

(1994) 06 KAR CK 0010

In the Karnataka High Court

Case No : Writ Appeals No's. 274 to 278 of 1994

Lipton India Limited and another

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 13-06-1994

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 B (2), 3 (2), 8 A

Citation : (1994) ILR (Kar) 1848

Hon'ble Judges : S.B. Majmudar, C.J.;N.D.V. Bhat, J

Bench : Division Bench

Advocate : P. Chidambaram and K.G. Raghavan, for the Appellant; B.V. Acharya, Advocate-General and H.G. Ramesh, Government Advocate, for the Respondent

Judgement

S.B. Majmudar, C.J.—These five writ appeals are taken out by the common appellants/original writ petitioners challenging the order passed on December 21, 1993, by learned single Judge K. Shivashankar Bhat, rejecting the writ petitions of the appellants on the ground that there is availability of effective alternative remedy. The learned Judge has, however, observed that clarification issued by the Commissioner of Commercial Taxes in individual case is not binding on the assessing authority nor the appellate authority. They are required to decide the question according to law.

2. In order to appreciate the grievance of the appellants, in these common appeals, it is necessary to note a few introductory facts :

3. Introductory facts :

The first appellant is a company incorporated under the Companies Act, 1956. It is engaged in the business of manufacturing and selling, inter alia, blended packet teas in Karnataka. The first appellant is a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act" for short) and it comes within the jurisdiction of fourth respondent for assessment under the Act.

4. It is the case of the second appellant that he is the shareholder of the first appellant-company.

5. According to the appellants, the first respondent, Government of Karnataka, in order to encourage industrialisation in the State, issued an order dated September 27, 1990 sanctioning a revised package of incentives and concessions for new industrial investment in the State with effect from October 1, 1990. The package included an incentive in the nature of sales tax concessions. Pursuant to the above, the first respondent also issued a notification u/s 8A of the Act which exempted goods manufactured and sold by new industrial units in the manner specified therein. By the said notification goods manufactured and sold by "new industrial units" situated in Zone IV are entitled to 100 per cent tax exemption without any monetary limit for 5 years from the date of commencement of commercial production. The term "new industrial unit" means a unit certified to be eligible for exemption by the prescribed authority, namely, the Director of Industries and Commerce or his authorised nominees. The said notification makes provision for the prescribed authority to issue a certificate in the regard in the manner provided under the heading "Procedure". It is necessary to point out that the tea manufacturing industry is not one of the industries in the negative list of industries specified as not being eligible for incentives in terms of annexure III to Government Order dated September 27, 1990.

6. It is the further case of the appellants that having regard to the incentives and exemption offered by the first respondent as aforesaid, the first appellant decided to set up a new factory for the manufacture of blended packet teas at Dharwar Growth Centre (falling under Zone IV backward area). The first appellant set up its unit as above with a fixed capital investment of about Rs. 1.34 crores and the commercial production and sale commenced on September 8, 1992.

7. The appellant contends that the 1st appellant was assured of all encouragement and incentives in terms of the Government order and exemption notification by the 1st and 2nd respondents. However, the 3rd respondent sought to take a view that the 1st appellant was not entitled to the benefit of exemption vide its letter dated April 2, 1992. Therefore, the 1st appellant took up the matter with the 1st and 2nd respondents, whereupon the 2nd respondent by letter dated April 24, 1992, addressed to the 3rd respondent clearly confirmed the entitlement of the 1st appellant to full exemption from sales tax. That position was also confirmed to the 1st appellant by the 2nd respondent by letter dated June 10, 1992. After the commencement of the commercial production, the 2nd respondent, after examining the merits of the 1st appellant's case, also issued a certificate dated December 1, 1992 certifying that the 1st appellant is entitled to the benefit of the sales tax exemption for a period of 5 years under the Government's notification.

8. It is the further case of the appellants that on the basis of the aforesaid admitted factual position the 1st appellant started availing of sales tax exemption

on blended packet teas manufactured at its unit at Dharwar and sold in the State of Karnataka for the assessment year 1992-93 as per monthly returns in form 3 prescribed under the Act. However, in utter disregard of the eligibility of the 1st appellant for exemption from payment of sales tax in terms of the Government Order dated September 27, 1990, exemption notification dated June 19, 1991, issued u/s 8A of the Act and the eligibility certificate dated December 1, 1992, the 4th respondent issued three notices u/s 12B(2) of the Act for the months of April, May and June, 1993, dated August 12, 1993 (marked and produced along with writ petitions as annexures H, J and K) denying the benefit of exemption on the sale of blended packet tea manufactured at the Dharwar unit and proposed to levy and recover the sales tax accordingly. The 1st appellant replied to the said notices drawing the attention of the 4th respondent to the fact that its turnover relating to blended packet tea was not exigible to tax in view of the exemption granted by the Government. The 1st appellant produced all the necessary documents including the eligibility certificate issued by the second respondent in terms of the exemption notification issued u/s 8A of the Act. The appellants further contended that while the 1st appellant was expecting respondent No. 4 to react fairly, reasonably and in a legal manner and drop all further proceedings pursuant to the said section 12B notices the 1st appellant was once again confronted with a proposition notice u/s 12(3) of the Act (produced as annexure "P" to the writ petition) stating that there is urgency to take up the assessment for the current year 1992-93 leaving old assessment as it is. It was proposed to disallow the exemption claimed in respect of turnover of blended packet tea and bring the same to tax at 13 per cent. In the light of the proceedings initiated by the 4th respondent the 1st appellant approached by its letter dated September 8, 1993, the 3rd respondent for issuing appropriate directions to the 4th respondent to drop the proceedings initiated u/s 12B(2) of the Act. It is the case of the appellant that the 3rd respondent by its letter dated November 27, 1993 (produced as annexure "R" to the writ petition) took the stand that the 1st appellant was not entitled to the benefit of exemption for the reason that blending of "tea" does not amount to "manufacture".

9. It is under these circumstances that the appellant filed Writ Petitions Nos. 43562 to 43566 of 1993 before this Court claiming the following reliefs :

(i) For a declaration that the 1st appellant is entitled to benefit of exemption in terms of Government order, exemption notification and eligibility certificate referred to above, in respect of the new industrial unit at Dharwar.

(ii) To quash the clarification dated November 27, 1993 (annexure R) issued by 3rd respondent.

(iii) To quash the proceedings of 4th respondent relating to assessment year 1992-93.

(iv) The issuance of a writ of mandamus to respondents 3 and 4 to implement the exemption certificate dated December 1, 1992 issued by respondent 2.

(v) To restrain respondent 4 from enforcing the proposition notices dated September 4, 1993 and notice (annexure "P") dated August 12, 1993 issued u/s 12B(2) of the Act for the months of April, May and June, 1993 (annexures "H", "J" and "K").

10. The learned single Judge before whom the writ petitions came up for hearing on admission took the view as aforesaid, that as there was alternative remedy for the appellant under the Act there was no case for interference. The clarification issued by the Commissioner of Commercial Taxes in individual case is not binding on the quasi-judicial authority under the Act. As noted earlier, that has brought the appellants by way of the present appeals. It may be mentioned that ultimately 4th respondent passed assessment orders, annexures S, T, U, V, confirming the demands on the ground of clarification issued by the 3rd respondent and also on merits that the Government exemption notification does not apply to the product of "blended tea" as brought forth by the appellants as there was no process of manufacture involved therein.

11. The said assessment orders are with reference to the demand of sales tax on "blended tea" sold by the appellants in April, 1993, May, 1993, June, 1993 and in the accounting year 1992-93. These four assessment orders, annexures S, T, U and V are brought in challenge in the present proceedings by getting the writ petitions amended as per interlocutory applications filed in these appeals and which interlocutory applications are allowed by us after hearing both sides. Therefore, now these appeals are ultimately confined to the challenge to these assessment orders though the earlier notices are also sought to be challenged along with them.

12. These appeals were admitted on March 2, 1994 and ordered to be fixed for final hearing on April 5, 1994. A common interim order was passed to the effect that there would be stay of demand of disputed tax as contended in four assessment orders (annexures S, T, U and V) on the condition that the appellants without prejudice to the contentions urged in these appeals shall deposit with the Deputy Commissioner, 4th respondent, 25 per cent of the disputed amount on or before March 31, 1994. It is clarified that in case the appellants succeed in the appeals ultimately, and the appellate court directs refund of any amount so deposited, the respondent-State shall refund that amount with 18 per cent interest to the appellants within the time laid down by the court. We are informed that the appellants have duly deposited 25 per cent of the tax dues.

Rival contentions :

13. Mr. Chidambaram, learned Senior Counsel appearing for the appellant submitted that the appellant is a manufacturer of tea, that Darjeeling, Assam and Nilgiri are varieties of tea, which are grown in India. So far as this State is concerned, tea is not grown in large quantities like coffee. The State of Karnataka with a view to tempt outside industrialists to start their new industrial units in the State, evolved a package of incentives as per policy dated September

27, 1990, annexure A to the petition, that main object of this policy was four-fold : (1) Object of employment generation, (2) giving encouragement to village artisan based industries, which are tiny and small industries, (3) taking development to backward regions, by offering incentives to entrepreneurs, who established their new industries in backward areas, and (4) giving opportunities to persons belonging to backward classes like SC, ST. As per the said package of incentives, new industrial investment was to be attracted from October 1, 1990, onwards and as per the said package, sales tax concessions were given, in connection with output of new industrial units. Even packing units were covered by the same package of incentives. The Secretary of Commerce and Industry, State of Karnataka, was to function as the Chairman of the committee monitoring the said package incentives and his decision on interpretation of the policy was final, that so far as appellant is concerned, it is a medium scale industry, which on the basis of the aforesaid package of incentives desired to establish its new industrial unit in Zone No. 4. That it was not covered by the exclusive list denying the benefits to the listed industries contained therein. Mr. Chidambaram further contended that pursuant to the said Government policy, offering a package of incentives to the new industrial entrepreneurs, notifications were issued u/s 8A of the Sales Tax Act and Central Sales Tax Act on June 19, 1991. The said notifications have to be read in harmony with the Government Policy dated September 27, 1990 and cannot be read de hors it. It was submitted that as per explanation I contained in the said notification u/s 8A of the Act which is annexure B to the petition, a certificate is to be issued by the Director of industries and Commerce or his authorised nominee to the effect that the new industrial unit duly certified was to be eligible for exemption under the notification, was to be treated as final and binding on the assessing authorities under the Sales Tax Act. That even according to the said procedure laid down by the notification u/s 8A, certificate is duly issued on December 1, 1992, by the competent authority under the Department of Industries, and therefore, nothing further was required to be done by the assessing authorities under the Sales Tax Act and it ought to have been held that the appellant industry was entitled to exemption from payment of sales tax for five years from the date of starting of its commercial production, i.e., September 8, 1992, as mentioned in the said certificate dated December 1, 1992 and consequently, the impugned notice and the impugned assessment orders are null and void and without jurisdiction.

