

(2004) 09 KAR CK 0041

In the Karnataka High Court

Case No : T.A. and E.T. No"s. 15 and 16 of 1996

Ranganatha Industries

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 15 (3), 16, 3

Citation : (2008) 11 VST 240

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : R.V. Prasad, for the Appellant; B. Ananda, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—In this appeal filed u/s 16 of the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as "the Act"), the appellant has called in question the correctness of the order dated June 27, 1994, passed by the Joint Commissioner of Commercial Taxes (Administration), Gulbarga Division, Gulbarga.

2. The facts in brief can be stated as hereunder:

The appellant (hereinafter referred to as "the assessee") is a proprietary concern and is a registered dealer under the provisions of the Act and it is engaged in the activity of extracting oil from rice bran. During the years 1987-88 and 1988-89, the assessee caused entry of rice bran into the Raichur local area from outside. The assessing authority by means of its order dated May 29, 1991, granted exemption from the payment of tax under the Act on the entry of rice bran brought into the local area by the assessee taking the view that the same did not constitute raw material for the purpose of entry 16-B of the Schedule given to the Act. To come to the said conclusion, the assessing authority relied upon the order passed by the Joint Commissioner of Commercial Taxes (Legal), Bangalore, wherein the Joint Commissioner of Commercial Taxes under similar

circumstances in the case of M/s. Habib Oil Mills, Srirangapatna, had taken the view that when the goods like oil cake and rice bran are brought into the local area and oil extracted therefrom, the activity should be treated only as one of processing and not manufacturing; and therefore, it will not come within the ambit of entry 16B of the Schedule. However, in the impugned order the Joint Commissioner of Commercial Taxes took the view that the rice bran brought within the local area is liable for payment of tax as the assessee has admittedly used the rice bran for the purpose of extraction of oil out of the rice bran. As noticed by us earlier, the said order is called in question by the assessee in this appeal.

3. Sri R.V. Prasad, learned Counsel appearing for the appellant challenging the correctness of the impugned order made three submissions. Firstly, he submitted that the rice bran brought within the local area cannot be considered as a raw material for the purpose of extraction of oil as according to him the extraction of oil out of the rice bran involves only processing activity and not a manufacturing activity. In this connection, he drew our attention to Section 3 of the Act which is the charging section and relied upon the decisions of the Supreme Court in the case of Commissioner of Central Excise, Chandigarh-I and Collector of Central Excise, Chandigarh Vs. Markfed Vanaspati and Allied Industries and Others, , in the case of M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, , in the case of Chowgule & Co. Pvt. Ltd. v. Union of India reported in [1981] 47 STC 124 and in the case of Union of India v. Ahmedabad Electricity Co. Ltd. reported in [2004] 134 STC 24. Secondly, he contended that rice bran and de-oiled rice bran having been held as one and the same in the case of State of Karnataka v. Oil Seeds Oil Trade and Industry's Association in Karnataka (Regd.) rendered in Writ Appeal No. 3069 of 1998 and Writ Appeal Nos. 3223 to 3242 of 1999, disposed of on June 20, 2002 and also in the Circular dated November 21, 1987, in CLR CR. No. 1109/87-88 issued by the Commissioner of Commercial Taxes wherein he had also taken the view that the rice bran and de-oiled rice bran are one and the same, the Commissioner should have taken the view that there was no manufacturing activity involved and therefore, the entry of the rice bran within the local area caused by the assessee is not liable to be taxed under the Act. Finally, he submitted that since the assessing authority in the light of the decision rendered by the Joint Commissioner who was subsequently re-designated as Additional Commissioner in view of the amendment made to the Act by means of Act No. 5 of 1993 with effect from November 9, 1992 the Joint Commissioner who had passed the impugned order could not have exercised his revisional power u/s 15 of the Act, firstly for the reason that the assessing authority had followed the order passed by the Additional Commissioner who is higher in rank to the Joint Commissioner and secondly for the reason, since the assessing authority has followed the order of the Additional Commissioner, the order passed by assessing authority cannot be considered as one prejudicial to the interest of the Revenue. In other words, it is the submission of the learned Counsel that if a subordinate authority like the assessing authority follows the

order passed by the appellate or a higher authority, the said order cannot be said to be an erroneous order and prejudicial to the interest of the Revenue. In support of this submission, he relied upon the decision of the Division Bench of the Calcutta High Court in the case of Russell Properties Pvt. Ltd. Vs. A. Chowdhury, Addl. Commissioner of Income Tax and Others, .

