
(1991) 03 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No's. 3600, 3601, 4115 to 4120, 5070 to 5074, 7176 to 7186 and 7461 of 1990 connected with 8586, 7608 to 7613, 7809, 9064 to 9073, 9084, 9177 to 9181, 9474 and 11002 to 11004 of 1990

New Swastik Flour Mill and another

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Karnataka Sales Tax Act, 1957 — Section 5 (1), 5 (3) (a)

Citation : (1991) ILR (Kar) 1393

Hon'ble Judges : M.M. Mirdhe, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, K.R. Prasad, B.V. Katageri, B.R. Satenahalli, S.A. Kalagi and Jayakumar S. Patil, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

M.M. Mirdhe, J.—These writ petitions are filed under article 226 of the Constitution challenging the validity of item 138 of the Second Schedule [presently item No. 8(iii) of Part C of the Second Schedule] to the Karnataka Sales Tax Act, 1957 ("the State Act" for short), which authorises the levy of tax under the Act on atta, maida and soji produced out of wheat, which is a declared goods u/s 14 of the Central Sales Tax Act, 1956 ("the Central Act" for short), on the ground that it is inconsistent with section 15 of the Central Act, and to issue a writ of certiorari quashing the assessment orders under which tax has been levied on these items under the State Act.

2. The facts of the case, are as follows : The petitioners are dealers registered under the State Act, engaged in the manufacture of wheat products. They purchase wheat either within the State of Karnataka or in the course of inter-State trade or commerce, paying tax u/s 5(4) of the State Act read with entry 9 of the Fourth Schedule of the State Act. They convert the tax-paid wheat into atta, maida or soji and sell the same. The sales tax authorities have not only

levied tax treating each of the aforesaid items as a separate goods falling under entry 138 of the Second Schedule to the State Act but also levied turnover tax on the sale turnover of each of these items u/s 6-B of the State Act. The petitioners have filed these petitions contending that the said assessment and demand made by the sales tax authorities in respect of their turnover of wheat products is illegal and ultra vires, on the ground that "wheat" is one of the declared goods vide section 14 of the Central Act and it includes atta, maida and soji and therefore tax levied on these items cannot exceed 4 per cent and further the tax cannot be levied at more than one point. The respondents contend that this stand taken by the petitioners is not sustainable in law and each one of the items, namely, atta, maida and soji derived from wheat are goods different from "wheat" and therefore liable to be taxed under the State Act unrestricted by the provisions of the Central Act, both regarding rate as also number of points at which it could be taxed.

3. In order to understand the contentions of the respective parties, it is necessary to note the following provisions of law having a bearing on the contentions of the parties. Section 15 of the Central Act reads as follows :

"Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(d) each of the pulses referred to in clause (vi-a) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law."

Section 14 of the Central Act, to the extent necessary for these cases, reads as follows :

"It is hereby declared that the following goods are of special importance in inter-State trade or commerce :-

(i) Cereals, that is to say, -

(i) paddy (*Oryza sativa* L.);

(ii) rice (*Oryza sativa* L.);

(iii) wheat (*Triticum vulgare*, *T. compactum*, *T. sphaerococcum*, *T. durum*, *T. aestivum* L., *T. dicoccum*);"

4. Section 15 of the Act makes it clear that the tax to be levied in respect of goods which are declared goods u/s 14 of the Central Act shall not exceed 4 per cent of the sale or purchase price thereof and such tax shall not be levied at more than one stage. Section 5(4) of the Karnataka Act which conforms to section 15 of the Central Act reads :

"Notwithstanding anything contained in sub-section (1) or section 5-B or section 5-C a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (3) and (4) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods :

Provided that where tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-State trade or commerce, and tax has been paid under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in respect of the sale of such goods in the course of inter-State trade or commerce, the tax paid under this Act shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be prescribed."