14. It was next contended that on the doctrine of promissory estoppel the respondents are bound to make available to the appellant the promised sales tax exemption as per the policy dated September 27, 1990, as on the basis of the said policy and in the light of the certificated of the competent authority under the Government notification u/s 8A of the Act, the appellant had acted and had changed their position to their detriment by going to the backward area like Dharwar and by purchasing costly land and by erecting costly plant for blending and mixing tea, that they had employed large number of persons in their industry, that the process undertaken at the said industry clearly brought out a

new commercial product like blended tea. That was done by employing mechanical process through costly machinery for dilly-dalling, tipping blend drums, quality testing, automatic weighing followed by automatic packing and subjecting to final quality test, etc. In short, the appellant's industry at Dharwar followed all mechanics for tea manufacturing process and therefore, the appellants were entitled to sales tax exemption both under Government policy dated September 27, 1990 at annexure A, and notification u/s 8A of the Sales Tax Act, annexure B and also under notification, annexure C, under the Central Sales Tax Act.

15. In support of these contentions, various decisions were relied upon, to which we will make a reference, hereinafter.

16. In the light of the aforesaid contentions, the following points were submitted by Sri Chidambaram, learned Senior Counsel, for our consideration in support of these appeals :

(1) The Government policy, annexure A and the notification, annexure B u/s 8A of the Act have to be harmoniously construed and if they are so construed, there will be no conflict between the two and therefore, the word "output" as employed by annexure A will give colour to the word "manufacture" as employed by annexure B and so construed in the light of the relevant clauses of these notifications, annexures A and B, the word "manufacture" must mean what is produced or what is the out-turn of the concerned industry. It is, therefore, that the word "manufacture" accordingly is not to be construed in a technical sense but from a broad common sense point of view so as to subserve but not subvert the parent policy of package incentives as laid down by annexure A.

(2) Even packing units are covered by exemption notification u/s 8A, annexure B to the petition and therefore, the appellants' unit would be covered by the said notification, even apart from the question whether the activity of blending of tea which is carried on by the appellants' industry at Dharwar may be called manufacturing activity or not.

(3) Even assuming that the notification u/s 8A, annexure B, requires the manufacturing activity of the new industrial unit in its strict sense, even in that sense, the blending of tea undertaken by the appellant by mechanical process can be considered to be a manufacturing process. That the appellants' product brought about at Dharwar factory is considered to be manufactured product under the Central Excises and Salt Act as well as under the Factories Act. Therefore, there is no reason to construe the very same product differently for the purpose of Sales Tax Act and sales tax exemption notification issued thereunder.

(4) It is the policy of the package of incentives, annexure A, which governs the facts of the case. It contains promises to the new industrial entrepreneurs to establish their factories in backward areas of Karnataka State and as the appellant has moved under the light of that policy and established its unit at

Dharwar, it is entitled to get the said policy enforced by the respondents and if necessary to request this honourable Court to direct the said authorities to make necessary amendments in the notification u/s 8A of the Sales Tax Act, on the doctrine of promissory estoppel.

(5) The certificate issued by the competent authority on December 1, 1992, under the very same notification u/s 8A of the Act to the effect that the appellants' industry is eligible for 100 per cent exemption for a period of 5 years on September 8, 1992 is binding on the sales tax authorities under the Act and in the light of the said certificate the proceedings were required to be dropped by the assessing authorities.

(6) The assessment orders are passed by relying upon the clarification issued by the Commission of Sales Tax dated April 2, 1992. That the said stand taken by the assessing authorities is patently erroneous and contrary to well-established principles of law. Even on merits the assessing authorities have patently erred in taking the view that the appellant's product had not undergone any process of manufacture.

17. The learned Advocate-General on the other hand joined issues and tried to refute the contentions canvassed on behalf of the appellants. It may be stated at the outset that though the learned single Judge has dismissed the petitions on the ground that the alternative remedy is available to the appellants under the Act, the learned Advocate-General did not press that preliminary objection before us and on the contrary invited our decision on merits of the main question in controversy between the parties. He was right in adopting this course for two reasons. Firstly, because the appeals are already admitted and they are at the final hearing stage wherein all the contentions on merits have been canvassed by learned counsel for the appellant. And, secondly and more importantly because in the counter filed by the respondents in these appeals a common case is put up by all the respondents including the State of Karnataka, assessing authority as well as appellate authority under the Sales Tax Act and issues are joined by them on merits. No plea is raised in the counter for relegating the appellants to the alternative remedy by way of appeals before appellate authority. We will therefore deal with the contentions canvassed by Sri P. Chidambaram for the appellant on merits.

18. So far the merits of the case are concerned learned Advocate-General at the outset submitted for the respondents that the Government order, annexure A, is a general order laying down a scheme of package of incentives to be offered to new industries and to existing industries for encouraging them to diversify their activities in this State. This Government order is not u/s 8A of the Act. That section 8A order is found only at annexure B and that order is rightly treated by the appellants to be the order under which they can claim sales tax exemption and that is why they have sought clarification from Commissioner of Commercial Taxes by their letter dated November 25, 1991 before establishing their project and before investing any amount of money in the proposed project. It was

therefore, submitted by learned Advocate-General that it is the Government notification u/s 8A, annexure B, which will have to be interpreted with a view to finding out whether the appellants can derive any benefit of sales tax exemption under the said notification. That general order, annexure A, has got superseded by notification annexure B. It was alternatively contended that even assuming both can be read together and are treated to be u/s 8A, even then, annexure B being later in point of time, if found to be restricting the scope and ambit of annexure A the later notification annexure B has to prevail and has to be given effect to. It was next contended that there was no question of promissory estoppel in the present case as the tax authority functioning under Sales Tax Act, viz., Commissioner of Sales Tax has never held out any promise to the appellants that if they establish their unit at Dharwar, even if they produce blended package tea by mixing various varieties of teas, their project will get sales tax exemption for five years. That it is not the case of the appellant that it had acted on the basis of any such promise by the Sales Tax Commissioner or even for that matter Secretary or the Minister for Finance or even the Chief Secretary of the Government. That on the contrary it is appellants' own case that the appellant was not inclined to invest a single paise for the project unless the Commissioner Sales Tax gives the clearance to his project so far as sales tax exemption is concerned. That no such clearance was ever given by the Sales Tax Commissioner. On the contrary it was clearly informed to the appellant on April 2, 1992 that no such sales tax exemption will be available to the blended package tea sought to be produced by the appellant at his Dharwar factory. Despite that, the appellant took a calculated risk and on its own started investing in the project after November 25, 1991 presumably to earn other benefits available under the package scheme mentioned at annexure A. Thus, the appellant had neither acted on the basis of any promise under annexure A nor under annexure B so far as sales tax exemption was concerned. As there was no promise there is no question of promissory estoppel especially when the appellant had not changed its position on the basis of any such promise by competent authority. It was next contended by the learned Advocate-General that the letter written by the Industries Commissioner on December 1, 1992 could not bind the sales tax authorities nor had the appellant acted on the same and had invested anything thereafter. On the contrary its commercial production started on September 8, 1992 almost 3 months prior to the said certificate issued by the Industries Commissioner. Consequently, there is no question of any promissory estoppel in this case.

19. Learned Advocate-General next contended that on a correct interpretation of annexure B notification, the certificate issued by the Industries Commissioner is to be treated only for the purpose of enabling the concerned certified new industry to apply of sales tax exemption under annexure B to the assessing authority. That the certificate had nothing to do with the moot question whether the condition precedent to earn the exemption as per exhibit B was satisfied by the concerned new industry, viz., whether it had manufactured and sold any

goods produced at the said factory and that question had to be decided by the assessing authority under the Sales Tax Act and not by the Industries Commissioner, that therefore the Industries Commissioner's letter was not at all binding on the sales tax authority and had not created any estoppel against sales tax authority demanding sales tax on appellants' products under the Act. There cannot be any estoppel against statute nor can any ultra vires Act give rise to estoppel much less promissory estoppel.

20. It was next contended by the learned Advocate-General that in order to earn sales tax exemption for five years from the date of starting of commercial production the concerned new industry must show that it had manufactured and sold the goods produced at that factory. In the present case all that the appellant is doing at Dharwar factory is to fret different brands of tea-leaves and after processing them through machinery they are mixed and packed. That this blending and packaging of tea-leaves does not give any manufacturing process for bringing out any new commercial commodity different from the tea-leaves themselves and the mixed tea-leaves which get packaged still remain flavoured tea-leaves themselves till they reach the consumer's table in the shape of tea-liquid prepared by consumers of just tea-leaves. Consequently, the notification, annexure B, cannot be pressed in service by the appellant.

21. Learned Advocate-General relied upon various decisions of the Supreme Court to substantiate his say and to which we will make reference at appropriate time hereinafter. The learned Advocate-General further submitted that the reply, exhibit R, as well as earlier clarification dated April 2, 1992 (annexure C) by the Commissioner of Sales Tax to the appellant were not u/s 3A(ii) of the Act nor were they addressed to any of the subordinates. They cannot therefore bind the assessing authorities exercising quasi-judicial powers under the Act and to that extent the assessing authority was in error when it wrongly construed it as such.

22. It was lastly submitted by the learned Advocate-General that on the merits the appellants have no case. The assessing authority is right in holding that the exemption notification, annexure B, does not help the appellants.

23. In rejoinder, learned Senior Counsel Sri P. Chidambaram for the appellants tried to refute these contentions and reiterated his submissions on merits and stated that both annexures A and B should be treated as issued u/s 8A of the Act and must be given due effect and must be harmoniously construed.

24. In the light of the aforesaid rival contentions, the following points arise for our determination :

(1) Whether the Government policy, annexure A, and the notification, annexure B, are to be construed conjointly and in that light the term "manufacture" as employed in annexure B has to be broadly construed ?

(2) Whether the appellants' packing unit at Dharwar is covered as such by the exemption notification, annexure B ?

(3) Whether the blending of tea undertaken by the appellants at Dharwar can be said to have been subjected to manufacturing process ?

(4) Whether the appellants are entitled to relief on the ground of promissory estoppel ?

(5) Whether the certificate issued by the competent authority on December 1, 1992, under the notification annexure B is binding on the sales tax authorities, and as such, exemption from sales tax is required to be given to the appellants ?

(6) Whether the impugned assessment orders suffer from a patent error of law inasmuch as they rely upon the clarification issued by the Commissioner of Sales Tax on April 2, 1992, and alternatively, whether even on merits the assessment order are unjustified ?

(7) What final order ?

Our answers to the above points are as follows :

(1) In the negative - against the appellants and in favour of the respondents.

(2) In the negative - against the appellants and in favour of the respondents.

(3) In the negative - against the appellants and in favour of the respondents.

(4) In the negative - against the appellants and in favour of the respondents.

(5) In the negative - against the appellants and in favour of the respondents.

(6) Partly in the affirmative and partly in the negative as discussed hereinafter.

(7) The appeals are liable to be dismissed.

We will now proceed to consider the points for determination seriatim, in the light of the aforesaid contentions :

25. Point No. 1 :

So far as this point is concerned, we have to keep in view that the State of Karnataka by Government Order, annexure A, dated September 27, 1990 did promulgate a revised package of incentives and concessions for new industrial investment in the State with effect from October 1, 1990. The idea of the State was to attract new entrepreneurs to this State and to encourage them to sink their investments in new industries to be started from October 1, 1990 and as incentive for the same this package of incentives and concessions was made available. Under the Government Order, annexure A, various types of incentives were offered, and they are :

1. Investment subsidy.

2. Pioneer unit subsidy.

3. Sales tax concession.

4. Special concession to thrust sectors.
5. Special concession for electronics, tele-communication and information (software) industries to be set up in electronic cities at Mysore and Dharwar.
6. Special concessions for 100 per cent export oriented industries.
7. Additional concessions to special categories of entrepreneurs like SC and ST, minority communities, etc.
8. Incentives for installation of pollution control equipment and equipment for utilisation of non-conventional energy sources.
9. Exemption from stamp duty and concessional registration charges.
10. Waiver of conversion fee for converting agricultural lands to industrial lands.
11. Incentives for rehabilitation of sick industries.
12. Rectification of anomalies in the earlier package of incentives and concessions.
13. Special incentives for large industrial investments.