4. However, Sri Anand, learned Additional Government Advocate while strongly supporting the impugned order pointed out that since un-disputedly oil is produced out of the rice bran, the revisional authority was fully justified in taking the view that the oil was produced as a result of manufacturing activity carried on by the assessee. According to the learned Government Advocate, when oil is extracted out of the rice bran, a new product is produced and the production of the new product takes place only on account of the manufacturing process involved. He pointed out that the production of a new material does not take place merely by way of processing of the rice bran and the nature of the production of the rice bran oil must be considered as taking place only on account of the manufacturing process involved. In support of his contention, that the production of oil out of the rice bran involves manufacturing process, he referred to us the decisions of the Supreme Court in the case of Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, ; in the case of State of Karnataka Vs. B. Raghurama Shetty and Others, ; in the case of State of Andhra Pradesh v. Modern Proteins Ltd. reported in [1994] 95 STC 181 : [1994] 2 Supp. SCC 496 in the case of B.P. Oil Mills Ltd. v. Sales Tax Tribunal reported in [1998] 111 STC 188. He also relied upon the Solvent Extracted Oil, De-oiled Meal and Edible Flour (Control) Order, 1967. He also pointed out that since the revisional authority has passed the impugned order relying upon the judgment of this Court in the case of J.S. Auto Machine Shop v. State of Karnataka reported in [1993] 90 STC 121, there is absolutely no justification to interfere against the said order.

5. In the light of the rival submissions advanced by the learned Counsel appearing for the parties, the only question that would arise for consideration in this appeal is as to whether the order impugned is liable to be set aside by this Court?

6. Before we proceed to examine the correctness of the contentions advanced by the learned Counsel appearing for the parties, we find it is appropriate to refer to some of the provisions of the Act and the history which ultimately led to incorporation of entry 16B of the Act. Section 3 of the Act is the charging section. It provides for levy and collection of tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein at such rates not exceeding 5 per cent of the value of the goods as may be specified, etc. By means of an amendment made to the Schedule by Act No. 41 of 1986 entry 16B came to be incorporated to the Schedule in the place of original entry 18 given to the Schedule. The said provision reads as follows:

16B. All raw materials, component parts and inputs which are used in the manufacture of an intermediate or finished product,-

(i) when brought into local areas by an industrial unit; or

(ii) when brought into local areas by any dealer who, after having so brought, sells or supplies the same to an industrial unit located either within the same local area or outside it.

Explanation I.--The words "industrial unit" mean a manufacturing unit which falls within the definition of a "factory" under the Factories Act, 1948 (Central Act No. LXIII of 1948), but excludes,--(i) handicrafts manufacturing units (ii) hand-loom weaving units and (iii) Any other group or class of industries which may with reference to their nature, competitiveness, employment potential or such other factors, be notified by the State Government.

Explanation II.--The words "raw materials, component parts and inputs" do not include agricultural produce, horticultural produce, timber or wood of any species, silk cocoons, raw, thrown or twisted silk, tobacco (whether raw or cured), cement, paper, electrical goods or such other inputs as may be notified by the State Government for purposes of exemption from tax under item 16B from time to time, but include aluminium ingots and ores of all kinds.

7. Prior to the incorporation of entry 16B of the Act, entry 18 given to the Schedule came to be incorporated by Act No. 38 of 1984 with effect from April 1, 1983 and the same reads as follows:

(18) All raw materials, component parts and any other inputs (e.g. processing of any other chemicals solvents used in the solvent [extraction process], catalysts and the like), which go into or may be used in the manufacture of an intermediate or finished product, when brought into local area by an industrial unit or any other dealer.

Explanation I.--The words "Industrial unit" mean a manufacturing unit, which falls within the definition of a "factory" under the Factories Act, 1948 (Central Act No. LXIII of 1948), but excludes,--(c) Handicrafts manufacturing units (ii) Hand-loom Weaving Units and (iii) Any other group or class of industries, which may with reference to their nature, competitiveness, employment potential or such other factors, be notified by the State Government.