The Fourth Schedule referred to in section 5(4) of the Karnataka Act specifies declared goods. Item 9 of the Fourth Schedule as it stood during different periods, reads :

----- "Sl. Description
of the Point of levy Period for Rate No. goods which of tax applicable
----- 9. Cereals, that
is to Sale by the From 8-9-1976 4% say, rice, wheat, first or earliest to
31-8-1978 jowar or milo, of successive bajra, maize, ragi, dealers in the
kodon, kutki and State liable to barley tax under this Act. Act 18 of 1978
(from 1-9-1978) Cereals, that is do. From 1-9-1978 4% to say, paddy and to
31-3-1984 rice, wheat, jowar or milo, bajra, From 1-4-1984 2% maize, ragi,
kodon, to 31-3-1986 kutki and barley Act 9 of 1986 (from 1-4-1986) 9. (i) Rice
and wheat do. From 1-4-1986 2% Act 14 of 1987 (from 1-4-1987) 9. (i) Rice,
Paddy and do. From 1-4-1987 2%" wheat

Item 138 of the Second Schedule to the Karnataka Act, which is presently item

8(iii) of Part C of the Second Schedule enumerates goods in respect of which sales tax is leviable u/s 5(3)(a) of the Karnataka Act, on the point of first sale, reads :

"Cereals and pulses, that is to say, -

.....

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

Section 6-B of the Act provides for levy of turnover tax at the rates prescribed therein on the turnover liable to tax under the Act.

5. The question for consideration in these cases is, whether the word "wheat" used in section 14 of the Central Act and reproduced at item 9 of the Fourth Schedule to the State Act, includes atta, maida and soji of wheat which are included in item 8(iii) of Part C of the Second Schedule and consequently the levy of tax under item 8(iii) of the Second Schedule to the State Act on atta, maida and soji produced out of wheat on which tax is paid u/s 5(4) of the Act is invalid on the ground that it is violative of and inconsistent with section 15 of the Central Act.

6. The learned counsel for the petitioners in support of their contentions that wheat includes atta, maida and soji produced out of it, have relied on the judgment of the Supreme Court in the case of Alladi Venkateswarlu v. Government of Andhra Pradesh [1978] 41 STC 394 AP. In that case, the question for consideration was, whether rice includes "atukulu" (parched rice) and "muramaralu" (puffed rice). The Supreme Court held that the term "rice" would include both parched and puffed rice and they are in substance same article, though different in form and therefore parched and puffed rice were within the meaning of "rice" in entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. In the said ruling, the Supreme Court observed as follows :

"We find that the High Court had come to the conclusion that parched rice and puffed rice, not being rice at all, falling within either of the two parts of item 66, were taxable as separate kinds of goods altogether. This meant that, although, the dealer had paid a tax of five paise per rupee on paddy as item 8 in the Second Schedule he will have to pay again a tax at the rate of 4 paise on every rupee of his turnover u/s 5(1) if his total turnover was not less than Rs. 25,000 per year

We do not think that it is fair to so interpret a taxing statute as to impute an intention to the Legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. Unless the language of the taxing statute was absolutely clear, it should not be given an obviously unfair interpretation against the

assessee.

It may be that an item may be taxed once as raw material and, after it is manufactured and converted into separately taxable goods, taxed again as another taxable item altogether. But, in such cases, the identity of the goods sold would be deemed to be different even though the raw materials may have been taxed already in a different form earlier

..... The term "rice" is wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain is not edible. Parched rice and puffed rice are edible. But, the entry "rice" seems to us to cover both forms of rice. At any rate, it is wide enough to cover them."

The learned counsel next relied on the judgment in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, . That case arose under the provisions of the Kerala General Sales Tax Act, 1963. The question for consideration was, whether the processing of pineapple fruit into its slices for selling in sealed cans resulted in the consumption of pineapple fruits in the production of commercially different goods and attracted tax u/s 5A of the Kerala Act. The Supreme Court answered that it did not. The relevant paragraphs of the judgment are paragraphs 6 and 7 (at pages 65-66 of STC). They read :

"6. A large number of cases has been placed before us by the parties, and in each of them the same principle has been applied : Does the processing of the original commodity bring into existence a commercially different and distinct article ?

