

(1995) 07 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 21654 of 1995

Manjunatha Roller Flour Mills Private Ltd.	APPELLANT
Vs	
Assistant Commissioner of Commercial Taxes	RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Karnataka Sales Tax (Amendment) Act, 1992 — Section 3 A, 8 A (3), 8 A (6)
Karnataka Sales Tax Act, 1957 — Section 8 A

Citation : (1995) ILR (Kar) 2196

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : M.N. Shankare Gowda and K. Hemakumar, for Vasan Associates and B.V. Katageri, for the Appellant; S.A. Nazeer, H.C.G.P. for State and Authorities, for the Respondent

Judgement

G.C. Bharuka, J.—In this batch of Writ Petitions the question involved is whether the State Government, which had professed and declared to exempt wheat products including Wheat Bran from levy of tax under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter in short, the Act) with effect from 19.10.1991, has been successful in carrying out the same in respect of Wheat Bran through the legislative process envisaged under the Act.

2. The petitioners, who all own Roller Flour Mills, are engaged in the business of manufacturing wheat products like Atta, Soji, Maida and Wheat Bran. All are registered dealers under the provisions of the Act. According to them though the State Government has exempted Wheat Bran, as well being one of wheat products, from levy of tax under the Act, but the Sales Tax authorities who are the creatures of the Act and are the functionaries of the Government, in an open defiance of the Governmental intention manifested through various Notifications, have levied tax on the said commodity even by going to the extent of challenging the legislative competence of the State Government in this regard. According to the petitioners, the action of the respondent authorities is not only impermissible in law but is deplorable because it reflects hierarchical indiscipline which has

never been approved by the Courts. The petitioners therefore pray for quashing of the impugned assessment orders which pertain to the periods 1991-92 and onwards.

3. The legislative exercise to exempt wheat products from levy of tax under the Act stated with publication of Government Order No. FD 172 CSL 91 dated 19.10.1991 in the Karnataka Gazette dated 16.1.1992 (Government Order, for short). This order needs to be quoted in extenso since its preamble sets out the facts and reasons which impelled the Government to abolish the Sales Tax levy on wheat products. The said order reads as under:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA Sub : Levy of sales tax on wheat and wheat products under the K.S.T. Act, 1957 - Abolition of tax - Issue of orders -regarding. GOVERNMENT ORDER No. FD 172 CSL 91, BANGALORE, 19TH OCTOBER 1991 Read : Representation dated 26th August, 1991 from the President, Karnataka Roller Flour Mills Association, Bangalore. Preamble: At present, wheat, which is a cereal and one of the item among the declared goods included in the IV Schedule of the K.S.T. Act, 1957, is being levied sales tax at 2% while, the products of wheat such as atta, maida and soji which have lost their original identity of wheat on undergoing a manufacturing process are treated as different commodities from that of wheat and are being levied sales tax at 3% under the K.S.T. Act, 1957,

M/s New Swastik Flour Mill and Others in Writ Petition Nos. 3600 of 1990 and 3601 of 1990 filed before the High Court of Karnataka, have challenged the levies on wheat and wheat products. The High Court, while rejecting the State's plea made in support of this tax levy and relying on the judgment of the Supreme Court in the case of Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, wherein it has been held that rice, parched rice and beaten rice are to be considered under the term "rice" only although they have undergone a change and accordingly have delivered the judgment holding that wheat and wheat products are one and the same commodities for the purposes of taxation, while the same High Court in S.T.R.P. No. 15 of 1984 State of Karnataka Vs. Chamundeswari Industries, had held that puffed rice and beaten rice are commercially different commodities and from that of rice which is classified as a taxable goods under IV Schedule. The Government considered this judgment, as having far reaching consequence on State's resources, as the State could levy 2% tax on wheat products only, treating them as wheat, which would besides, diluting the State's resources considerably, on which score a revenue of Rs. 2.25 crores annually is being derived, would project wide scope for the dealers for claiming reimbursement of the excess tax paid in the past, which, the State would not be able to sustain. In view of this revenue implication and the dire need to preserve resources, the State, however, has filed a SLP before the Supreme Court, against this judgment of the Karnataka High Court which is still pending before the Supreme Court for a decision.

