in so far as they are relevant, of the Sale of Goods Act, 1930. Chapter II thereof concerns the formation of the contract. Provisions for sale and agreement to sell occur in Section 4. It reads :—

*“4. Sale and agreement to sell.*

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time lapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

Chapter III relates to the effects of the contract. Section 18 lays down that where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Section 19 provides that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For ascertaining the intention of the parties, regard has to be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Provisions contained in Section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Under Section 20 where there

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is an unconditional contract for sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. Section 21 takes care of contracts for sale of specific goods. In a contract for specific goods where the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. Section 22 lays down that where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. Since it calls for construction, Section 23 is extracted *in extenso* :

“23. *Sale of unascertained goods and appropriation.*—

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

*Delivery to carrier.*

- (2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.”

(19) As noticed earlier, the petitioner enters into contract with its dealers which, *inter alia*, provide for the sale and supply of petroleum products to its dealers. The dealers, according to the submissions of Mr. Kapoor, learned counsel for the petitioner, place orders for the sale of unascertained goods, the petroleum goods are stored at the depot of the petitioner. The petitioner in order to

comply with the orders ascertains the goods ordered, separates them from the bulk and loads them in the tank lorries for being delivered at the premises or place of business of the intending dealers which are lying outside the municipal limits of Jalandhar. A copy of the model agreement has been appended as Annexure R-7 to the written statement of respondent No. 1. We with the help of learned counsel for the parties have gone through this agreement. We do not find any clause therein which may lead to the conclusion that the property in the goods does not pass to the buyers when the goods contracted to be supplied are separated from the main bulk, ascertained and loaded in the tank lorries. There is nothing in the agreement of dealership that the property in the goods is not unconditionally appropriated to the contract. When the dealers have accepted the terms of the petitioner that the latter will supply the petroleum products in tank lorries at the place of business of the dealers, this amounts to an assent by the buyer to the unconditional appropriation of the goods to the contract on their being loaded in the tank lorries for transmission to the business premises of the dealer. Even if the submission of Shri Kapoor is accepted, the provisions of sub-section (2) of Section 23 shall be attracted. It has been explicitly provided therein that when in pursuance of the contract, the seller delivers the goods to a carrier (the lorry tanker in the present case) for transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

(20) The petitioner has not placed on the file any contract between the petitioner and its dealers to establish that the petitioner reserved the right of disposal of the goods even after they had been delivered to the carrier for the purpose of transmission to the buyer. Faced with this situation, Mr. Kapoor sought sustenance from sub-section (2) of Section 19 of the Sale of Goods Act by urging that for the purpose of ascertaining the intention of the parties, regard should be had to the terms of the contract, the conduct of the parties and the circumstances of the case. As mentioned earlier, the only contract which is a contract between the petitioner and the dealers placed on the file by respondent No. 1 does not support the plea of the petitioner. The terms of the contract do not lend themselves to the construction that the property in the goods is not transferred to the buyer at the time of the contract or in any case when the goods are loaded in the tank lorries for transmission to the buyers. He fell back on the circumstances of the case and the conduct of the parties. Mr. Kapoor

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referred to us the vouchers, Annexures P-7 to P-11 appended with the replication. Great emphasis was laid on the voucher, Annexure P-9. According to this document, the General Manager, Punjab Roadways, Moga had placed an order for the supply of petroleum products on November 23, 1984. The goods were transmitted through tank-wagon No. PBO-9940. These goods were in fact delivered on November 24, 1984 to Messrs. Punjab Agro Akhara Kalan. From these it is sought to be established that the petitioner reserved the right of disposal in the goods even after they had been loaded in the tank lorries for transmission to the buyers.

(21) This submission of Mr. Kapoor cannot prevail. The pleadings on this aspect are not very clear and specific. All the circumstances are not brought on the record under which the goods were diverted to Punjab Agro's outlet. Ought we know, the General Manager, Punjab Roadways, Moga had declined to take delivery of this particular cargo. Even a copy of the contract with the General Manager, Punjab Roadways, Moga was not produced to indicate that the petitioner had in that case retained the right of disposal expressly or by necessary implication. The other documents are to show that in a particular case when the petroleum products were found to be short in quantity than ordered and paid for the petitioner had through Annexure P-8 given credit of Rs. 87.75 to M/s Auto Car Service, Kapurthala on account of shortage which had occurred. Here again, it is not clear that the credit had been given because the shortage had occurred because of the negligence of the carrier or it was reimbursement by the seller to the buyer for the shortages. These incidents have to be viewed in the conspectus of hundreds of contracts entered into by the petitioner with its dealers during the period under consideration. These stray incidents do not prove or establish that the petitioner retained or reserved the right of disposal of the goods even if the same had been loaded in the tank lorries.

(22) We are fully convinced that the goods which had been separated in pursuance of the contract of sale had been separated, ascertained and loaded in the tank lorries at the depot of the petitioner. They had been appropriated to the contract. The assent of the buyer is implicit in the agreement of dealership and the petitioner did not reserve or retain any right of disposal of the petroleum products for which the buyers had paid for the carriage thereof. The property in the goods passed on to the buyers as and



when the goods were laden in the tank lorries, the sale was complete at the depot of the petitioner and did not take place at the respective places of business of the dealers. This view of ours is in consonance with the ratio of a Division Bench judgment of this Court in *Firm Paharia Mal Ram Sahai v. Birdhi Chand Jain and Sons* (3), wherein it was held :—

“Where there is a contract for the sale of unascertained goods and the goods are deliverable to the buyer ex-godown at place A, then if the buyer at B instructs the seller by letter to send the goods by lorry, they must be held to have impliedly assented to the appropriation made by the seller when he removed the goods from his godown and took them to the lorry. At the time when the goods were removed from the godown there was irrevocable and unconditional appropriation of the goods and if later on the seller had changed the bales, then it would have been in breach of the contract and if the goods had been destroyed after they had left the godown, then the buyer's goods would have been destroyed and not the seller's goods.”