7. In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit."

The next decision relied on was of Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, . In the said case, the question for consideration was, whether shrimps, prawns and lobsters became commercially different goods after they were processed by cutting heads and tails, peeling, deveining and cleaning them and freezing them. Reversing the decision of this Court, in which this Court held they became commercially different goods, the Supreme Court held that they did not. The relevant portion of the judgment reads :

"Here in the present case, it was not disputed on behalf of the Revenue that the purchases of raw shrimps, prawns and lobsters were made by the appellants for

the purpose of fulfilling existing contracts for export and after making such purchases the appellants subjected raw shrimps, prawns and lobsters purchased by them to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing and exported such processed and frozen shrimps, prawns and lobsters in fulfilment of the contracts for export. The only argument raised on behalf of the Revenue was that the goods which were exported were not the same as the goods purchased by the appellants because raw shrimps, prawns and lobsters after processing ceased to be the same commodity and became a new distinct commodity. But, for reasons which we have already discussed, this argument cannot be sustained. The shrimps, prawns and lobsters purchased by the appellants did not lose their original character and identity when they were subjected to processing for the purpose of export."

The next case on which the learned counsel relied was, *Lakshmi Coconut Industries Vs. The State of Karnataka and Another*, . In this case, decided by the court, the question considered was whether on inter-State sale of desiccated coconut prepared out of coconut purchased on which tax was paid, tax was payable on the ground that it was not "coconut" which was a declared goods. This Court on consideration of various decisions of the Supreme Court, held "coconut" which was a declared goods included desiccated coconut. Relevant portion of the judgment reads :

"11. The principles which should be applied in the interpretation of entries in the sales tax laws laid down by the Supreme Court in the various decisions referred to earlier may be summarised as follows :

(1) A sales tax statute, being one levying tax on goods, any particular term used to specify an item of goods on which tax is levied, must, not being a term of science or art, be presumed to have been used in the ordinary sense and, therefore, it should be understood according to the meaning ascribed to it at common parlance. Therefore, while interpreting any item subjected to tax under the sales tax laws, resort should be had to their popular meaning or the meaning attached to them by those dealing in them, i.e., in the commercial sense and not to the scientific or technical meaning of such term.

(2) If the intention of the Legislature was to levy a single point tax on a particular item, an interpretation which would in effect result in the levy of multi-point tax on the same commodity should not be given.

(3) If two interpretations are reasonably possible, the one in favour of the assessee should be accepted.

Therefore, the decision on the crucial question arising for consideration in these cases, viz., as to whether the desiccated coconut has to be considered as coconut and nothing more or it should be treated as a separate commercial commodity and, consequently, liable to tax under the Central Act also, should be arrived at by applying the aforesaid principles.

.....

The construction suggested for the assessee on the interpretation of the word "coconut" used in entry 5 of the Fourth Schedule to the Act and section 14 of the Central Act to the effect that it includes desiccated coconut is plausible on the analogy of, groundnut oil and hydrogenated groundnut oil in the cases of *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, , rice, parched rice and puffed rice in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, coal and charcoal as in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, , iron and steel and bars, flats and plates as in *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, , shampoo and soap in *State of Gujarat Vs. Prakash Trading Co., Ahmedabad*, , dryer felts and textiles in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, , sugar and patasa, harda and alchidana in *Sakarwala Brothers [1967] 19 STC 24 (SC)*, milk and condensed milk in *Indodan Milk Products Ltd. Vs. Commissioner of Sales Tax, seegekai and seegekai powder in Oil and Flour Mills (C.R.P. No. 1157 of 1961 - Karnataka High Court)* and is also more appropriate and should be preferred to the analogy of cashewnut and its kernel as in *S.V.C Factory [1953] 4 STC 205 (SC)*, or of paddy and rice in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, or of tobacco and bidi patti in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, or of tamarind seed and tamarind pappu in *Mysore Starch Manufacturing Co. (S.T.R.P. No. 35 of 1969, decided on 27th May, 1971 - Karnataka High Court).*"