The Karnataka Roller Flour Mills Association, Bangalore, in their representation

read above, have requested for abolition of the sales tax on wheat and wheat products adducing the reason that no tax is being levied in the neighbouring States of Andhra Pradesh, Maharashtra and Goa. It is further stated that earlier, wheat was being allotted to the roller flour mills through the Food Corporation of India at subsidised rates resulting in lesser costs on wheat which practice has been dispensed with, and now, that wheat has to be imported from other States especially Punjab. Though wheat is available in plenty, cost of importing it and tax burden would make the end wheat products to cost very heavy which post serious problem to the consumers who are compelled to switch over to consumption of other food items like rice which besides, involving heavy flow of funds as subsidy, and creating demand for rice, the price of which would also shoot up beyond the ability of the common consumer, would make the roller flour mills to face stiff competition in marketing their products from the mills of the neighbouring States where these products are not saddled with taxes.

The argument advanced by the Roller Flour Mills Association, Bangalore, that pricing of wheat, operational cost and prevailing taxes would, besides, affecting the consumers, would make these mills to face a futile competition in marketing their products from the hands of the mills of the neighbouring States, where there is no levy of taxes on wheat/wheat products and consequently the revenue yields would descend, have been very critically examined at Government level. As the incidence of sales tax on wheat and wheat products will evidently pass on to the consumer on this food item, in respect of which, there is no tax burden in the neighbouring States of Andhra Pradesh, Maharashtra and Goa, Government considers that the argument of the roller flour mills has merit in it and attracts reliefs to rehabilitate them. Accordingly, it is proposed to abolish the existing sales tax on wheat and wheat products.

ORDER

1. After careful consideration of all aspects explained in the preamble and pending issue of suitable amendment to the Karnataka Sales Tax Act, 1957, Government are pleased to hereby abolish with immediate effect the existing sales tax levy under the Karnataka Sales Tax Act, 1957 on wheat and wheat products.
2. The arrears of taxes due by the dealers on this score, till the date of abolition of the tax, shall be imposed and recovered.
3. This order issues with the concurrence of the DP.A.R. conveyed in its U.O. Note No. DPAR:3547:Per-I/91, dated 19th October, 1991 read with G.O. No. FD 2 TFP 88, dated 11th May, 1988.

By Order and in the name of the Governor of Karnataka Sd/-19/10 (G. BALAKRISHNA SHARMA) Under Secretary to Government. Finance Department (Taxes)." 4. Thereafter by the Karnataka Taxation (Amendment) Act 4 of 1992 the following Entry-64 was inserted in the Fifth Schedule to the Act with retrospective effect from 19.10.1991:

"64. Wheat and atta, maida and Soji of wheat."

5. It appears that the above Entry was inserted to effectuate the Government's decision as contained in the aforesaid Government Order. Since Conspicuously the Wheat Bran did not find place in the afore-noted Entry-64, the Government issued a Corrigendum under Notification No. SO 3019 dated 26.11.1992 which is to the following effect:

"CORRIGENDUM No.FD 259 CSL 92, Bangalore, dated 3rd November, 1992 SO 3019, Karnataka Gazette, dated 26th November, 1992 In the entries relating to SI.No.64 in the Fifth Schedule to the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), after the word "soji" and before the words "of wheat" the following words shall be and shall be deemed always to have been inserted with effect from the Nineteenth day of October, 1991, namely:-

"and bran".

6. Strangely, despite the Government Order noticed above by the Karnataka Act 4 of 1992 itself the "wheat bran" was put with bran of rice and maize by substituting Entry 8(iii) in the Second Schedule making it effective retrospectively from 19.10.1991 thereby declaring it liable to 3 per cent tax at the first point of sale in the State as provided u/s 5(3)(a) of the Act. This Entry 8(iii) reads as under

SI.No.

Description of goods which applicable

Period for

Rate of Tax

8.