26. It is easy to visualise that in this package of incentives and concessions various types of incentives were offered to attract new industries in the State. In these proceedings we are concerned with only the type of incentive, viz., sales tax exemption for which appellant is clamouring. Government Order in paragraph IVB laid down that, all new industrial units in the above sectors shall be exempted from payment of sales tax (CST and KST), on the output of such industrial units as per details given below. For Zone IV exemption limit was 100 per cent and period of exemption was for 5 years from the date of commencement of commercial production. It is not disputed that the appellant established a tea-blending and packaging industry in Dharwar which is in Zone IV. As per the said scheme of incentives as laid down by Government Order, annexure A, any new industry established in Zone IV was to get 10 per cent sales tax exemption on its output beginning from the date of commencement of commercial production of such output and extending up to 5 years from that date. Much was tried to be made out by Sri Chidambaram from the employment of the "word" output in the said scheme for submitting that even if mere mixing of tea and packaging did not result into any manufacturing activity in the strict sense, even then commercial production of such an output was covered by the said scheme. In our view this contention cannot be accepted for the simple reason that while dealing with the scheme of sales tax exemption under the Act we have to keep in view the taxing event under the Act. The taxing event under the Act is an event when a registered dealer purchases and/or sells a commodity. The scheme of sales tax exemption under the Government order does not contemplate merely a trader who purchases the goods manufactured by others and sells them in the State, but the Government order emphasises that to earn exemption from payment of sales tax the taxing event of sale of such commodity must be preceded by the

commercial production of such commodity by the industry out of its inputs and it is in that sense the word "output" is used in the Government order exhibit A. "Output" presupposes "input", therefore, "input" must by some mechanical process result into "output" of a new product as known in commercial world. Therefore, the concept of manufacture of new product by the new industry is implicit in the term "output" as employed by the Government order. It cannot be said that the scheme of sales tax exemption as envisaged by the Government order, exhibit A, wanted to cover even that activity of the new industry by which no new "output" of commercial production of any such new product took place and that even though no new commercial product is manufactured by the new industry, still it will be entitled to sales tax exemption as envisaged in the Government order. Such an interpretation of the word "output" is contra-indicated when read with the requirement of the Government Order at annexure A, that sales tax exemption will start from the date of commercial production of such an "output" and will last up to 5 years therefrom.

27. We therefore hold that the word "output" of new industrial unit must be construed as an "output" of that commercial product which is manufactured by new industry at its factory especially in any of the zones mentioned in sub-para "B" of para IV of Government Order, annexure A.

28. We may now turn to Government notification, exhibit B, issued u/s 8A dated June 19, 1991, gazetted on June 21, 1991. That notification in terms lays down that in exercise of powers conferred under sub-section (1) of section 8A of the Karnataka Sales Tax Act, the Government of Karnataka exempts with immediate effect the tax payable under the said Act in respect of the goods manufactured and sold by new industrial units mentioned in column (2) of the Table located in the zones specified in column (3) to the extent indicated in column (4) and during the period mentioned in column (5) thereof. And this is followed by the Table indicating the type of industry, its location, extent of sales tax exemption and period of exemption. The appellants' case falls in serial No. 3 being the medium scale industrial unit situated in Zone No. IV. He claims 100 per cent sales tax exemption without any monetary limit for 5 years from the date of commercial production. It will at once be clear on a conjoint reading of the Government Order, annexure A and notification annexure B that period of sales tax exemption is to commence from the date of commencement of commercial production by the concerned new industrial unit located in the Zone No. IV. But that exemption will be qua the goods manufactured and sold by the said new industrial units. Annexure A mentions "output" of new industrial units while annexure B mentions "goods manufactured and sold by new industrial units". A conjoint reading of these words in both the notifications clearly amplifies the fact that what was implicit in the word "output" is made explicit in the exemption notification u/s 8A, annexure B, namely, that the output of new industrial units which will be entitled to such sales tax exemption would be output of those goods which are manufactured and sold by the new industrial units. Therefore, in our view, there is no conflict between the term "output" as employed at

annexure A and the terms "goods manufactured" and sold by new industrial unit as employed at annexure B. Both in the context of each other mean the same thing. We, therefore, cannot accept the contention of the learned counsel for the appellants, Sri Chidambaram that annexure A has wider coverage as compared to annexure B or that the words "goods manufactured and sold by new industrial units" as mentioned in annexure B take colour from the broader term "output" as employed in Government Order annexure A. In our view, both these terms are synonymous and cover the same field and seek to cover the same type of industrial activity undertaken by the concerned new industrial unit.

29. At this stage, we may mention one submission of the learned Advocate-General for the respondents. He submitted that the Government order, annexure A, is an executive order while notification annexure B is a statutory exemption notification issued u/s 8A of the Sales Tax Act and it is that notification which would govern the field and not the general notification, annexure A. Learned Advocate-General in this connection submitted that notification u/s 8A of the the Act has to be gazetted in order to become operative as laid down by section 2(1) (p) of the Sales Tax Act which states that notification means a notification published in the Official Gazette. He also invited our attention to section 39 of the Act which lays down that :

"Every rule made under this Act and every notification issued u/s 8A shall be laid as soon as may be after it is published before each House of the State legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions immediately following, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."

It was submitted that therefore, section 8A notification has a statutory flavour and efficacy. It is a product of delegated legislative function while the package of incentives issued by the Government Order, annexure A, has no such efficacy and in any case once annexure A is followed by annexure B which is a statutory notification it would supersede the former. In support of this contention learned Advocate-General heavily relied upon the decision of the Supreme Court in Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, wherein Jeevan Reddy, J., speaking for the Supreme Court has held that the Government order issued for the removal of doubts u/s 42 of the A.P. General Sales Tax Act cannot be treated to be one granting exemption u/s 9 of the Act and that exemption u/s 9 has to be granted not only by notification but it is also to be published in Andhra Pradesh Gazette. Relying upon this decision, it was submitted that Government order cannot be treated to be an order granting

exemption in exercise of statutory power vested in the concerned authority.

30. On the other hand, learned counsel for the appellants Sri Chidambaram submitted relying upon *Pournami Oil Mills and Others Vs. State of Kerala and Another*, *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others*, and *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*, that once Government order grants exemption from tax, it can be traced to the power to grant exemption as statutorily available to the concerned authority. Especially placing reliance on *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others*, it was submitted that Karnataka Government order granting exemptions introducing a package scheme of incentives was construed by the Supreme Court as one u/s 8A of the Karnataka Sales Tax Act, so far as sales tax exemption went and this decision has a direct bearing on the facts of the present case. Now we must at once mention that in the aforesaid decisions of the Supreme Court on which reliance was placed by Sri Chidambaram for the appellant, it had no occasion to consider the effect of non-gazetting of such notification or Government orders and non-following of the statutory provisions of placing such notifications before Legislature as laid down therein, for giving effect to such notifications as exemption notifications. All that these decisions stated was that if the State has power to exempt, exemption can be given by way of Government order or by way of a notification and that non-mentioning of the source of power would not nullify the effect of the notification. These decisions are not authorities for the proposition that even if statutory procedure of gazetting the notifications and laying them before both the Houses of Legislature is not followed, these notifications or orders can still be treated to be issued in exercise of statutory power conferred by section 8A of the Act. The question with which we are concerned is directly answered by the Supreme Court only in the case of *Bengal Iron Corporation and another Vs. Commercial Tax Officer and others*, . Therefore, it must be held that as Government order, annexure A, is admittedly not gazetted nor it has been subjected to the procedure of section 39 of the Karnataka Sales Tax Act, it cannot be treated to be an exemption notification u/s 8A. Under these circumstances, the only exemption notification which has a legal effect of granting exemption from sales tax to new industries is the notification, annexure B, and not the Government order, annexure A. In fact the appellants themselves have so considered the situation by insisting from the beginning as we will show later on that they are entitled to exemption from payment of sales tax only on the basis of notification annexure B and they pitched their case only under the said notification and not de hors it as per annexure A, when they approached the concerned authorities for exemption from payment of sales tax. We, therefore, agree with the contention of the learned Advocate-General that fate of this case has to be decided in the light of annexure B notification and as per general scheme of exemption as per annexure A. However, Mr. Chidambaram, learned Senior Counsel, is right when he submitted that notification, annexure B, cannot be read

in isolation without referring to incentives scheme, annexure A. At various places in annexure B reference is made to the parent order, annexure A. To that extent Mr. Chidambaram is right but that only shows that the notification, annexure B, incorporates by reference to Government order, annexure A to the extent to which reference is made to a given part of the earlier notification and nothing more and nothing less. Under these circumstances, therefore, it must be held that the case of the appellant will have to be decided on the basis of the exemption notification, annexure B, and it has to be found out whether the appellant has satisfied its requirements, and for that purpose reference to annexure A would not be strictly relevant except for explaining the historical context in which the notification, annexure B, came to be passed. In fact, the respondents themselves have admitted in their counter at page 43, paragraph 5, that notification, annexure B, is issued u/s 8A of the Karnataka Sales Tax Act pursuant to the package of incentives announced in the Government Order, annexure A. To that extent, parent notification, annexure A, may be relevant to understand the reason why annexure B exemption notification came to be issued for new industries but beyond that annexure A notification by itself would not be of much avail to the appellants nor it is their case that they acted on the basis of annexure A. On the contrary, they continuously insisted that they are entitled to the benefit under annexure B and they have acted in the light of annexure B.

31. Under these circumstances, submission of Sri Chidambaram that annexures A and B must be read together and annexure A which is wider in coverage must be given precedence as compared to annexure B cannot be accepted.

32. However, even assuming that annexures A and B both can be construed to have been issued u/s 8A of the Act, let us see whether the situation is changed in any manner. We have already seen earlier that annexure A uses the word "output" of new industries, while annexure B uses the words "goods manufactured and sold by new industries". In the context and collocation of these notifications especially when both of them have a common objective of granting exemption to these goods from sales tax for a period of five years from the date of their commencement of commercial production, which are a result of converting inputs into different outputs, it has to be held that both these phrases are almost synonymous and they emphasise that new industries must manufacture or produce or new outputs or new commodities known as such in the commercial world. But even if we proceed on the assumption of Sri P. Chidambaram for the appellants that annexure A has wider coverage, then also it must be held that later exemption notification, annexure B, issued u/s 8A of the Act by the 1st respondent-State being subsequent in point of time would represent a new scheme of exemption and will cover all new industries established after the promulgation of exemption notification, annexure B. To recapitulate it is not the case of the appellants that they have established new industries at Dharwar in the light of annexure A. Their consistent case is that they moved in the matter only after annexure B and pursuant thereto. Not only that but in the light of annexure B they sought clarification from Sales Tax

Commissioner whether annexure B can cover their project before they think of venturing upon any investment in the proposed industry at Dharwar. Therefore, the submission of Sri P. Chidambaram that both notifications, annexures A and B, read together and harmonious and that they complement each other cannot advance the case of the appellants any further. However, on the scheme of these notifications we do not agree with the Advocate-General that annexure B notification sought to curtail scope and ambit of annexure A order. On the other hand, as we have seen earlier annexure B notification makes it explicit what was implicit in annexure A order. So far as the scheme of grant of sales tax exemption for new products of new industries is concerned, the learned Advocate-General relying on the very decision of the Supreme Court in Pournami Oil Mills and Others Vs. State of Kerala and Another, relied upon by Sri P. Chidambaram for the appellants, submitted that even in that case it has been clearly laid down by the Supreme Court that even if both Government orders granting exemption from sales tax under the Kerala General Sales Tax Act, may be considered to have been issued u/s 10 of the Act, still the second notification curtailing the benefit of first notification would govern new industries set up after the issuance of the second notification. As the appellant claims to have set up his Dharwar industry only after exhibit B, it will have to be governed by exhibit B notification alone. We find considerable force in this submission of learned Advocate-General. For all these reasons therefore it must be held that it is the second notification, annexure B, which will govern the field of controversy in this case and the appellants' case for exemption from sales tax will have to be considered in the light of second notification, annexure B, and the first notification annexure A cannot in any way advance the case of the appellants independently of the latter. It has also to be held that the notification, annexure B, does not subvert the policy of package incentive laid down by annexure A, on the contrary it effectuates the same by exercise of statutory power of exemption u/s 8A of the Act. That it would not amount to giving any technical meaning to the word "manufacture" but the meaning which is contemplated by the scheme of exemption laid down by notification, annexure B. We will deal with this aspect of the matter in greater details when we come to consider point No. 3.