The next decision relied on was *Dhanbad Flour Mills v. State of Bihar [1989] 75 STC 47 (Pat)*. In the said case the question for consideration by the Patna High Court was, as in this case, whether atta, maida and soji were goods different from wheat. The Patna High Court, following the ratio of the judgment of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, held that though in form wheat was converted into atta, maida or soji, in substance it was wheat and fell within the item "wheat" u/s 14(i)(iii) of the Central Act. The relevant portions of the judgment reads :

"20. It appears to me that factually it has been established that atta, maida and sujji are derived entirely from wheat by processing the grain into powdered form of different sizes. The object of such processing is primarily to make the grain edible. It is not the respondents' case that anything is added to wheat as an extra ingredient in making atta, maida or sujji, I note that atta, maida and sujji also remain cereals within the dictionary and popular meaning of the term.

21. In my view, the decision of the Supreme Court in the case of *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, is of more relevance to the instant case. It was held by the Supreme Court in that case that preparations of parched rice and puffed rice, which are made out of rice by heating and parching come within the meaning of "rice" under entry 66(b) of the First Schedule of the Andhra Pradesh General Sales Tax Act, 1957

22. In *Shri Kishan Satyanarain* [1983] 54 STC 25 SC a Division Bench of the Madhya Pradesh High Court followed and applied the decision of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, and held that puffed rice and beaten rice will be treated as declared goods u/s 14(i) of the Central Sales Tax Act, 1956.

23. Following the decisions of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, and said other High Courts I hold that atta, maida and sujji, which are obtained merely by reducing the size of "wheat" grain into smaller particles and powder would be included into item "wheat" in section 14(i)(iii) and as such should be treated as declared goods under the said statute, as contended on behalf of the petitioner, which I accept."

The learned counsel also relied on the decision in *The State of Andhra Pradesh Vs. Vayugundla Venkata Subbaiah and Sons*, In this case, a Division Bench of the Andhra Pradesh High Court considered the question as to whether ravva of rice was "rice" which was a declared goods and consequently no tax was leviable on the sale of ravva produced out of tax-paid rice. The Division Bench held thus :

"In *Alladi Venkateswarlu v. Government of Andhra Pradesh* [1978] 41 STC 394 AP, the Supreme Court held that "atukulu" and "muramaralu" which are called "parched rice" and "puffed rice" in English, are "rice" within the meaning of entry 66 of the First Schedule to the A.P. General Sales Tax Act. The process by which rice is converted into "ravva" is no more elaborate than the process by which rice is converted into parched rice and puffed rice. If parched rice and puffed rice fall within the meaning of the expression "rice" in entry 66, "there is no reason why "ravva" should not also similarly fall within that expression. In our opinion, the said decision of the Supreme Court squarely governs the present case. We must accordingly, hold that the Tribunal was right in holding that rice ravva is "rice" and therefore, the sale of ravva constitutes second sale, and is exempt from tax."

7. Relying on the aforesaid decisions, the learned counsel for the petitioners submitted that atta, maida and soji derived from wheat are in substance wheat only which is a declared goods and, therefore, no tax can be levied more than once on any one of them and at a rate not exceeding four per cent, in view of section 15 of the Central Act.