Cereals and pulses, that is to say, -

(i) xxx

xxx

xxx

(ii) xxx

xxx

xxx

(iii) Flour and husks of pulses; flour and soji of maize; grits and flakes of maize; parched rice; rice soji and beaten rice; bran of rice, wheat and maize.

From 19.10.91

Three per cent

7. Subsequently" one more Notification dated 31st March 1993 was issued by the Government in exercise of powers u/s 8-A of the Act thereby declaring certain commodities including Wheat Bran as exempt from levy of tax u/s 5 of the Act with effect from 1.4.1993. The said Notification to the extent it is relevant for the present purpose reads as follows:

"NOTIFICATION No.FD 58 CSL 93(1), Bangalore, dated 31st March, 1993 In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the First day of April, 1993, the rate of tax payable by a dealer u/s 5 of the said Act on the sales of the following goods, namely:-

xxx xxx xxx 5. Wheat bran.

xxx xxx xxx"

8. Now, let me glance through the scheme of the Act providing for levy of tax and the power of the State Government as a delegatee to grant exemption from such tax in respect of specified commodities.

9. Section 5 is one of the charging Sections which provides levy of tax on dealers on their taxable turnover at the given points and the rate prescribed. Section 6-B provides for levy of turnover tax which is over and above the tax levied u/s 5 subject to the conditions and exceptions stated in this Section. Section 8 declares that no tax is leviable on the good specified in Fifth Schedule to the Act subject to the conditions and exceptions set out therein. Section 8-A empowers the State Government to notify the exemptions and reductions of tax. Since Sections 2(p), (u), 5(3)(a), 8 and 8-A(1), (2) (2-A) are material for the present purpose they are quoted hereunder:

"2. Definitions. (1) In this Act, unless the context otherwise requires,-

xxx xxx xxx (p) "notification" means a notification published in the Official Gazette;

(u) "tax" means a tax leviable under the provisions of this Act;

(u-1) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;

(u-2) "total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;"

"5(3) Notwithstanding anything contained in Sub-section (1), the tax under this Act shall be levied-

(a) in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule, by the first or the earlier of successive dealers in the State who is liable to tax under this section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule, on the taxable turnover of sales of such dealer in each year relating to such goods:...."

"8. Exemption of tax.-(1) No tax shall be payable under this Act on the sale of goods specified in the Fifth Schedule subject to the conditions and exceptions, if any, set out therein."

"8-A. Power of State Government to notify exemptions and reductions of tax.-(1) The State Government may, by notification, make an exemption, or reduction in rate, in respect of any tax payable under this Act-(a) on the sale or purchase of any specified goods or class of goods, at all points in the series of sales by successive dealers; or

(b) by any specified class of persons, in regard to the whole or any part of their turnover; or

(c) on the sale or purchase of any specified class of goods by any specified class of dealers in regard to the whole or part of their turnover.

(2) Any exemption from tax or reduction in the rate of tax, notified under Sub-section (1) may be subject to such restrictions and conditions as may be specified in the notification.

(2-A) The State Government, by Notification, transpose any entry or part thereof from one schedule to another schedule and alter the point of levy of sale or purchase, but not so as to enhance the rate of tax in any-case:

Provided that where the point of levy is altered under this subsection in respect of any goods and if such goods have been subjected to tax under the transferred entry."

10. The first issue to be addressed to is as to whether the Government Order referred to above can be said to be an exercise by the Government of granting exemption in respect of wheat products including Wheat Bran u/s 8-A(1) of the Act. This provision specifically and unambiguously empowers the State Government to grant exemption on the sale of any specified class of goods, but this power has to be exercised by a Notification. The expression "Notification" as quoted above has been defined u/s 2(p) to mean a Notification published in the Official Gazette. In the present case, admittedly, the Government order has been published in the Karnataka Gazette. Therefore, though the Government Order declares to "abolish with immediate effect the existing sales tax levy under the Karnataka Sales Tax Act, 1957 on wheat and wheat products", it clearly tantamounts to exercise of powers by the State Government to notify the

exemption u/s 8-A(1) of the Act it may also be mentioned here that though the Government Order does not specifically refer to the statutory provisions under which the power has been exercised, but now it is well settled by catena of Judicial Pronouncements that non-labeling or wrong labelling of a statutory provision is inconsequential so long as the power/jurisdiction exercised is referable to some statutory source (see *Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal*, In some what identical situation a similar question had arisen for consideration before the Full Bench of the Patna High Court in the case of *TARA STEEL INDUSTRIES v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES AND ORS.* 2. (1986) 61 STC 301 KAR, wherein their Lordships have held that;