Point No. 1 is therefore answered against the appellant and in favour of the respondents.

33. Point No. 2 :

This takes us to the consideration of Mr. P. Chidambaram's argument that even on the broad construction of the notification, exhibit B the word "manufacture" as employed by it has to be construed as outturn or product of the new industry which may not necessarily involve process of manufacturing such product. For that purpose he invited our attention to items Nos. 4 to 11 of column No. 2 of the Table containing the notification, describing the types of industries covered by the sweep of this notification. He submitted that industries described at serial Nos. 4 to 9 are referred to as industries in the thrust sector as found in annexure

2 to the Government Order, annexure A. He took us to that list of industries which amongst others at the clause D deal with the list of industries like agro food processing, agro based (including high-tech packaging units, cold storages, green-houses, tissue culture laboratory, bio-fertilisers, compost, growth regulators and seed production units) and bio-technology industries. He also relied upon industries listed at serial No. 10 of column No. 2 containing in annexure B notification and submitted that the industries sought to be covered are electronics, tele-communications and informatics (software). He submitted that these industries may not necessarily carry on any manufacturing activity so far as their products are concerned and still they are sought to be covered by the sweep of notification, annexure B. He posed a question as to what manufacturing is being done by an industry dealing with the informatics-production of software where only intellectual process is involved. He then took us to last item in that column and submitted that all sorts of khadi and village industries defined in Khadi and Village Industries Act are given 100 per cent exemption without any limit if they are situated in Karnataka. That under Khadi and Village Industries Act, 1955, even some industries like bee keeping are covered. No manufacturing process is involved in a bee keeping industry. He therefore submitted that the catchwords in the notification annexure B namely "goods manufactured and sold" by industries listed in the Table would mean the products of those industries and not necessarily those goods or products which are actually manufactured by these industries.

34. Learned Advocate-General on the other hand contended that even so far as these listed industries are concerned in so far as their products or output have emerged after the process of manufacturing, they may be covered by the sweep of exemption notification but not otherwise because the words "goods manufactured" and "sold" by new industries would govern products of these listed industries also. He further submitted, it is not as if industries listed in the thrust sector as defined in annexure II in Government Order, annexure A, cannot manufacture any product in their industries. He submitted that to the extent to which their products are a result of manufacturing process, they will be covered by the sweep of exemption notification but those products which are not manufactured but are simply stored or which are produced without any manufacturing process being undergone will not be covered by the sweep of the notification. Therefore, it cannot be said the catchwords "goods manufactured" and sold by the new industries cannot apply to new industries listed at items Nos. 4 to 11 of the notification or that these items would become otiose. If the word "manufacture" is insisted upon in its technical sense for covering the products of such industries we find considerable force in this contention of the learned Advocate-General. So far as industries listed at items 4 to 9 are concerned, the thrust sector industries found at annexure II to Government Order, annexure A, include various industries which necessarily undertake process of manufacture while bringing out their output. For example electronics, tele-communication, leather and leather products including leather garments,

ready-made garments (non-leather), equipment for non-conventional sources of energy and energy conservation, equipment for pollution control, sericulture based industries including reeling, twisting, weaving and processing units, exports oriented industries, all undergo process of manufacture before their output becomes commercially viable, i.e., sold in the open market. However, there are industries like informatics (software), agro food processing, agro based (including high-tech packaging units, cold storages, green-houses, tissue culture laboratory, bio-fertilisers, compost, growth regulators and seed production units) and bio-technology industries, which may in some cases produce an article which might not have undergone any process of manufacturing. For example taking the case of high-tech packaging units, if it is found that these units bring out a product after packaging but that product is also manufactured by it and then packed it would be covered by the sweep of the exemption notification. But if on the other hand the activity of high-tech packaging unit consists simply of packaging products produced by some other industry, it may not be covered under the sweep of exemption notification. Similarly, in case of cold storage plants, if the cold storage plant undertakes process of manufacturing an article and then stores by way of cold storage and sells it, it may be covered by sweep of the notification. But if the cold storage plant merely stores goods manufactured by other industries after purchasing them and then sells them in open market, for such products sold by it, it cannot get the benefit of exemption notification. Even Mr. P. Chidambaram made it clear that it is not his case that notification, exhibit B, can cover activities of a simpliciter trader who purchases goods manufactured by others, stores them and sells them. He fairly stated that for operation of exhibit B notification in the light of exhibit A order the new industry must undertake a mechanical process by which inputs are converted into outputs having commercial market. His only rider was that such outputs need not undergo any manufacturing process for earning sales tax exemption under annexure B. We can take an illustration of cold storage plant industry storing dairy products. If such an industry purchases milk powder or milk bottles from other industries and after keeping them in cold storage sells these products which are manufactured by other industries and which are purchased by it, it may not get the benefit of exemption notification qua these products. But if it purchases milk-powder manufactured by other industry and by process of manufacture converts this milk-powder into condensed milk and after bottling it and storing it in cold storage sells it, such manufacture of condensed milk stored in cold storage by this industry may get the benefit of exemption notification. Same is the case with green-houses, tissue culture laboratory, etc., mentioned in item No. (d) of annexure II of Government Order, annexure A.

35. Therefore, it is not possible to agree with the broad proposition canvassed by Mr. Chidambaram for the appellants, that merely because the industries mentioned in annexure II to Government Order, Annexure A, are listed for exemption under notification annexure B at serial Nos. 4 to 9 the words "goods manufactured and sold" by these industries must be held to be goods which are

the output of such industries even though they might not have gone through any process of manufacture at their ends. Same is the case with the industries listed at item No. 10 Table annexure B and industries listed at item No. 11 in the said Table. informatics (software) industries are mentioned at both item No. 10 in Table, annexure B as well as annexure II to Government Order, annexure A. Even for software informatics industries it is possible that software gets manufactured by mechanical process and even though the software may be storing intellectual research of its author, still as a software it would emerge as new commercial commodity known as such in the market and which is or which can be sold and bought in the market.

36. Similarly at item No. 11 to the Table at annexure B are found all khadi and village industries as defined in Khadi and Village Industries Act, 1955. It was submitted by Sri Chidambaram for the appellants that some of the listed khadi and village industries may not be doing any manufacturing work at all and still they are covered. That would indicate that the word "manufacture" as employed in annexure B has to be broadly construed. It is not possible to agree. Even in the listed khadi and village industries, there are many industries like match industry manufacturing of fire works and agarbatti, can industry, etc., which all manufacture commercial products for sale. However, Mr. Chidambaram pointed out that industry of bee keeping would not be manufacturing anything. Now it must be kept in view that even bee keeping industry gets the benefit of the exemption under annexure B on the commencement of commercial production without any limit of time. Such as industry also can manufacture honey and if manufacture of honey is done by a mechanical process involved in the industry of bee keeping, such a product manufactured by it will get covered by the sweep of the notification, otherwise not. It is also not possible to agree with the broad proposition canvassed by Mr. Chidambaram for the appellants, that the industries mentioned at item Nos. 4 to 11 in Table annexed to annexure B, would have no occasion to manufacture any product which is a distinct entity of commercial value and could be sold in market by such manufacturers. In order to highlight his point, Mr. Chidambaram invited our attention to *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another*, In that case, the Supreme Court was concerned with an assessee, who was a dealer in frozen shrimps, prawns and lobsters and other sea-food products, which were being purchased by the assessee in the course of business and after processing them and packing them in cartons, the assessee was exporting them to foreign countries under prior contracts of sale. u/s 5(3) of the Central Sales Tax Act, 1956, the assessee would be entitled to exemption from payment of sales tax on the sale of sea-food products, if it was shown by the assessee that the very same commodity, sea-food, which he purchased was being exported after processing and dressing it. The assessee contended that only because he processed or dressed the prawns and lobsters, they did not change their character as such and they were never a distinct commodity and they remained the original prawns and lobsters. Hence, when they were

subjected to export pursuant to the earlier contract, the assessee was entitled to get the benefit of exemption of sales tax as per section 5(3) of the Act. The Revenue contended that once the prawns were processed, after freezing them, a new and distinct commodity emerged and therefore, the assessee was not entitled to benefit of section 5(3) exemption. The Supreme Court took the view in favour of the assessee by holding that process of freezing lobsters did not result in any new and distinct commodities, but they retained the same character and identity, as the original shrimps, prawns and lobsters. When raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, delevering cleaning and freezing, they do not cease to be shrimps, prawns and lobsters and become another distinct commodity. It is difficult to appreciate how this judgment can be of any avail to Mr. Chidambaram. In the present case, we are not concerned with the question whether on freezing a commodity, it loses its character or not, or becomes another commodity. The short question is whether agro processing industry or cold storage industry will be covered by the sweep of exemption notification, annexure "B", if its product has not undergone any process of manufacturing at its end. It is of course true that mere storage of any commodity would not bring about any change in the commodity and process of storage simpliciter may not be a manufacturing process. If that is so, such a cold storage industry may not earn exemption under notification annexure "B", as it has not manufactured any product through the process of cold storage. But, it is possible that the said cold storage industry might have manufactured a product subjected to cold storage and then sold it. In that case, it will be entitled to the benefit of exemption notification, annexure "B", if all other conditions of the said notification are satisfied.

