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brought to our attention in support of that submission.

In this view of the matter the answer given by the High Court to the second question was correct and the assessment made under s. 34(1)(b) of the Act after four years from the end of the relevant assessment year was out of time. This is the only question which survives for decision and in our opinion the High Court answered it correctly.

These appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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November, 16.

BURMAH SHELL OIL STORAGE & DISTRIBUTING CO. INDIA LTD. *v.* THE BELGAUM BOROUGH MUNICIPALITY

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Octroi—Levy of Octroi on goods by Belgaum Municipality —Consumption, use or sale—Meaning of—Difference between Terminal tax and Octroi—Bombay Municipal Boroughs Act, 1925, (Bom. 18 of 1925), s. 73.

The appellant company deals in petrol and other petroleum products which it manufactures in its refineries situated outside the octroi limits of Belgaum Municipality. It brings those products inside the said area either for use or consumption by itself or for sale generally to its dealers and licensees who in their turn sell them to others. The Company also directly sells its products to Government, both civil and military, and to local bodies and big private concerns. The goods brought by the company within the octroi limits fall into four categories, viz. (i) goods consumed by the Company, (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 but consumed by them outside the octroi limits and (iv) goods sent by the Company from its Depot inside the octroi limits to extra-municipal points where they are bought and consumed by persons other than the Company.

The Company filed a writ petition in the High Court against the respondents for a writ or writs to prohibit them from charging octroi from the Company on its products brought inside the octroi limits for sale. The writ petition was dismissed by the High Court. The appellant came to this Court by certificate under Art. 133(i)(b) of the Constitution. During the course of arguments, the respondents agreed to grant a refund on those goods belonging to the appellant company which were actually sent outside octroi limits. The appellant also admitted its liability to pay octroi on goods consumed by itself. This Court was required to give its decision only on the rest of the two categories of goods.

Held, that the Company was liable to pay octroi tax on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it. The company was held not liable to octroi in respect of goods which it brought into the local area and which were re-exported.

The word consumption in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word 'consumption' has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up.

Octroi and terminal tax resemble in the sense that they are both leviable in respect of goods brought into a local area. Otherwise, they are quite different from each other. While terminal taxes are leviable on goods "imported or exported" from municipal limits denoting thereby that they are connected 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 shows 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

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the area for consumption, use or sale. They were leviable in respect of the goods put to some use or the other in the area but only if they 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.

Burmah Shell Oil and Dist. Co. v. *Manmad Municipality*, A.I.R. 1958 Bom. 43, *The State of Bombay* v. *The United Motors (India) Ltd.*, [1953] S.C.R. 1069 and *Anwar Khan Mahboob Co.* v. *The State of Bombay*, [1961] 1 S.C.R. 709, relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 431/1961.

Appeal from the judgment and order dated May 31, 1960, of the Mysore High Court in Writ Petition No. 94 of 1959.

M. C. Setalvad, Attorney-General of India, D. N. Mukherjee and *B. N. Ghosh,* for the appellant.

A. V. Viswanatha Sastri and *R. Gopalakrishnan,* for the respondent.

1962. November 16. The Judgment of the Court was delivered by

Hidayatullah, J.

HIDAYATULLAH, J.—In this appeal by certificate under Article 133 (1) (b) of the Constitution granted by the High Court of Mysore against its judgment and order dated May 31, 1960, the Burmah Shell Oil Storage & Distributing Company of India Ltd. is the appellant and the Belgaum Borough Municipality, Belguam, the respondent. The appeal arises out of proceedings commenced by the Company against the Municipality under Article 226 of the Constitution for a writ or writs to prohibit the Municipality from charging octroi from the Company on its products brought inside the octroi limits for sale. The petition of the company was dismissed by the High Court. The Company deals in petrol and other petroleum products which it manufactures in its refineries situated outside the octroi limits of Belgaum

Municipality. It brings these products inside the said area either for use or consumption by itself or for sale generally to its dealers and licensees who in their turn sell them to others. The Company also directly sells its products to Government both Civil & Military, and to local bodies and big private concerns. The Company has a Divisional Office and Depot in Belgaum and the petition in the High Court was filed by the Divisional Manager in-charge of that area. The Company in the normal course of its business operations appoints dealers and licensees and typical forms of agreement between the Company and such dealers and licensees have been exhibited in the case. According to the Company, the goods brought by it within the octroi limits can be divided into four separate categories as follows :—

1. Goods consumed by the Company ;

2. Goods sold by the Company through its dealers or by itself and consumed within the octroi limits by persons other than the Company ;

3. Goods sold by the Company through its dealers or by itself inside the octroi limits to other persons but consumed by them outside the octroi limits ; and

4. Goods sent by the company from its Depot inside the octroi limits to extra-municipal points where they are bought and consumed by persons other than the company.