"Now it seems plain from the above (and no other provisions to the contrary could be brought to our notice) and, indeed, it was common ground that the law has not prescribed any particular or peculiar form for a notification generally or those under the Sales Tax Act. That being so, where a formal resolution of the Government expressly issued in its name and recorded by the order of the Governor is duly published in the Gazette, specifying in express terms the exemptions to be granted, can it possibly be said that it would not come within the ambit of the notifications referred to in the Sales Tax Act? The answer plainly seems to be that the same would be a notification in terms or in any case a substantial compliance with the law which would render any distinction betwixt the two as one without a legal difference."

It has been further held that -

"Both on principle and precedent, it has, therefore, to be held that a formal resolution of the Government duly published in the Official Gazette under the name and order of the Governor would squarely come within the ambit of "notification". Consequently, the petitioner would be clearly entitled to the exemption under Annexure-7"

For the said reasons and by respectfully following the dictum of their Lordships of the Patna High Court, it has to be held that the Wheat Bran being one of the wheat products has been exempted by the State Government from levy of tax under the Act under the above referred Government Order dated 19.10.1991.

11. Now, coming to the insertion of Entry No. 64 in the Fifth Schedule and Entry 8 (iii) in Part C of the Second Schedule, by the Karnataka Act 4 of 1992, it is worth noticing that in the above referred Government Order it has clearly been spelled out that the Government is abolishing the Sales Tax on wheat and wheat products "pending issue of suitable amendment to the Karnataka Sales Tax Act, 1957". From the reasons set out in the said order it can clearly be presumed that the Entry No. 64 was inserted in the Fifth Schedule only as a measure of carrying out of the said objective. But, for some reason or the other, Wheat Bran instead of finding its place in Entry 64 of the Fifth Schedule with other products appeared at Entry 8(iii) of Part-C of the Second Schedule with bran's of other grains

thereby making it assessable to tax.

12. The Government of late having realised the error so committed came out with a Corrigendum dated 3.11.1992 referred to above thereby purporting to insert "wheat bran" as a measure of correction with effect from 19.10.1991, the date on which the said Entry was inserted. The purport of this Corrigendum, which was duly published in the Official Gazette, was obviously to extend exemption in relation to Wheat Bran as well by putting it in the Fifth Schedule in conformity with the policy decision of the Government as reflected in the aforesaid Government Order.

So far as the power exercised by the State Government in issuing the Corrigendum is concerned, on the plain words used therein and without any further interpretation, it is neither referable to Sub-section (1) of Section 8-A nor to Sub-section (2-A) thereof. This Corrigendum does not in express words extend any exemption from tax under the Act on the transactions of Wheat Bran. Therefore, it is not an exercise of powers u/s 8-A(1) of the Act. Similarly it cannot be justified on its plain reading, under Sub-section 2-A of Section 8-A since this sub-section empowers the State Government inter alia to transpose any entry or part thereof from one Schedule to another, whereas the Corrigendum on its face has not transposed "wheat bran" from any other Schedule of the Act to the Fifth Schedule. Be that as it may, the intention seems to be clear that the Government wanted to extend exemption of tax to Wheat Bran as well though that has been sought to be done in somewhat unskilled manner which is unbecoming of the State Government which has a regular Law Department with experts in legislative technics. Nonetheless and irrespective of the efficacy of the Corrigendum through which the Government has intended to effectuate its intention, the Government Order which I have held to be a Notification u/s 8-A(1) has remained operative by its own force since the date of its issuance entitling the dealers to avail exemption from tax on the transactions of Wheat Bran.