37. We may take a simple example to illustrate the point. If an industry dealing in cold storage, purchases mangoes in open market, subjects them to cold storage and after proper packing, sells them in open market, it would not have done any process of manufacturing and therefore, on the sold mangoes subjected to cold storage process, the exemption notification will be of no avail to such an industry even though it may be a new industry. But if on the other hand, such an industry purchased mangoes and extracted juice on large scale by mechanical process and then that mango juice is subjected to process of cold storage and freezing and after packing them in proper receptacles, tins and cartons, such mango juice is sold in market, such a manufacturing process undertaken by the cold storage plant of that industry may be entitled to the benefit of notification, annexure "B". Therefore, it is not as if that the industries listed in the Table 1, items 2 to 11 at annexure "B" can never get coverage of the sweep of exemption notification, annexure "B". Consequently, no different meaning can be attached to the words "manufacturing and sale of goods" as employed by annexure "B" as a condition precedent to earn the benefit of exemption under that notification, so far as the listed industries, item Nos. 1 to 11 of the Table, are concerned. It may also be mentioned that it is not the case of the appellants that they are entitled to the benefit of exemption notification,

annexure "B", because it is a packaging unit as mentioned in note 2 in para 5 of the Government Order, annexure "A". It has rested its case only on item No. 3 of Table at annexure "B", on the ground that it is a medium scale industry which is a new industry situated in zone IV and it is entitled to cent per cent exemption from payment of sales tax for five years from the date of commencement of its commercial production. Even otherwise, as we have discussed earlier, a packaging unit also, even assuming that appellant acts as packaging unit, can claim exemption under notification annexure "B", if it is shown that the output or the final product which it produces is manufactured and sold by it as a new industry. Only then exemption from sales tax would be earned on such output of the appellant-industry for a period of five years from the date of commencement of its commercial production of such manufactured goods. In any view of the matter, the appellant cannot get the benefit of notification, annexure "B" even if it read with the parent order annexure "A" as Mr. Chidambaram would like to call it, unless the appellant shows that the blending and mixing of tea of various qualities at its factory and packing them in different packets or receptacles can be termed a process of manufacture. Only because the appellant styles itself as a packaging unit, it would not automatically earn any exemption on its output or final product put in the open market for sale as a commercial commodity.

38. In this connection, Mr. Chidambaram, learned senior counsel for the appellants, also invited our attention to Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, In that case, the Supreme Court was concerned with the question whether a company running a cold storage plant can be said to be an industrial company within the meaning of the Finance Act, 1973. The industrial company was defined by section 2(7)(c) of the Finance Act, 1973, as an industry to mean a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. It was held that the cold storage activity done by the appellant's industry could not be said to be manufacturing or processing of goods. The Supreme Court held that processing is a term of wide amplitude and has various aspects and meanings and in common parlance "processing" is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. Processing involves bringing into existence a different substance from what the material was at the commencement of the process and in cold storage where articles are preserved by refrigeration, it cannot be said that the stored articles have undergone a process within the meaning of section 2(7)(c) of the Finance Act. It is difficult to appreciate how this decision can be of any avail to the learned counsel for the appellant. It is true that simpliciter storage of any commodity cannot be said to be amounting to process of manufacture. If that is so, it would not be producing any output after subjecting it to the process of manufacture so as to earn exemption under notification annexure "B" on the very express language of the said notification.

39. Before parting with the discussion on this point, we may mention that relying

on the rules of interpretation as laid down by the Supreme Court in *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, and in *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, it was contended by Mr. Chidambaram for the appellants that such notifications and statutory instructions should be broadly construed, so as to give effect to the real intention of the Legislature underlying such instruction. On the other hand, learned Advocate-General for the respondents submitted placing reliance on the decisions of the Madras High Court in *Jaya and Company v. State of Tamil Nadu* [1991] 83 STC 512 and the Supreme Court in *Hotel Balaji and others, Vs. State of Andhra Pradesh and others*, etc. etc., that in case of exemption notifications, the courts has to strictly construe the conditions precedent which are to be satisfied before exemption could be earned. Even leaving aside this aspect and even broadly construing the terms of the notification, annexure B, there is no escape from the conclusion that before a new industry can be said to have earned exemption from the payment of sales tax on its output of commercial product produced by it, it must be shown that that new industry has manufactured and sold the concerned goods. This is an express language of the notification. Any tinkering with it would be amounting to rewriting the notification, which is not the scope and ambit of any judicial interpretation of the notification. It is obvious and well-settled that condition precedent for earning exemption under an exemption notification has to be fully and strictly satisfied before such exemption can flow to the concerned claimant. Consequently, this argument of broader construction of the notification is also of no avail to the learned counsel for the appellants.

Point No. 2 is, therefore answered against the appellant and in favour of the respondents.

40. Point No. 3 :

That takes us to the consideration of point No. 3. This is the real point in controversy between the parties. Mr. Chidambaram, learned counsel for the appellant, vehemently contended that in its new industry at Dharwar the appellants are blending the tea by a mechanical process and then packaging the same in suitable packets and are selling the same in open market to wholesalers. That the blended and mixed tea of different flavour after undergoing mechanical process is packed in suitable packets and receptacles and hence, it must be held that the said process of blending and mixing of tea and packaging the same results into a new commercial commodity distinct from the ingredients thereof, namely, the different type of tea which has been subjected to blending and mixing and therefore, it must be held that the appellants' factory is manufacturing the said blended packaged tea and can be said to have earned exemption as per notification, annexure "B". Now, so far as this aspect of the matter is concerned, it must be kept in view that the word "manufacture" is not defined by the Karnataka Sales Tax Act, 1957. We have therefore, to resort to the meaning of the term, in common parlance. Various dictionary meanings were

placed before us by Sri Chidambaram to submit that process to make a product from raw material or the process of making goods by machine or other agency or the production of articles from materials by giving such material new shapes would amount to manufacture. There cannot be any dispute on this aspect. However, the moot question is whether the appellants' factory manufactures any commodity in its factory at Dharwar when it blends and mixes different tea purchased from different gardens and packs the mixture in suitable packets and then sells the same to wholesalers.

41. In this connection, our attention was invited by Mr. Chidambaram to the flow chart at page 122 of the first paper book. The said chart shows that garden tea is subjected to delidding machine, tipping and through conveyor belt it is taken to reserve chamber and through mobile hopper, it gets quality tested and after passing through automatic weigher, it is sent through automatic packing machine and via conveyor belt blended tea is subjected to bundling and wrapping and then it is brought out at the factory gate. On the basis of this flow chart, it is submitted by Mr. Chidambaram that the garden tea after getting blended and quality tested and being packed in suitable packets becomes a new commercial commodity and does not remain as original loose tea. It is not possible to agree with this contention. In the entire process shown above, at no stage the original tea gets converted into a new commodity, but it remains tea. It, of course, gets blended, weighed and packed in suitable packets. In fact, this question is no longer *res integra* as it is covered by two decisions of the Supreme Court to which we will presently turn.

42. In the case of Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital, the Supreme Court was concerned with the question whether tea grown by agriculturists which undergoes certain processes before it is sold can be said to be an agricultural produce covered by the proviso to section 2(i) of the U.P. Sales Tax Act, 1948. The assessee contended that only because he subjects the tea-leaves to various processes for making them marketable after purchasing them from different tea gardens they do not result in a different commodity, but remain tea-leaves and therefore, he was entitled to exemption on the payment of U.P. sales tax under the aforesaid proviso. The Revenue contended to the contrary and submitted that leaves which are subjected to this process become a different commodity and do not remain as tea-leaves. Negating this contention of the Revenue, the Supreme court speaking through Untwalia, J., to which Pathak, J., concurred made the following observations in paragraphs 5 and 7 of the report (pages 394 and 395 of STC). In para 5 (page 394 of STC) the process to which the tea-leaves were subjected by the assessee was indicated, namely (1) the tea-leaves were first subjected to withering in shadow in rooms on a wooden floor for about 14 hours, (2) then they were crushed by hand or foot and then roasted for about 15 minutes, (3) later they were roasted on mats for about 15 minutes, (4) and then they were covered by wet sheets for generating fermentation. During this process the colour of leaves was changed from green to yellowish, (5) the leaves were then subjected to grading with sieves of various

sizes. Fanning machines are also used in completing the grading process, (6) the produce was then finally roasted with charcoal for obtaining suitable flavour and colours, and (7) it is this final product which was eventually sold by the assessee. In the light of this process, the following observations were made in para 7 of the report (page 395 of STC) :

"7. Unlike many agricultural products tea-leaves are not marketable in the market fresh from the tea gardens. Nobody eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. Of course, the processing may stop at a particular point in order to produce inferior quality of tea and a bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change the character of the tea-leaves, still they will be known as tea-leaves and sold as such in the market. In my opinion, all the six processes enumerated above from the primary findings of fact recorded in the order of the revising authority were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal. Withering, crushing and roasting the tea-leaves will be surely necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with sieves were all within the region of minimal process and, at no point of time, it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially. In my opinion, therefore, the view expressed by the High Court is quite justified and sustainable in law."

It will be appreciated that it was in terms held by the Supreme Court in the aforesaid decision that tea-leaves become only fit for marketing when there is minimal process by which they are made fit for human consumption and still they were held to have remained tea-leaves and agricultural produce. Meaning thereby, they cannot be said to have undergone any metamorphosis or change of form nor could they be said to have formed a new product after such a process. If that is so, it is obvious that by subjecting the garden tea purchased by the appellant-company to the process of blending and mixing and then packaging the same, the tea-leaves remain as such till they reach the ultimate consumers' table and become tea-liquor for drinking purposes. It must, therefore, be held on a parity of reasoning as adopted by the Supreme Court in the aforesaid case that the garden tea which the appellant purchases remains the same product till it is sold in the open market to the wholesaler in mixed and packed condition and till it reaches the ultimate consumer. If that is so, the essential ingredient of any manufacturing process, namely, that a new commercially known product must emerge after the processing of the inputs would be essentially lacking in the said process. And therefore, it cannot be said that the appellant's factory is manufacturing any tea which is different from the ingredients of the tea-leaves which are mixed and blended by it to make them more presentable and having appropriate flavour and quality to enable the consumers to consume such tea in

packed condition. Another decision of the Supreme Court, which clinches the issue is rendered in the case of *Chowgule & Co. Pvt. Ltd. v. Union of India* [1981] 47 STC 124 That was also a case under the Central Sales Tax Act. The question before the Supreme Court was whether the blending of iron ore for requisite specification would amount to manufacture or processing within the contemplation of section 8(3)(b) of the Central Sales Tax Act, and rule 13 of the Rules. The Supreme Court, speaking through Bhagwati, J. (as he then was), held that the blending of different qualities of ore possessing different chemical and physical composition so as to produce ore of the contractual specifications cannot be said to have involved any process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together but the operation of blending would amount to "processing" of ore within the meaning of section 8(3) (b) of the Central Sales Tax Act. Now it has to be appreciated that section 8(1) lays down that if any dealer during the course of inter-State trade or commerce sells to the Government any goods or sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3), he shall be liable to pay tax under this Act, which shall be 3 per cent of his turnover. Section 8(3)(b) describes goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods. Assessee in the case before the Supreme Court was merely blending ores of different specifications and the question was as to whether blended ore had undergone any process of manufacture as contended by the assessee. The Supreme Court in terms negated the said contention of the assessee. However, on the alternative ground, it was held that it did amount to processing of goods for sale. In the present case, any processing of commodities for earning exemption requires in the first instance, manufacture of commodity and then its sale by the new industry. So far as this aspect of manufacture is concerned, the Supreme Court in para 5 of the report has clearly held that such process of blending of different quantities of commodity would not amount to manufacture. It will be profitable to reproduce what is stated in paragraph 5 (page 130 of STC) in this connection by the Supreme Court :

"5. The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the mechanical ore handling plant constituted manufacture or processing of ore. Now it is well-settled as a result of several decisions of this Court, the latest being the decision given on 9th May, 1980, in Civil Appeal No. 2398 of 1978, *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, that the test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. This Court speaking

through one of us (Pathak, J.) pointed out : "Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place". The test that is required to be applied is : does the processing of the original commodity bring into existence a commercially different and distinct commodity ? On an application of this test, it is clear that the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore."