We are concerned in this appeal with a period of three years commencing on October 22, 1955, and ending on a like date in 1958. During this time, octroi duty levied on all goods brought inside the octroi limits of the Municipality, irrespective of their destination according to the four categories above enumerated,

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amounted to Rs. 1,40,544.51 nP. The Company claimed in the High Court that it was not liable to pay octroi on categories other than the first. This claim was rejected but the Municipality agreed to give a refund according to rules in respect of the fourth category.

Before dealing with the contentions in the case it is necessary to refer briefly to the scheme of taxation under the Bombay Municipal Boroughs Act, 1925, by which the Belgaum Municipality is governed and the by-laws and rules made by the Municipality for the levy of octroi within the octroi limits of the Municipality. The Municipality draws its power to levy taxes from section 73. That section provides *inter alia* as follows :—

> "(1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of section 75 and 76, a Municipality may impose for the purposes of this Act any of the following taxes, namely :—
>
> x x x x
>
> (iv) an octroi on animals or goods or both, brought within the octroi limits for consumption, use or sale therein ;"

The words "use or sale" were substituted for the words "or use" from May 5, 1954, by an Amending Act of 1954 (Bombay Act 35 of 1954). In other words, before 1954 the word "sale" did not figure in the description of "octroi on animals or goods or both" which the Municipality was authorised to impose.

Sections, 75 and 76 lay down the procedure which the Municipality must follow before imposing a tax. It is not necessary to quote the sections. It

is sufficient to say that the Municipality passes a resolution at a general meeting, selects one of the taxes mentioned in section 73 and approves rules prepared for the purpose of clause (j) of section 58 specifying the classes of persons or property or both which would be made liable, any exemptions to be granted, the amount or rate at which the tax is to be levied and any remission or refund to be allowed together with the conditions under which such exemption, remission or refund would be granted. There are other matters which the rules cover but it is not necessary to mention them here.

After the resolution is passed the Municipality publishes the rules together with a notice informing all persons concerned. Any inhabitant of the Municipal Borough objecting to the imposition of the tax, or its amount or the rate proposed or the classes of persons or property to be made liable or to any exemption proposed may object within one month. The Municipality then considers the objection, records its opinion upon them and forwards the notice, the objections, its opinion upon them and the rules with modifications, if, any, in view of the objections, to the State Government. Section 76 then lays down that the State Government may refuse to sanction the rules submitted or to sanction them with or without modification and under section 77 the rules are once again published along with the sanction and from the date prescribed by the rules so published the tax is imposed. Section 58 to which reference was made above confers power on the Municipality to make rules not inconsistent with the Act and clause (j) in so far as relevant to our purpose reads as follows :—

> "(j) prescribing the taxes to be levied in the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the conditions on which and the

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extent to which remission will be granted, and the system on which refunds will be allowed and paid, in respect of such taxes; the limits of the charges or payments to be fixed..... ....."

Section 61 (1) confers on the Municipality the power to make by-laws for many purposes. Clause (n) thereof authorises—

> "fixing of octroi limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system under which refunds are to be made on account thereof when the animals or goods on which octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not to be intended for consumption, use or sale within the municipal borough, and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum amount for which any claim to refund may be made."

Under section 60 the Municipality has to follow as far as may be the same procedure for the suspension, modification or abolition of any tax and the suspension, alteration or recession of any rule prescribing a tax. In 1925 the Municipality had framed rules and by-laws before it became a Borough Municipality. These rules are called the "The Belgaum Municipality Octroi Rules and By-laws", and are continued by virtue of section 5 (b) of the Borough Act. Before the amendment of the Boroughs Act in 1954, rule 4(1) of the Octroi Rules and By-laws ran as follows :—

> "Subject to the exemptions and the provisions hereinafter expressly specified, a tax on all

goods of the description mentioned in Schedule "A" hereto annexed, shall, on the import thereof, be payable to the Municipality at the rates specified for such goods respectively in the said schedule."

When the Act was amended in 1954 by including the word "sale" in the description of octroi the rules and by-laws were not reframed nor was the procedure under section 76 read with section 58 (j) followed to impose octroi on animals and goods *sold* within the octroi limits. Rule 4 (1) also continued as before.