13. In the case of Commissioner, Sales Tax, U.P. Vs. Agra Belting Works, Agra, the question before the Supreme Court, which arose under the provisions of the Uttar Pradesh Sales Tax Act, 1948, was as to whether in the absence of notification withdrawing the exemption granted in respect of certain goods, the mere of prescription of rate of tax by a subsequent notification would amount to impliedly withdrawing the exemption. Under the said Act, Section 3 was the charging Section, whereas Section 3A authorised the State Government to issue notification varying the rate of tax and Section 4 provided for issuance of similar notifications exempting the goods from levy of tax under the Act. The Supreme Court while answering the question held thus:

"When, after a notification u/s 4 granting exemption from liability, a subsequent notification u/s 3A prescribes the rate of tax, it is beyond doubt that the intention is to withdraw the exemption and make the sale liable to tax at the rate prescribed in the notification. As the power both for the grant of exemption and

the variation of the rate of tax vests in the State Government and it is not the requirement of the statute that a notification of recall of exemption is a condition precedent to imposing tax at any prescribed rate by a valid notification u/s 3A, we see no force in the contention of the assessee which has been upheld by the High Court. In fact, the second notification can easily be treated as a combined notification - both for withdrawal of exemption and also for providing higher tax. When power for both the operations vests in the State and the intention to levy the tax is clear we see no justification for not giving effect to the second notification."

14. Drawing analogy from the dictum in the above case of *C.S.T. v. Agra Belting Works* (supra), it can be safely held that though the Corrigendum Notification dated 3.11.1992 has not in express terms transposed the Wheat Bran from the Second Schedule to the Fifth Schedule, but looking at the intention of the Government which had ample competence to do the same, it can be presumed that there was such a transposition and as such Wheat Bran ceased to be in the Second Schedule. Once this conclusion is reached, then, subsections (3) and (6) of Section 8A comes into operation which are to the following effect:

"8-A(3): The State Government, by notification, cancel or vary any notification issued under Sub-section (1) or Sub-section (2-A)."

"8-A(6): Any notification issued under Sub-section (1) of subsection (2-A) shall be valid until it is cancelled under Sub-section (3), notwithstanding that the tax payable in accordance with such notification in respect of any specified goods or class of goods or by any specified class of persons on the sale or purchase of any specified class of goods by any specified class of dealers, is modified by an amendment to this Act."

15. In the present case, admittedly subsequent to the issue of the aforesaid Government Order and the Corrigendum Notification no further Notification cancelling or varying the same as required u/s 8-A(3) has been issued by the State Government. Therefore, since the Legislature has in express terms provided that unless such Cancellation Notification is issued, the Exempting Notification will remain valid, by mere implication the exemption so granted cannot be deemed to have been taken away.

16. In a case before the House of Lords, viz in *London Investment And Mortgage Co., Ltd. V. Worthington* (H.M. Inspector Of Taxes) And Ors. 4. 38 TC 86, 115 : (1959) 37 ITR 56, 62, it has been held by Viscount Simonds that:

"I hesitate in any case to introduce by way of implication in a taxing Statute a provision which cries aloud for express statement if it is intended."

17. In that view of the matter, since neither the aforesaid Government Order which is referable to Section 8-A(1) of the Act nor the Corrigendum Notification which is justifiable u/s 8-A(2-A) of the Act have been cancelled by issuance of any Notification under Sub-section (3) to Section 8-A of the Act, those have to be

held as operative, notwithstanding any modification by an amendment of the Act or issuance of Notification like No. S.O.473 dated 31.3.1993 providing for exemption of Wheat Bran from levy of tax u/s 5 only.