8. The learned Government Advocate relied on the judgment of the Supreme Court in the case of *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, In the said case, the question for consideration by the Supreme Court was, whether each item of iron and steel produced out of another type of iron and steel constituted commercially different goods. The Supreme Court after referring to the relevant item in section 14 of the Central Act as amended by Act 61 of 1972, pointed out that as many as sixteen items of iron and steel were separately specified as declared goods and therefore each one of them was declared goods and they were liable to tax, subject to the restrictions imposed by section 15 of

the Central Act. The relevant portion of the judgment reads :

"It will be seen that "iron and steel" is now divided into 16 categories which clearly embrace widely different commercial commodities, from mere scrap iron and leftovers of processes of manufacturing to "wires" and "wheels, tyres, axles and wheel sets". Some of the enumerated items like "melting scrap" or "tool alloys" and "special steels" could serve as raw material out of which other goods are made and others are definitely varieties of manufactured goods. If the subsequent amendment only clarifies the original intentions of Parliament, it would appear that heading (iv) in section 14, as originally worded, was also meant to enumerate separately taxable goods and not just to illustrate what is just one taxable substance : "iron and steel". The reason given, in the Statement of Objects and Reasons of the 1972 Act, for an elucidation of the "definition" of iron and steel, was that the "definition" had led to varying interpretations by assessing authorities and the courts so that a comprehensive list of specified declared iron and steel goods would remove ambiguity. The Select Committee, which recommended the amendment, called each specified category "a sub-item" falling under "iron and steel". Apparently, the intention was to consider each "sub-item" as a separate taxable commodity for purpose of sales tax.

.....

It is true that the question whether goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax, the taxable event is the sale and not the manufacture of goods. Nevertheless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial commodity, has taken place. The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they ceased to be goods of one taxable description and become those of a commercially different category and description."

9. The learned Government Advocate contended that just as different items of steel, in that, as many as sixteen items are specified as declared goods, and just as each of the items, which was only a changed form of another item of iron and steel is treated as separate goods, atta, maida and soji were also commercially different items of goods and therefore cannot be regarded as falling under the item "wheat". In support of this submission, he also relied on the judgments of the Supreme Court in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, and *State of Karnataka Vs. B. Raghurama Shetty and Others*, in which the Supreme Court held that paddy and rice were different commodities.

10. After giving careful consideration to the ratio of the decisions cited for the petitioners and for the State and the submission of the learned counsel for the

parties, we are of the view that in view of the ratio of the judgment of the Supreme Court in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, the contention of the learned counsel for the petitioners that atta, maida and soji which are produced out of wheat, though different in form, in substance they are nothing but wheat, is well-founded. That is the view taken by the Patna High Court in Dhanbad Flour Mills [1989] 75 STC 47 SC. The ratio of the decisions of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, of the Andhra Pradesh High Court in The State of Andhra Pradesh Vs. Vayugundla Venkata Subbaiah and Sons, as also of the decision of this Court in Sri Lakshmi Coconut Industries [1980] 46 STC 404 SC, support the same view. As is evident from the scheme of the Central Act, the very object of specifying certain goods as "declared goods" u/s 14 of the Act is to ensure that in each State the taxation on such goods which are of great importance and use to the people at large throughout the country shall not exceed 4 per cent and it shall not also be subjected to tax again and again. If we bear this principle in mind, when wheat is one of the declared goods and the same is a staple food article and is capable of being consumed only in the form of broken wheat or flour or rava (soji), these items cannot be treated as different from wheat. At common parlance, "wheat" as a staple item of food means atta, maida and soji. The decision of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, is of no assistance to the respondents. The fact that the Legislature has not specified each of the products of wheat such as atta, maida and soji separately as declared goods is no ground to hold that they are different from wheat. In fact, it supports the contention of the petitioners that because atta, maida and soji of wheat, are also in substance wheat only, the Parliament has not specified them as separate item of goods. If Parliament intended that each of these items should be taxed again as declared goods, the Parliament would have specified them separately, as has been done in the case of iron and steel by specifying as many as sixteen items. When the Parliament has not done so, to say that atta, maida and soji of wheat are goods different from wheat, which construction enables the levy of tax again or more than once and/or at multi-point without bound by the restrictions incorporated in section 15 of the Central Act, though all those goods are in substance wheat, is impermissible, in view of the ratio of the decision in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, and other decisions relied on for the petitioners. In our view, the ratio in State of Karnataka Vs. B. Raghurama Shetty and Others, on which the learned Government Advocate relied is also distinguishable in view of the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, as also the decision in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, and the decision of this Court in Sri Lakshmi Coconut Industries [1980] 46 STC 404 SC, rendered following the ratio in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, which are apposite to the point arising for consideration in these cases. We are, therefore, of the view that when there is