The Company which had paid octroi on all its products brought within the octroi limits of the Belgaum Municipality before the amendment including the goods not consumed by itself but sold to others started a correspondence saying that in as much as the law was newly amended to include "sale" in the description of "octroi", the Rules and By-laws ought to have been framed again and the procedure under section 76 read with section 58 (j) followed. As this was not done, the Company contended, the tax could not be collected on goods which were merely sold but not consumed inside the octroi limits. In the course of this correspondence, the Company did not object generally to the levy of octroi on goods brought inside the octroi limits for consumption, use or sale but asserted that octroi on goods which were sent out of the said limits was liable to be refunded. This the Municipality was prepared to grant subject to the rules. Even before the High Court the learned Advocate appearing for the Municipality stated that if any goods belonging to the company were actually sent outside the octroi limits the Municipality was prepared to grant refund on proof thereof. That is the stand of the Municipality even to-day. The Company also stated before us that it was liable to pay octroi on goods consumed by itself. The dis-

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pute has thus narrowed down to the second and third categories.

The learned Attorney General appearing for the Company contends that the words "consumption or use" must be contrasted with the word "sale". Sale, he argues, introduces a person other than the one who brings the goods or animals within the Municipal limit and as the words "consumption or use" are not qualified to say that the consumption or use may be by any one, those words must necessarily denote consumption or use by the very person who brings the goods or animals. In support of this argument he refers to entry No. 49 of the second list of the Government of India Act, 1935, Sch. VII which reads :—

> "49. Cesses on the entry of goods into a local area for consumption, use or sale,"

and entry No. 52 of the State List in the Constitution which reads :—

> "52. Taxes on the entry of goods into a local area for consumption use or sale therein."

It is pointed out that these Constitutional documents themselves indicate that octroi may be on goods (or animals) brought into a local area (a) for consumption (b) for use or (c) for sale, and the Boroughs Act, before the amendment, had selected only two, namely, consumption and use and left out the third that is, "sale". The tax was thus payable only when the goods or animals were brought for consumption or use, by the person who brought them in, but not when the goods or animals were brought in and sold and were consumed or used by the purchaser or someone else. It is conceded that after the amendment the tax was intended to be collected even in respect of goods brought for sale but here it is pointed out that the procedure under sections 75, 76 and 77 has not been followed as required by section 60 of the Boroughs Act and the imposition of

octroi on goods and animals brought in for sale fails to be effective. It is said that this amounts to a new tax and it needed to be imposed according to the provisions above-mentioned and reliance is placed upon *Burmah Shell Oil Storage and Dist. Co.* v. *Manmad Municipality* (1).

> "The Boroughs Act defines octroi in section 2 (12)—"octroi" shall include a terminal tax."

In clause (v) of section 73 (1) terminal tax is mentioned separately and section 61 (1) (O) gives the power to fix terminal tax limits and stations and other ancillary matters. The proviso to section 73 (1) is material and it reads :

> "provided that, save as provided in clause (xiv) no such tax shall be leviable in boroughs in which an octroi was not levied on or before the 6th July, 1917."

Clause (xiv) says that the Municipality may impose any other tax "which under the Constitution the State Legislature has power to impose in the State."

The entries in the Legislative Lists which have been cited from the Government of India Act 1935 and the present Constitution and the definition of octroi as including terminal tax need some explanation. The definition of octroi is subject to the context and may not apply to enlarge the ambit of octroi. But the reason underlying the extended definition gives us the true meaning of octroi as described in section 73 (1) (iv). The Boroughs Act was passed in 1925 and replaced an earlier Act of 1901. The Boroughs Act, therefore, was prior to the Government of India Act, 1935. Under section 80A (3) (a) of the Government of India Act, the Governor General-in-Council had framed rules on December 16, 1920, which were known as the Scheduled tax Rules. Schedule II of these Rules

(1) A.I.R. 1958 Bom. 43.

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dealt with taxes for the benefit of Local Authorities and included :

7. Octroi

8. A terminal tax on goods imported into, or exported from a local area, save where such tax is first imposed in a local area in which octroi was not levied on or before July 6, 1917.

[Entry No. 8 quoted above was substituted by the Government of India Notification No. 7 dated January 24, 1924, for an entry which read formerly "A terminal tax on goods imported into a local area in which an octroi was levied on or before July 6, 1917."]