18. One important aspect of the problem yet needs to be touched. Mr. Nazeer, learned Government Pleader has sought to ventilate the stand of the Commissioner of Commercial Taxes and the assessing authorities by asserting that in view of the insertion of Entry 8(iii) in Part-C of the Second Schedule making the Wheat Bran liable to 3% tax at the first point, it should be presumed that the exemption granted under the Government Order in respect of Wheat Bran stood superseded. Possibly it was with this view in mind that the Commissioner of Commercial Taxes had issued a Clarification dated 11.11.1992 i.e. after the issuance of the Corrigendum, to the following effect:

"I am desired to clarify that bran of wheat continues to fall under Entry SI.No.8(iii) of Part C of Second Schedule to the KST Act 1957 and attracts tax and turnover tax as applicable."

19. The plea taken in respect of the clarification issued by the Commissioner is that the Corrigendum issued by the State Government is ultra vires its powers under the Act in wholesome or at least to the extent of its retrospectivity. I just wonder if such plea at all can be raised by a creature of the statute and that too by being a functionary of the State Government.

20. In the case of K.S. VENKATARAMAN AND CO. (P) LTD. v. THE STATE OF MADRAS 5. 1966) 17 STC 41 SC, the Constitution Bench of the Supreme Court at page 440 has held that:

"... an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions."

A similar effort was made by the authorities under the Act to unify an earlier order of the Karnataka Government conceding certain sales tax concessions. In the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, the Supreme Court disapproved such a course adopted by the State functionaries by holding that-

"The next submission of the learned counsel for the appellants was that the concessions granted by the said order dated 30th June, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of 30th June, 1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either."

Therefore, in my opinion, the Sales Tax Authorities under the Act including the Commissioner cannot be heard to raise their voice against the act of the Government on the ground of absence of any statutory authority in the latter.

21. With regard to retrospective effect of Rules and Notifications, in the celebrated commentary of Sri N.A. Palkhivala on Income Tax, 8th Edition (Page 11), on summarising the law in this regard, it has been stated that -

"An authority cannot make rules or issue notifications adversely affecting the assessee's rights with retrospective effect, unless the statute, either expressly or by necessary intendment, empowers the authority to do so."

In the present case, the retrospective operation of the Notification is to the benefit of (the assessee's) rights and therefore cannot be assailed as bad.

22. In any view of the matter, it is now firmly settled that the beneficial tax provisions have to be liberally construed so as to make the benefit sought to be extended meaningful and effective. In the case of Commissioner of Income Tax, Bombay City I Vs. Chugandas and Co. (Securities), , it has been held that -

"Lastly, it was argued by Mr. Palkhivala that, since we are dealing with an exemption clause, if there was any doubt as to the true interpretation of the exemption clause, the exemption should be liberally construed provided no violence is done to the language employed in the section. This, no doubt, has been held to be proper canon of construction by the Calcutta High Court in COMMISSIONER OF AGRICULTURAL Income Tax, WEST BENGAL Vs. RAJA JAGADISH CHANDRA DEO DHABAL DEB., and by the Patna High Court in Sir Kameshwar Singh Vs. Commr. of Income Tax, and we certainly accept that canon of construction."

23. Before parting, I may quote a passage from the case of Mathra Prashad and Sons Vs. State of Punjab, wherein the Constitution Bench of the Supreme Court while being faced with similarly vexed question having arisen because of unthoughtful act of the Government while issuing Press-notes and Notifications under the East Punjab General Sales Tax Act (XLVI of 1948), 1948 had to observe in the following terms:

"We cannot help saying that the Act and the Notification could have been framed to obviate such unnecessary questions by providing clearly in them the time from which such exemptions would begin to operate. ... Contradictory Press Notes were issued, which showed that the State Government itself was not sure of the true legal position, thus causing great confusion and distrust in the minds of the tax-payers."

In the present case as well a little diligence on the part of the Government in employing appropriate legislative mechanism for carrying out its professed intention, could have easily avoided the present unnecessary litigation.

24. For the reasons aforesaid, it has to be held that no tax under the Act can be levied on transactions of the Wheat Bran with effect from 19.10.1991. As such the impugned orders and notices to the extent they seek to levy tax under any provision/s of the Act, are held to be bad, illegal and unenforceable; and, are accordingly quashed to that extent. Keeping in view the facts and circumstances

of the case, there will be no order as to costs.