mere change of form of declared goods without any addition and without there being any change in substance, such changed form of declared goods should not be regarded as a different item, for it results not only in the levy of tax at a higher rate but also levy of tax at multi-point, which amounts to contravention of section 15 of the Central Act.

11. A similar question was also considered by this Court in the case of *M. N. Shanmugam and Co. v. State of Karnataka* (S.T.R.P. No. 99 of 1981 decided on 23rd June 1982 - Karnataka High Court). In the said case, the question for consideration was, whether the parched gram was a commodity different from "gram" which was a declared goods and therefore the turnover of parched gram was again liable to tax u/s 5(1) of the Act as general goods. Relying on the judgment of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, this Court held that parched gram and gram were not different commodities. The relevant portion of the judgment is paragraph 11. It reads :

"11. In the case of *State of Karnataka Vs. B. Raghurama Shetty and Others*, the question for consideration was whether a person who had purchased paddy under circumstances under which no tax was leviable u/s 5(1) of the Act, was liable to pay tax u/s 6 of the Act when he converted it into rice and sold it. The Supreme Court following its earlier decision in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, held, as rice was manufactured out of paddy for sale levy u/s 6 was attracted. The latter decision was specifically cited and referred to in the case of *Lakshmi Coconut Industries Vs. The State of Karnataka and Another*, and after considering its ratio as also of the later decision of the Supreme Court in *Alladi Venkateswarlu* [1978] 41 STC 394, this Court held that the ratio in the case of *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, was apposite to the case of coconut and desiccated coconut as coconut was an item marked for single point levy. It was held that the goods in respect of which the legislative intention was to subject it to single point levy, even after some physical change was brought about in it to make it ready for human consumption, should be considered as one and the same. Though this Court in *Sri Lakshmi Coconut Industries* [1980] 46 STC 404 SC, had explained as to how the decision of the Supreme Court in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, had to be understood and had also indicated that the ratio of the decision in the later decision of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, was apposite to a case of this type, the way in which the Bench of the Tribunal went about the matter ignoring the binding decision of this Court is not happy. By this disregard of a binding decision of this Court, the Tribunal has lent itself to the criticism of acting with impropriety, apart from the circumstance that its conclusion on the point becomes liable to attack as being patently erroneous. It is relevant to note that another Bench of the Tribunal in its decision in *S.T.A. Nos. 280 and 332 of 1980* had updated the Tribunal's view and has, applying the ratio of the decision of the Supreme Court in *Alladi Venkateswarlu and Others Vs.*

Govt. of Andhra Pradesh and Another, held that gram and parched gram were not different commodities."

12. For the aforesaid reasons, we take the view that atta, maida and soji of wheat are not different from wheat, which is a declared goods, and therefore the turnover of these items cannot be subjected to tax u/s 5(3)(a) of the Act if the wheat out of which the said items are prepared, had already suffered tax as declared goods.

13. In the result, we make the following order :

(i) The writ petitions are allowed;

(ii) A writ of mandamus shall issue;

(a) directing the respondents not to treat atta, maida and soji of wheat, as goods different from wheat, and

(b) directing the respondents not to levy tax u/s 5(3)(a) of the Karnataka Act on atta, maida and soji produced out of wheat on the sale turnover of which tax has been paid u/s 5(4) of the Karnataka Act;

(c) directing the respondents to modify the impugned order of assessment in accordance with law and in conformity with this order and to refund or adjust the amount becoming refundable, in the light of this order, if the tax has already been collected under the impugned orders.

(iii) The parties shall bear their costs themselves.

14. Writ petitions allowed.