The particular tax was 'octroi' and there was no description of the tax. The word 'octroi' comes from the word 'octroyer' which means 'to grant' and in its original use meant 'an import' or 'a toll' or 'a town duty' on goods brought into a town. At first octrois were collected at ports but being highly productive, towns began to collect them by creating octroi limits. They came to be known as 'town duties'. These were collected not only on 'imports' but also on 'exports' see Beuhler: Public Finance (3rd Edn.) p. 426. Grice in his National and Local Finance p. 303 says that they were known as 'ingate tolls' because they were collected at toll gates or barriers. Normally, they were levied on goods meant for consumption but in Seligman's Encyclopaedia of Social Sciences Volume IX page 570, 'octrois' are described without any reference to consumption or use. This is how the editors describe octrois :—

"As compared with the facilities of the National Government the possibilities of raising revenue by local bodies are quite limited. All forms of indirect taxation are practically closed to local authorities. They are unable to levy

customs duties, although they may collect the so-called octrois that is, duties levied on goods entering town."

It will be noticed that in the Government of India Act 'octroi' was named but not described and now the Constitution avoids the word 'octroi', as did the Government of India Act 1935 before, and gives a description. In the Boroughs Act the definition of 'octroi' includes Terminal Tax. Terminal Tax, as the Indian Statutory Commission points out, formerly meant in Indian fiscal terminology a tax which was levied at Railway Stations and collected by the Railway Administration on all goods imported or exported from the Station. It was also collected from passengers in some Municipalities. We also learn from the Report that on the recommendation of a Committee appointed in 1908 terminal tax took the place of octroi in a large number of Municipalities at first in the United Provinces and then in others. At first the Government of India were not in favour of such a change. Octrois were levied on goods brought into a local area for consumption, use or sale and were indirect taxes but terminal taxes were regarded as direct. On July 6, 1917, the Government of India by a Resolution reversed their former policy and agreed that the conversion was not a change from indirect to direct taxation. Terminal taxes were of the nature of octrois, but were not quite the same. The main differences were : that there was no system of refunds under the Terminal Tax Rules (Terminal taxes as Findlay Shirras tells us were sometimes known as 'octrois without refunds') and for octroi to be levied the goods must be brought in for sale, use or consumption.

After the Scheduled-tax Rules the collection of terminal tax was restricted to those areas in which octroi was levied on or before July 6, 1917. Most of the Municipal laws allowed collection of terminal taxes only if octrois were not levied. As the Taxation

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Enquiry Commission observes : (Vol. III Ch. IV page 401)

> ".....the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must not only enter the area, but must be "for the purpose of consumption, use or sale therein." Usually, this requirement is sought to be satisfied by (a) the *ab initio* exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds, therefore, are the distinguishing features of the octroi system."

Octrois and terminal taxes were different taxes though they resembled in one respect, namely, that they were leviable in respect of goods brought into a local area. While terminal taxes were leviable on goods 'imported or exported' from the Municipal limits denoting thereby that they were connected with the traffic of goods, octrois, according to the legislative practice then obtaining were, leviable in respect of goods brought into a Municipal area for consumption or use or sale. It is not necessary to cite the Municipal Acts prior to 1935 but a reference to them will amply prove that such was the tax which was contemplated as octroi.

When the Government of India Act 1935 was enacted terminal taxes became a central subject vide entry No. 58 of List I, which reads as follows :—

> "58. Terminal taxes on goods or passengers carried by railway or air."

At that time, it was suggested by Sir Walter Leyton that both octrois and terminal taxes should be provincial subjects and that it would perhaps be possible to fuse the two. The Joint Committee, however,

recommended otherwise and terminal taxes were separated from octrois and included in the central list. The proceeds of the terminal taxes, however, were to be distributed among the provinces. In allocating 'octrois' to the Provinces, the word itself was avoided because terminal taxes are also octroi in a sense and instead a description of the tax was mentioned in entry No. 49, which has been quoted already, and which read "Cesses on the entry of goods into a local area for consumption, use or sale." This scheme has been repeated in the Constitution with the difference that the entry relative to terminal tax now reads "terminal taxes on goods and passengers carried by railway, sea or air", and the word "taxes" replaced the word "cesses" in the entry relative to octrois.