A recent Division Bench decision of this Court in *The Municipal Committee Mukerian, District Hoshiarpur v. The Sub-Divisional Officer (C), Dasuya, District Hoshiarpur* (4), is of no help to the petitioner. In that case, the Division Bench had recorded a finding of fact that goods which entered the municipal limits were not meant for being sold, consumed or used within the municipal limits. Similarly, *S. M. Ram Lal and Company v. The Secretary to Government of Punjab and others* (5), a case where the Notified Area Committee, Faridabad claimed to levy octroi duty on the wool imported within its local area for the purpose of dyeing. After dyeing, the wool was taken outside the local limits of the Notified Area Committee. It was held that unless it was shown that the wool was brought within the limits of the Notified Area Committee, Faridabad Township, with the object of converting it into a different commercial commodity, it was not liable to octroi.

(23) There is another circumstance which supports this view. The petitioner is a registered dealer under the Punjab General

(3) A.I.R. 1956 Punjab 217.

(4) 1987 (1) P.L.R. 24.

(5) 1969 Cur. L.J. 458 (S.C.),

Indian Oil Corporation v. Municipal Corporation, Jullundur and  
others (S. S. Kang, J.)

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Sales Tax Act. In accordance with the provisions of that Act, the dealer has to specify the business premises where he engages himself in the sale and purchase of goods liable to Sales-tax. It is conceded that the petitioner pays Sales-tax at Jalandhar. If the petitioner had been engaged in selling goods which were exigible to Sale-tax at the premises of the dealers lying outside the municipal limits and at far flung places in the State of Punjab, then it was required to get registration certificate for sale of petroleum products at those places also. This also excludes the theory of sale of the petroleum products supplied by the petitioner at the places of business of the dealers outside the municipal limits.

(24) It was then contended that the petroleum products are received in the depot of the petitioner at Jalandhar through the underground pipes and they are only re-exported from the depot of the petitioner outside the municipal limits of Jalandhar and as such those goods do not attract octroi duty by respondent No. 1 because these goods do not enter the local areas of respondent No. 1 for the purpose of consumption, use or sale. In support of this contention, reliance is placed on two Constitution Bench decisions of the final Court in *Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Belgaum v. Belgaum Borough Municipality, Belgaum* (6), and *M/s Hiralal Thakorlal Dalal v. Broach Municipality and others* (7). We are not impressed. It is clear case of respondent No. 1 in the written statement as also before us that respondent No. 1 could not demand and had no intention to demand Octroi on those petroleum products which are re-exported by the petitioner to its sub-depots outside the territorial limits of respondent No. 1. The aforesaid two decisions also dealt with those cases where no sale of goods took place within the limits of the Municipality. The goods had not entered the municipal limits for the purposes of consumption, use or sale and in those cases also, the Municipality had also taken the stand that the Oil Company was liable to pay octroi only in respect of the goods imported by it for the purpose of consumption, use or sale and did not intend to charge Octroi on the goods which were sent out of the said limits. It was in this context that their Lordships of the Supreme Court held that no Octroi was leviable on goods sent by the Company from its depots inside the octroi limits to extra municipal points where they were

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(6) A.I.R. 1963 S.C. 906.

(7) A.I.R. 1976 S.C. 1446.

bought and consumed by the persons other than the Company. In view of the finding that the sale of petroleum products in these cases had taken place within the territorial limits of respondent No. 1, the ratio of the aforementioned two Supreme Court decisions is not attracted. The petitioner thus cannot seek any assistance therefrom.

In the result, we find no merit in this writ petition and dismiss the same with costs.

S. C. K.

Before : G. R. Majithia, J.

NEW INDIA INSURANCE CO. LTD.,—Appellant.

versus

CHARANJIT KAUR AND OTHERS,—Respondents.

First Appeal from Order No. 48 of 1984

November 18, 1988.

*Code of Civil Procedure (V of 1908)—O. 1 Rl. 10, O. 41 Rl. 20—Motor Vehicles Act (IV of 1939)—S. 110 A—Insurance Company filing appeal against the order of Tribunal—One of the claimants not impleaded as respondent in appeal—Application by appellant to implead such claimant as respondent—Application filed after expiry of limitation—Maintainability of such application—Power of Court to implead a respondent—Principles stated.*

*Held*, that the application is not maintainable under O. 1 Rl. 10 of the Code of Civil Procedure, 1908. A proper provision to make addition of fresh parties in appeal is contained in O. 41 Rl. 20 of the Code. The appellate Court can add a person as a respondent if it is satisfied that a party interested in the result of the appeal was inadvertently not made a party to the appeal. The addition can be made even after the expiry of limitation provided the Court is satisfied that the omission was not as a result of negligence of the applicant.

(Para 9).

*Held*, that the appellate Court has to exercise its power very cautiously. A person in whose favour the lower court has passed a decree against which an appeal has been filed, but who was not