It is true that thereafter the Supreme Court considered the alternative question whether this process of blending can be treated to be processing the ore and that was answered in the affirmative by the Supreme Court disagreeing with the Bombay view that with any mechanical process if blending was done, there will be no processing. But we are not concerned with the question whether the blending of tea would be said to be processing the tea. We are concerned with the first question with which the Supreme Court was concerned namely, whether blending of different quantities of commodities in order to become a commercially viable produce can be said to be subjected to process of manufacture. On this aspect, the decision of the Supreme Court found in para 5 in the aforesaid Chowgule's case [1981] 47 STC 124 clearly puts the controversy beyond any doubt. It must be held on a parity of reasoning that blending of different qualities of tea resulting in a mixture of tea which is packed even by mechanical process, cannot amount to any process of manufacture as laid down by the Supreme Court in the aforesaid decision. Mere blending different qualities of commodity by mechanical process and the resultant mixed commodity of a different specification cannot be said to involve any process of manufacture. The mixed commodity produced cannot be regarded commercially a new and distinct commodity from the different specifications of the same commodity blended together. Applying the ratio of the aforesaid decision of the Supreme Court to the facts of the present case, there is no escape from the conclusion that merely because the appellant-factory purchases garden tea of various types and mixes and blends them and after quality test, packs them in different packets, it is not manufacturing any new tea as a distinct commercial commodity as distinguished

from the tea which is mixed in suitable quantities by flavouring it.

43. In this connection, however, Mr. Chidambaram vehemently submitted placing reliance on Madhya Pradesh decisions in *Pathik Products v. General Manager, District Industries Centre* [1988] 70 STC 21 and in *Badrinarayan v. State of M.P.* [1988] 70 STC 12, that blending of tea-leaves can be said to be process of manufacture. In view of the aforesaid Supreme Court decisions, we cannot follow the decisions of the Madhya Pradesh High Court even assuming that they took a contrary view. Our attention was also invited to the decision of the Division Bench of the Gujarat High Court in *Brooke Bond India Ltd. Vs. Union of India*, Even that case cannot be of any avail to the appellants first, because the Gujarat High Court was concerned with Central Excises and Salt Act and in the light of the Schedule therein, it examined the question whether the blending of tea by the Jamnager factory of Brooke Bond India Ltd., can be said to be a manufacturing process covered by the sweep of Central Excise Act. We are not concerned with any such contingency. But, even that apart, Gujarat view cannot prevail in the light of the Supreme Court decisions discussed above on the point which clearly took a contrary view. Similarly, reliance placed on the judgment of the Calcutta High Court in *Brooke Bond India Ltd. and Another Vs. Union of India (UOI) and Others*, cannot be of any avail to the appellants as the decision of the Supreme Court on the point would be law and it will be binding under article 141 and contrary views of High Courts cannot prevail in that connection.

44. It was next contended by Mr. Chidambaram, that anomalous position would arise if this view is taken as on the blended tea which is packed and sold to wholesalers by the appellant by removing it from the factory gate at Dharwar, the appellants were already paying Central excise under the Central Excises and Salt Act on the very commodity and it is only because of the exemption granted in the subsequent years that the said product is not bearing excise duty. Even if that may be so, we fail to appreciate how the appellants' voluntary payment of excise duty on the assumption that it is manufacturing a new commodity by blending tea-leaves and packing them can bind the State of Karnataka. It has to be kept in view that the appellants' voluntarily paying the excise duty on such an assumption which in the light of the Supreme Court decisions referred to above is shown to be erroneous and unsustainable cannot bind sales tax authorities. The excise authorities might have recovered excise duty for the relevant period. It was almost a consent payment as no grievance was made in this connection by the appellants against excise authorities. Therefore, there was no occasion to adjudicate whether the tea produced at the appellants' factory at Dharwar had really undergone a process of manufacture which attracts charging section under the Central Excise Act as that question was never debated by any one. The voluntary act on the part of the appellant in paying the excise duty cannot be an estoppel against the sales tax authorities under the Karnataka Act seeking enforcement of the Sales Tax Act if the exemption notification under the Act does not help the appellant.

45. In this connection, Mr. Chidambaram submitted that the Central Excise Tariff 9.02 deals with tea of different qualities packed in different types of containers. That shows the legislative intention that packed tea is an excisable commodity by itself, meaning thereby that it has undergone process of manufacture. We fail to appreciate how this aspect of the matter can help the appellants. Thus, an entirely different scheme of Central Excise Tariff cannot be of any avail while interpreting sales tax exemption notification, exhibit B, issued under the Karnataka Sales Tax Act, 1957. It must be kept in view that the word "manufacture" is defined in the Central Excises and Salt Act by section 2 to include any process incidental or ancillary to the completion of the manufactured product and the word "manufacture" has to be accordingly construed for the said Act. In view of this specific definition, the Supreme Court in the case of Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur, took the view that manufactured articles if subjected to incidental or ancillary process may be said to have been manufactured after that process. It is on that basis, that it was held by the Supreme Court in Empire Industries Limited and Others Vs. Union of India and Others, that fabric subjected to bleaching, dyeing and printing may be said to have been subjected to manufacturing process within the meaning of the said term in the Central Excise Act. As we have noted earlier, in the Karnataka Sales Tax Act, there is no such definition. Therefore, the pith and substance of the charging section in Central Excise Act cannot be injected into the charging section in the Karnataka Sales Tax Act or for that matter for interpreting the meaning of the term of "manufacture" as used by the exemption notification, annexure B. The aforesaid decision of the Supreme Court or the reliance on Central Excise Act or Tariff are also of no avail to the learned counsel for the appellants. In the case of Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur, the Supreme Court was concerned with the question whether by lamination of kraft paper with polyethylene different goods come into being. Laminated kraft paper was held to be known in the market as different from the kraft paper even though both these goods were covered by the said entry. It is obvious that the term "manufacture" as defined by section 2(f) of the Central Excise Act was pressed in service by the Supreme Court for coming to the aforesaid conclusion. But even in that connection, it was observed that "manufacture" is bringing into being goods known in the market as having distinct, separate and identifiable function. As we have seen earlier, by merely blending of tea a distinct and new commodity does not emerge as held by the Supreme Court in Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, so far as the Sales Tax Acts are concerned. Therefore, the decision rendered in the light of express provisions of the Excise Act and definition of the term "manufacture" as contained therein cannot be of any avail to the appellants in the present case. Consequently, point No. 3 will also have to be answered against the appellants and in favour of the respondents by holding that the appellant's factory at Dharwar does not undertake any manufacturing process when it blends and mixes different types of leaves purchased from tea gardens and then packs them and offers for sale to the wholesalers. By that

process no input is changed into an output of different commodity known to market and the tea-leaves mixed remain to be leaves till they reach the table to the ultimate consumer for being converted into tea-liquid and therefore, the sales tax exemption notification annexure B does not get attracted to the said product brought out by the appellant's factory at Dharwar.

46. Point No. 4 :

This point was highlighted on the principle of promissory estoppel. Now so far as that principle is concerned, it is well-settled by the Supreme Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., of the report (page 586 of ITR), it is observed as follows :

"9.....The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties."

Therefore, it has to be seen in the light of the aforesaid decision, whether any promise was held out by the State of Karnataka to the appellants by annexure A or B and whether the appellant has acted on such promise and changed its position.

47. So far as Government Order, annexure A, is concerned, it has to be kept in view that it sought to offer a package of incentives of various types as detailed earlier in this judgment and amongst them one of the incentives was exemption from payment of sales tax to the products of new industries for a specified period. The Government Order, annexure A, was issued on September 27, 1990. It is not the case of the appellants that on the basis of that Government Order, it took any steps in establishing any new industry at Dharwar. On the contrary, the evidence on record clearly shows that the first step taken by the appellant in this connection was on December 20, 1991, when it filed an application before the State Government for clearance of its project. By that time, annexure B exemption notification u/s 8A had come into force as it is dated June 15, 1991. Therefore, if at all the appellants' case at the highest can be pitched on the ground of promissory estoppel on the promise contained in annexure B. Learned Advocate-General submitted in this connection that there cannot be any estoppel against a statute and an exemption notification which is statutory in character cannot hold out any such promise which would be binding on the authorities. The said broad proposition cannot be accepted. Even by exemption notification, promise can be held out to new entrepreneurs. If they act to their detriment relying on that promise the doctrine of principles of estoppel can squarely apply

if such exemption notification is within the powers of the authorities and is not contrary to any law. It is not the case of the respondents that exemption notification, annexure B, is contrary to any of the provisions of the Sales Tax Act or the Constitution when it seeks to grant sales tax exemption to the manufactured goods of new industries. Therefore, Mr. Chidambaram was right when he submitted that notification, annexure B, can be relied on for basing the case of promissory estoppel if other requirements of the said notification are satisfied by the appellants. In fact that is the real question which has to be examined. Now it is true that the exemption notification, annexure B, offered to the new industries benefit of sales tax exemption on their output or products manufactured by them and sold by them in Karnataka State for a period of 5 years from the date of commencement of commercial production. But the moot question is whether the appellant simply relying upon the said notification had changed its position to its detriment. So far as this aspect is concerned, the appellant is on a very weak footing.

48. As noted earlier, the sales tax exemption notification u/s 8A, annexure B, is dated June 19, 1991. Before the appellant could take first step towards the establishment of his industry at Dharwar, the appellant addressed a letter dated November 25, 1991, annexure AE at page 106 of the first paper book to Mr. Philipose Mathais, Commissioner of Commercial Taxes, Government of Karnataka. The letter refers to the subject regarding confirmation about eligibility of incentives and concessions for new industrial units' investments in Karnataka and State Government order dated September 27, 1990 and the Government notification dated June 19, 1991. That letter is addressed by the vice-president of the appellant-company. It is clearly mentioned therein that the attention of the Commissioner of Commercial Taxes is drawn to the notification dated June 19, 1991 (annexure B) issued by the Government of Karnataka granting sales tax exemption to the new industries as per the terms and conditions specified therein and in order to avail of the above package of incentives, appellant was contemplating setting up an agro food processing unit for the manufacture of "blended tea packets" at the growth centre in Dharwar, Karnataka. Having mentioned salient points, about the project it was ultimately stated in the last paragraph of the letter that they would like to have confirmation for their proposed industry whether it is within the list of industries which are not eligible for incentives as given in the Karnataka Government order dated September 27, 1990, and they understood that the grant of exemption as per the notification dated June 19, 1991 (annexure B) is applicable to them. They further requested the Commissioner to kindly confirm that their proposed blended packet tea industry shall be entitled for grant of sales tax exemption by the State Government so that they can invest in the said project at Dharwar. The aforesaid letter makes it clear beyond any shadow of doubt that the appellants were not prepared to commence investment for the proposed industry unless they get confirmation from the Commissioner of Sales Tax that their product of blended packed tea would be eligible for sales tax exemption under Government