The history of these two taxes clearly shows 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 consumption, use or sale. 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. When the Government of India Act, in its Scheduled Tax Rules, mentioned "octrois", it intended to give the power to levy taxes in this well-understood sense, namely, on the entry of goods in a local area for consumption, use or sale. The Boroughs Act, which was enacted in 1925 mentioned only "consumption and use." Ever since its enactment, no dispute seems to have been raised by any person that goods brought in for sale were exempt from octrois. All persons who brought the goods apparently paid this tax without objection. It was only in 1954 when the Legislature seeking to bring the description of octroi in the Municipal Act in line with the Constitution included the word "sale" also, that the dispute was raised by persons who were affected, and they were

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some of the persons who had paid the tax before, even though the word "sale" was not there. Of course, the conduct of the tax-payer is not determinative of the meaning of the words "consumption or use." But it shows how the term was always understood. The word consumption in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word "consumption" has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up. The word "consumption" occurs in explanation to sub-Article 1 of Article 286 of the Constitution. In explaining the ambit of that word this Court observed in *The State of Bombay* v. *The United Motors (India) Ltd.* (1) as follows:—

> "The expression "for the purpose of consumption in that State" must, in our opinion, be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State."

It is not the immediate person who brings the goods into a local area who must consume them himself, the act of consumption may be postponed or may be performed by someone else but so long as the goods have been brought into the local area for consumption in that sense, no matter by whom, they satisfy the requirements of the Boroughs Act and octroi is payable. Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not 'used up' in the process. A motor-car brought into an area for use is not used up in the same sense as food-stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using

(1) [1953] S. C. R. 1069, 1084.

them up or for consumption in a manner which destroys, wastes or uses them up. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense. Recently, in *M/s. Anwarkhan Mahboob Co.* v. *The State of Bombay*(1) while dealing with the Explanation to Article 286(1), this Court observed as follows :—

> "In answering that question it is unnecessary and indeed inexpedient to attempt an exhaustive definition of the word "consumption" as used in the explanation to Art. 286 of the Constitution. The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food ; we speak of people consuming tea or coffee or water or wine, when they drink these articles ; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities." Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the 'utilization' thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption. Thus grapes may be "finally consumed" by eating them as fruits ; they may also be consumed by drinking the wine prepared from "grapes." Again, the final act of consumption may in some cases be spread over a considerable period of time. Books, articles of furniture, paintings may be mentioned as examples. It may even happen in such caes,

(1) [1961] 1 S. C. R. 709, 715.

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that after one consumer has performed part of the final act of consumption, another portion of the final act of consumption may be performed by his heir or successor-in-interest, a transferee, or even one who has obtained possession by wrongful means. But the fact that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through different stages of production and for such different stages, there would exist one or more intermediate acts of consumption..... ..... In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity."

Looking to the trade of the company, it is quite obvious that it brings in the goods (a) for consumption by itself—Which of course is within the term 'octroi' as described; (b) for re-export either by itself or through dealers outside the area—which as is admitted by the municipality, entitles the company to a refund of tax and (c) for sale by it directly to consumers or to dealers who distribute the goods within the area to ultimate consumers. So long as the goods are brought inside the area for sale within the area to an ultimate consumer, it makes no difference that the consumer does not consume them in the area but takes them out for consumption elsewhere. A motorist who buys petrol within the municipal area and goes outside it for a drive buys the petrol in the area for purposes of consumption and the person who keeps and stores the petrol for sale in such circumstances keeps it for consumption

therein. The word "therein" does not mean that all the act of consumption must take place in the area of the municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area. Indeed, the consumer may never consume them as, for example, a motorist buys a tin of oil and finds that it does not suit his vehicle and leaves it lying on his shelf. The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being 'use or consumption'. The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use. In other words, a sale of the goods brought inside, even though not expressly mentioned in the description of octroi as it stood formerly, was implicit, provided the goods were not re-exported out of the area but were bought inside for use or consumption by buyers inside the area. In this sense the amplification of the description both in the Government of India Act 1935 and the Constitution did not make any addition to the true concept of 'octroi' as explained above. That concept included the bringing in of goods in a local area so that the goods come to a repose there. When the Government of India Act 1935 was enacted, the word 'octroi' was deliberately avoided and a 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

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word 'octroi' was also avoided because terminal taxes are also a kind of octroi and the two were to be allocated to different legislatures.

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

In our opinion, the company was liable to pay octroi tax on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it. The company was, however, not liable to octroi in respect of goods which it brought into the local area and which were re-exported. But to enable the company to save itself from tax in that case it had to follow the procedure laid down by rules for refund of taxes.

For the reasons above stated this appeal must fail. It will be dismissed with costs.

Appeal dismissed.