notification, annexure B. Therefore, the appellants was not ready to act upon annexure B till it got the written confirmation from the Commissioner that its products would be covered by the exemption scheme. It is pertinent to note here that Commissioner of Commercial Taxes being taxing authority, never gave any such confirmation at any time to the appellant. It is true that the appellants' project was cleared at State level single window agency on November 25, 1991 and the appellant deposited an advance of Rs. 77,500 towards the purchase of land and on December 20, 1991, the land was allotted by the Karnataka Industrial Area Development Board and thereafter the appellants seem to have proceeded with construction of the factory. But that was all done de hors annexure B and independently. Learned Advocate-General is right when he contends that the appellant took a calculated risk and even de hors annexure B which was to offer sales tax exemption took the chance to set up its factory presumably to avail of other incentives which were offered to new industries by Government Order, annexure A, namely, investment subsidy, pioneering unit subsidy, exemption from stamp duty and concessional registration charges, waiver of conversion fee for converting the agricultural lands to industrial lands. But so far as sales tax exemption was concerned, the appellant was clear in its mind that it would not commit itself by way of any investment unless it got clearance from the Sales Tax Commissioner, which it never got. And despite that it proceeded with the purchasing of land for establishing its factory and took steps for establishment of its factory. Meaning thereby it did not change its position on account of the promise held out by annexure B but ignoring that type of promise and knowing full well that clearance had never come from the Commissioner of Sales Tax it went ahead in search of other incentives available under annexure A and de hors the benefit of sales tax exemption. It may also be noted that so far as Sales Tax Commissioner is concerned not only no promise was held out by the Sales Tax Commissioner to the effect that the appellants' product will be covered by sales tax exemption as per annexure B, but on the contrary, it was clearly informed to the appellant by communication dated April 2, 1992, with reference to the appellant's letter dated November 25, 1991 referred to hereinabove, that in terms of notification cited meaning thereby annexure B, the appellant was not eligible for the benefit of tax exemption on the sale of blended tea. Despite that clear letter, the appellant went ahead with completion of the project and started commercial production on September 8, 1992. Mr. Chidambaram, in this connection submitted that on April 24, 1992, the Commissioner for Industrial Development and Director of Industries and Commerce, Karnataka, had already written to the Commissioner of Sales Tax that the appellants' project was eligible for sales tax exemption for a period of five years from the date of commencement of commercial production and signatory would be grateful if Commissioner of Commercial Taxes would kindly confirm to the unit that they will be eligible for sales tax exemption and package of incentives contained in 1990 Government Order. We fail to appreciate how the Commissioner for Industrial Development and Director of Industries and Commerce in Karnataka's letter and his opinion about the eligibility of the

product to earn sales tax exemption would bind the Sales Tax Commissioner, who was the authority under the Act to take such decision, which would be binding on its subordinate authorities. He had with the said letter sought to send his personal opinion and recommendation to the Commission of Commercial Taxes to look into the matter. As such, pursuant to letter dated April 24, 1992, by the Commissioner for Industrial Development, the appellant could not have presumed that the sales tax authority had cleared his project for grant of sales tax exemption. In fact, there is no promise held out either by the State of Karnataka in the Finance Department nor by its Chief Secretary representing all departments nor by Sales Tax Commissioner at any time to the appellant that appellant may go ahead with the project at Dharwar for blending and mixing and packaging the tea and that its product would be covered by sales tax exemption notification, annexure B. The recommendatory letter of Commissioner for Industrial Development dated April 24, 1992, cannot be said to have contained any promise by any competent authority under the Sales Tax Act which could bind the assessing authorities under the Sales Tax Act. It is also equally not possible to agree with the learned counsel for the appellant that whatever uncertainty remained in this connection ended by the recommendatory letter dated April 24, 1992, by the Commissioner for Industrial Development and Director of Industries. In fact uncertainty lingered on and the appellant was certain of the fact that he would not be assured of sales tax exemption unless the Commissioner of Sales Tax certified to that effect in writing as claimed by the appellant itself from the very inception on November 25, 1991 by which time he had not invested a pie in the project pursuant to the notification, annexure B, and was not inclined to act on the said notification unless it received written confirmation from the Commissioner for Commercial Taxes. It appears that thereafter the appellant addressed letter to Chief Secretary to Government of Karnataka making grievance that the appellant was eagerly looking forward for the confirmation for his proposed unit whether it would be entitled to incentives offered under the exemption notification, so that they can invest in the project freely. Even despite that neither the Chief Secretary nor the Commissioner of Sales Tax offered any information to the appellant that its unit would be entitled to incentives offered under the Sales Tax Act. On the other hand, by reply dated June 10, 1992, the Commissioner and Secretary to Government, Industries and Commerce Department, informed the appellant that they would like to assure him that the State Government is bound by the 1990 package of incentives and concessions and the same would be made eligible to new industrial units coming up in the State and that they would like to assure him that the State would extend all assistance in setting up their future projects. Even in that letter, no promise is held out or assurance is given that the appellant would be entitled to sales tax exemption as per annexure B. Even if it is stated that the State Government was bound by 1990 package of incentives, it is a general statement and that too, by an authority which was not competent authority under the Sales Tax Act like Commissioner of Commercial Taxes, which could give such assurances, which would be binding on assessing authority under the Act. We will

discuss hereafter while considering point No. 5 that under the scheme, annexure B, Commissioner and Secretary to Government, Industries and Commerce Department, cannot usurp the function of assessing authorities under the Sales Tax Act for deciding whether the appellant's product had undergone process of manufacture or not. Suffice it to state at present that even the letter dated June 10, 1992, issued by the said authority in the Industries Department could not bind the Commissioner of Sales Tax nor could it be said that the Commissioner of Commercial Taxes had given any written confirmation clearing the appellant's project for the purpose of grant of sales tax exemption. There is nothing on record to show that at any time right from November 25, 1991, onwards till the appellant went into production on September 8, 1992, the Commissioner of Sales Tax had ever given any written confirmation about the eligibility of the appellant's product for being covered by the sales tax exemption scheme notification, annexure B. When confronted with this position, Mr. Chidambaram drew our attention to letter dated February 19, 1992, written by the vice-president of the appellants-company to the Commissioner of Commercial Taxes, Government of Karnataka regarding confirmation about eligibility of incentives and concessions for new industrial investments in Karnataka. In that letter a reference was made to the earlier letter dated November 25, 1991, demanding confirmation in this connection from the Sales Tax Commissioner and then it is stated in the second paragraph that subsequently they had discussed the matter with the addressee of the letter that is one Philipose Mathai, the then Commissioner of Sales Tax and that their Chairman was given assurance on January 6, 1992 that their project would be eligible for the sales tax exemption scheme notified by the Government and again through the telephonic conversation held by the "undersigned" Mr. Mathai confirmed that letter is being issued in a day or two by the Commercial Tax Department to them. Then a request was made to avail of an opportunity to meet the addressee and explain the entire matter so that confirmation letter as requested in their letter dated November 25, 1991, could be issued to them at the earliest. Even this letter clearly shown that no confirmation letter was ever issued by the Commissioner of Sales Tax to the appellant as demanded by the letter dated November 25, 1991. It is true that the reference is made to the oral assurance of Mr. Mathai. But even that oral assurance was not relied upon by the appellant and appellant insisted for written confirmation which never came. On the contrary, the very fact that Mr. Mathai is alleged to have assured that confirmatory letter is being issued in a day or two shows that the appellant wanted a confirmatory letter from the Commissioner of Sales Tax and was not prepared to rely only on oral confirmation. Such a letter was never issued by the Sales Tax Department. Therefore, the oral assurance of Mr. Mathai if any, remained of no avail especially when the appellant itself was not willing to act on such oral assurance of Mr. Mathai who had left the charge of Commissioner of Sales Tax. Therefore, it sought to meet the new Commissioner so that he can get the confirmation letter as per the request in the letter dated November 25, 1991. It is not the case of the appellant that the addressee of the letter dated February 19, 1992, ever

gave such a confirmation letter. Even otherwise, in the background of these facts, it appears that the theory of oral confirmation by Mr. Mathai on January 6, 1992 to the appellants' proposal appears to be purely an afterthought and cannot be accepted in the light of the correspondence on record and the events that took place, in connection with letter dated November 25, 1991, addressed by the appellant to the Commissioner of Sales Tax demanding written confirmation regarding applicability of exemption notification, annexure B, to the appellants' project. Even after the appellant voluntarily went ahead with the establishment of the project and stated its commercial production on September 8, 1992, the Commissioner of Sales Tax by letter dated November 21, 1993, clearly informed the appellant that it was not entitled to have the benefit of sales tax exemption for blended, mixed and packed tea at its Dharwar factory. By that letter the earlier reply dated April 2, 1992, of the Commissioner was confirmed. Mr. Chidambaram submitted that said reply letter, annexure R, dated November 27, 1993, came after number of months after the commercial production was already started by the appellant. That may be so, but in the light of the very first letter written by the appellant to the Commissioner of Commercial Taxes making it very clear that the appellant was not inclined to invest anything in the project without getting the written confirmation by the Commissioner of Commercial Taxes that its product would be covered by sales tax exemption scheme as envisaged by exemption notification, annexure B, it cannot be said that any promise to that effect was held out by any competent authority to the appellant and the appellant had acted relying on such a promise.

49. On the facts of the case, therefore, it must be held that the appellant is not entitled to the benefit of the doctrine of promissory estoppel and whatever assurance Industries Commissioner had given to him was unauthorised as neither Industries Commissioner is a taxing authority under the Sales Tax Act nor was he acting on behalf of the Finance Department or the Finance Secretary or for that matter the Finance or Chief Minister who could speak on behalf of the Government in Finance Department. On facts, therefore, it must be held that no promise was held out to the appellant that its industry would earn exemption under notification, annexure B, on its product of blended tea to be produced at the factory nor had the appellant acted on such a promise. The appellant cannot be said to have moved towards establishment of its factory relying on any promise contained in annexure B. Under these circumstances, there is no question of granting any relief to the appellant on the basis of such non-existing promise so far as respondents-sales tax authorities are concerned nor can the State be directed to make necessary amendments in the notification on the doctrine of promissory estoppel as the said doctrine is not attracted in favour of the appellant on the facts and circumstances of the case. Point No. 4 is, therefore, answered against the appellants and in favour of the respondents.

50. Point No. 5 :

So far as this point is concerned, reliance is placed by the learned counsel for the

appellant on the certificate issued by the Joint Director in the Department of Industries and Commerce dated December 1, 1992 to the effect that the appellant is a registered medium scale industry located at 4th number 0125, Belur Industrial Area, Dharwar. The location of the unit at Belur Industrial Area, Dharwar Growth Centre, falls under Zone IV backward area in terms of 1990-95 package of incentives and concessions vide Government Order dated September 27, 1990 and accordingly the unit is eligible for 100 per cent tax exemption for a period of 5 years from September 8, 1992, i.e., the date of commencement of commercial production as evidenced by first sale invoice bearing No. 1, dated September 8, 1992. The unit has invested a total of Rs. 134.16 lakhs on fixed assets as per Chartered Accountant Certificate and as certified by the General Manager, District Industries Centre, Dharwar. It is further certified that no part of the plant and machinery installed in the unit is old/second-hand and that only new plant and machinery has been acquired and installed. So far as this certificate is concerned, we must keep in view that the notification, annexure B, dated June 19, 1991, contains two explanations. We are concerned with explanation I which reads as under :

Explanation I :

(a) For the purpose of this notification :

(i) A "tiny industrial unit" or "small-scale industrial unit" or "medium-scale industrial unit" or "large-scale industrial unit" means a unit which is registered as such with the Director of Industries and Commerce or the Ministry of Industries, Government of India.

(ii) A khadi and village industrial unit as defined under the Karnataka Khadi and Village Industries Act, 1956, from time to time.

(b) "A new industrial unit" means any of the units described in clause (a) above, which are certified to be eligible for exemption under this notification, by the authorities mentioned in clauses (a) and (b) of para (1) under "Procedure" below.

A mere look at the said expression shows that before any medium scale industry like the appellant industry is shown to be a new industrial unit, it must be supported by a certificate to be eligible for exemption under the notification. Procedure for issuing such certificate is laid down in the same notification as under :

Procedure :

1. A new industrial unit which is claiming exemption under this notification shall produce at the time of the assessment of the first of the years for which exemption from tax is claimed -

(a) in the case of tiny/small-scale/ medium-scale/large-scale industrial unit, a certificate in original issued by the Director of Industries and Commerce, or his authorised nominee certifying :

- (i) that it is a unit registered as such;
- (ii) that investment in the unit having been made on or after October 1, 1990, it is eligible for exemption under this notification.
- (iii) the date of commencement of its commercial production;
- (iv) the serial number of the Table above under which it is eligible for exemption; and
- (v) that no part of its plant and machinery at the time of commencement of its commercial production is old/used/second-hand, with the exception of imported second-hand machinery.

A conjoint reading of Explanation I and procedure for eligibility under the exemption notification as new industrial unit, shows that the concerned unit must arm with a certificate issued by the Director of Industries and Commerce or his authorised nominee certifying in connection with the eligibility conditions mentioned at paragraphs (i) to (v) of clause (a) of Part 1 of the procedure. Therefore, new industrial unit claiming such exemption under annexure B must show that it is a new industrial unit and that it must get certificate from the Director of Industries and Commerce that it is a registered unit, that investment in the unit having been made on or after October 1, 1990, it is an eligible new industrial unit as per the said exemption notification from the date of commencement of its commercial production, serial number of the Table, etc. It becomes obvious that the certificate issued by the competent authority on December 1, 1992, referred to earlier clearly shows that the appellant-unit was registered as a new industrial unit by the Industries Department, that it has made investment on or after October 1, 1991, that it had commenced commercial production as mentioned in the certificate, that the plant and machinery at the time of commencement were not old/used, etc. This certificate dated October 1, 1992 with which the appellant had got armed only establishes that it is a new industrial unit. For the purpose of applicability of exemption notification, annexure B, following three ingredients are required to be fulfilled by the concerned claimant : (1) that it is a new industrial unit, (2) that it has manufactured goods at its unit, and (3) that it has sold those manufactured goods in this State.

51. So far as the first requirement is concerned the certificate issued by the competent authority, namely, the Director of Industries and Commerce or his authorised nominee would remain binding on the assessing authorities under the Sales Tax Act. When a question is raised before them whether the concerned new industrial unit is entitled to the benefit under the notification, annexure B, the said certificate issued by the competent authority as laid down by Explanation I(b) read with the procedure cannot be gone behind by the assessing authority. But that certificate cannot cover the other two ingredients, namely, whether the said new industrial unit had manufactured the goods at that unit and sold the same in this State. So far as these two remaining ingredients are concerned they

are not covered by the certificate issued by the Director of Industries and Commerce or his authorised nominee as laid down in the procedure contained in the said notification. The five items on which certificate can be issued do not cover any additional item, namely, that the goods manufactured by the industrial unit for which exemption is claimed are manufactured by new industrial unit and are sold by such new industrial unit. Mr. Chidambaram, in this connection submitted that the second condition mentioned in the procedure para 1(a)(ii) would meet this requirement. It is difficult to agree. That requirement only shows that the certificate would mention that the investment in the unit having been made on or after October 1, 1990, it is eligible for exemption under this notification. That eligibility for exemption is connected with the certification that investment in the new unit is done on or after October 1, 1990 and nothing more. That eligibility for exemption would only guarantee that investment is made after October 1, 1990 by the new industrial unit and nothing more. It would not go beyond the said limited purpose of certification and cover the further requirement that the goods manufactured by such unit are also manufactured by the said unit and sold in Karnataka State. It is therefore, not possible to agree with the contention of the learned counsel for the appellant that the certificate issued by Industries Director or his authorised nominee on December 1, 1992, under the procedure laid down in the said notification would also remain binding on the assessing authorities on the additional aspect that such industrial units have manufactured such goods or sold such goods. Even the Explanation I(b) would not cover such an ingredient. Therefore, it must be held that the certificate issued on December 1, 1992 by the competent authority under the procedure laid down by Explanation I(b) of the notification, annexure B, would only remain binding on the assessing authority under the Sales Tax Act so far as the claim of the appellant that it is a new industrial unit is concerned and not beyond that. Such a new industrial unit has to show before the assessing authority that it has manufactured goods at its new factory and it has sold these goods in Karnataka markets. These are the matters, which are entirely within the domain of the assessing authority which has to decide whether the appellant satisfied these additional conditions before earning exemption from sales tax on its product as per annexure B. That jurisdictional function entirely rests with the assessing authorities under the Sales Tax Act and cannot be usurped by the Director of Industries or his authorised nominee on the basis of the procedure laid down by the said notification for certifying the concerned unit as a new industrial unit. On the scheme of the said notification, therefore, it is not possible to agree with the contention of the learned counsel for the appellant that once such certificate is issued to the appellant that it is new industrial unit eligible for the exemption under the notification, by the Director of Industries and Commerce, the curtain must drop and exemption notification must automatically be held to have been applied to the appellants' product whether it has manufactured the product or not. With respect, learned counsel for the appellants' reads too much in the said certificate in the light of the notification, annexure B. Reliance placed by Sri Chidambaram on this aspect on the decisions

of the Supreme Court in *M.G. Abrol Vs. Shantilal Chhotlal and Co.*, in *Auto Tractors Ltd., Pratapgarh Vs. Collector of Customs, Bombay*, as well as in *Bombay Chemicals Pvt. Ltd. Vs. Appellate Collector of Customs*, is of no avail for the simple reason that in the aforesaid decisions, the certificates issued by the competent authorities on the aspects falling within their jurisdiction were held binding on the assessing authorities under the Customs Act. Such are not the facts in the present case as we have discussed earlier. In fairness, the certificate dated December 1, 1992, issued by the Director of Industries and Commerce does not certify that appellants' blended tea is manufactured by it. It has rightly never certified in this connection as he cannot certify on this aspect which was purely within the domain of assessing authorities before whom exemption notification is pressed in service by the appellant. Point No. 5 also, therefore, will have to be answered against the appellant and in favour of the respondents.

52. Point No. 6 :

That takes us to the last point for consideration. It is true that the impugned assessment orders, annexures S, T, U and V have referred to clarification dated April 2, 1992, issued by the Commissioner of Commercial Taxes and they treat this clarification as one u/s 3(2) of the Karnataka Sales Tax Act, 1957. But the said reference in the assessment orders is parental erroneous. If we turn to the letter of the Commissioner of Sales Tax dated April 2, 1992, we find that it is addressed to the appellant and only states that with reference to the appellants' letter dated November 25, 1991, the appellant is informed that in terms of the notification dated June 19, 1991 (annexure B), appellant is not eligible for the benefit of exemption on sale of blended tea. The reply sent by the Commissioner of Commercial Taxes to the appellant to the query raised by the appellant by its letter dated November 25, 1991 addressed to the Commissioner of Commercial Taxes cannot be said to be any order by the Commissioner of Commercial Taxes u/s 3A(2) of the Act. Section 3A(2) of the Act lays down that notwithstanding the power contained in section 3A(1) enabling the State Government and the Commissioner from time to time to issue such orders, instructions and directions to all officers and persons employed in the execution of the Act, the Commissioner may, on his own motion or on an application by a registered dealer liable to pay tax under the Act, if he considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the work of assessments and collection of revenue, clarify the rate of tax payable under this Act in respect of goods liable to tax under the Act, and all officers and persons employed in the execution of this Act shall observe and follow such clarification.

53. It is difficult to appreciate how the reply of the Commissioner dated April 2, 1992 to the appellant can ever be construed as suo motu clarification by the Commissioner about the rate of tax payable and that the said clarification can be said to have been made to officers and persons employed in the execution of the Act, who have to follow such clarification. The said reply given by the Commissioner was not in exercise of any suo motu power. Secondly, it was not a

clarification issued in connection with any rate of tax. Thirdly, it was not addressed to any of the subordinate officers. Mr. Chidambaram, in this connection submitted that it can be said to be a clarification saving that it will not be a nil rate of tax but would be maximum rate of 30 per cent. No such instruction to any subordinate officer was found in the reply dated April 2, 1992. The said letter has nothing to do with the rate of tax payable under the Act. The reply was in connection with the appellants' query whether the exemption from sales tax would be available to its products under the notification annexure B. It must, be held that the said reply of the Commissioner of Commercial Taxes dated April 2, 1992, addressed to the appellant by any stretch of imagination cannot be said to be instruction issued by the Commissioner u/s 3A(2) to its subordinates. Therefore, that reply could never have been relied upon by the assessing authority while exercising its independent quasi-judicial power in assessing the appellants' product. It is also now well-settled by a catena of decisions of the Supreme Court that general executive instructions cannot bind the assessing authorities discharging quasi-judicial functions under the Act. In the case of Bengal Iron Corporation Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, it has been in terms laid down by the Supreme Court that such clarifications and circulars issued by the Central Government or State Government regarding taxability of certain items represent merely their understanding of the statutory revisions. It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities under the Act; while acting in quasi-judicial capacity, they are bound by law and not by any administrative clarifications or circulars. It must, therefore, be held that assessing authority was not justified in relying upon the so-called clarification of the Commissioner of Sales Tax dated April 2, 1992. To that extent, the assessment orders are erroneous. However, that would not affect the final conclusion which the assessing authority has reached alternatively on merits. The assessing authority relying upon the Supreme Court decision in Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital, has taken the view that the appellants' product namely, blended tea has not undergone any process of manufacture and therefore, the said product has not earned exemption of sales tax as envisaged by notification, annexure B. This conclusion to which the assessing authority has reached for framing the assessments is quite correct and legal and proper as we have discussed earlier. These assessment orders deserve to be confirmed on this additional aspect which weighed with the assessing authority. Therefore, while upholding the contention that the assessing authority was not justified in relying on the Commissioner's reply dated April 2, 1992 to the appellant, still its final conclusion and the assessments framed would remain justified in the light of the alternative ground which was upheld by the assessing authority, namely, that the exemption notification does not apply to the appellants' product of blended and packed tea produced at its Dharwar factory. Assessment orders shall stand confirmed on this ground on merits. Point No. 6 is, therefore, held partly against the appellants and partly in favour of the respondents.

54. These were the only contentions canvassed in support of the appeals and as all of them fail, inevitable result is that the appeals fail and are dismissed. The assessment orders are confirmed. As the assessment orders are confirmed on merits, there remains no occasion for considering whether the appellants are entitled to refund of 25 per cent of the assessed tax which they have paid pursuant to our interim order or that they are entitled to any refund with any interest. In view of this conclusion of ours, we have not gone into the wider question whether even if the appellant had succeeded in the appeals on merits and the assessment order were set aside, the appellants could have got refund in the absence of clear proof that the disputed tax was not passed on by them to the consumers and whether on the doctrine of unjust enrichment, the appellants could not have been entitled to such refund. The interim stay granted by us against the recovery of the remaining tax amount as per the assessment orders stands vacated.

In the facts and circumstances of the case, there will be no order as to costs.

55. Appeals dismissed.