Explanation II.--The words "raw materials, component parts and inputs" do not include sugarcane, cereals, oil-seeds, pulses, timber or wood of any species, silk cocoons, raw, thrown or twisted silk, or such other inputs as may be notified by the State Government for the purposes of exemption from the tax under entry 18 from time to time; but include aluminium ingots and ores of all kinds.

8. Further, by means of Karnataka Act No. 9 of 1990 the entry 16B given to the Schedule came to be modified. The modified entry 16B reads as follows:

16B. All raw materials, component parts and inputs which are used in the manufacture of an intermediate or finished product, or in the processing, improvement or repairs of goods,-

- (i) when brought into a local areas by an industrial unit; or
- (ii) when brought into a local areas by any dealer who after having so brought, sells or supplies the same to an industrial unit located either within the same local area or outside it.

9. At this stage, it is necessary to point out that by means of an amendment made to entry 16B to the Schedule by Act No. 9 of 1990 with effect from April 1, 1990, the words "or in the processing, improvement or repairs of goods" came to be inserted for the first time in the place of the word "manufacture" which was earlier incorporated in the said provision.

10. Now, we will proceed to consider each one of the contentions urged by the learned Counsel appearing for the parties. As noticed by us earlier, Section 3 of the Act provides for levy and collection of tax on entry of any goods specified in the First Schedule into the local area for consumption, use or sale therein at the rates specified in the Schedule. The Schedule given to the Act provides for various items in respect of which tax is made leviable u/s 3 of the Act. Entry 16B is one of the items in respect of which entry tax is made leviable as provided u/s 3 of the Act. The entry 16B referred to above provides that the raw materials, component parts and inputs which are used in the manufacture of an intermediate or finished product, (i) when brought into local areas by an industrial unit; or (ii) when brought into local areas by any dealer who sells or supplies the same to an industrial unit located either within the same local area or outside it are liable for levy of tax. Explanation II provides that raw materials, component parts and inputs excludes agricultural produce, horticultural produce, timber or wood of any species, silk cocoons, raw, thrown or twisted silk, tobacco (whether raw or cured), cement, paper, electrical goods or such other inputs notified by the State Government. The submission of Sri Prasad, learned Counsel appearing for the appellant as noticed by us earlier, is that it is only such of those raw materials, component parts and inputs which are brought into the local area, if they are used for the manufacture of intermediary or finished product, it is only then they are liable for levy of tax u/s 3 of the Act. In other words, it is his submission that the rice bran brought by the assessee to the local area if used for any manufacturing purposes, then only the same is liable for levy of entry tax and in cases where it is not used for manufacturing purposes, entry tax cannot be levied. According to him since the rice bran brought is not destroyed and continues to be rice bran even after extraction of the oil, it must be held, there is no manufacturing process involved and as such is not liable for levy of entry tax. While the submission made for first blush appears attractive, on closer scrutiny it does not commend itself for acceptance. It is not in dispute that the assessee has caused entry of rice bran into the local area for the purpose of extracting oil from the rice bran. We are unable to accede to the submission of Sri Prasad that since this Court in the case of Oil Seeds, Oil Trade and Industry's Association in Karnataka (Regd.) (Writ Appeal Nos. 3069 of 1998 and 3223 to 3242 of 1999, decided on June 20, 2002--Karnataka High Court), has taken the view that the

rice bran and de-oiled rice bran are one and the same, there is no manufacturing process involved in extraction of oil from the rice bran. In our view, the principle enunciated by this Court in the case of Oil Seeds Oil Trade and Industry's Association in Karnataka (Regd.)(Writ Appeal Nos. 3069 of 1998 and 3223 to 3242 of 1999, decided on June 20, 2002), has no application to decide the facts of the present case. Merely because in the case of Oil Seeds Oil Trade and Industry's Association in Karnataka (Regd.)(Writ Appeal Nos. 3069 of 1998 and 3223 to 3242 of 1999, decided on June 20, 2002), has taken the view that the rice bran and de-oiled rice bran are one and the same, it is not possible to take the view that the rice bran caused entry within the local area is not liable for levy of entry tax. For the same reason, we are also of the view that Sri Prasad cannot take any assistance from the circular dated November 21, 1987 issued by the Commissioner, wherein it is stated that rice bran and de-oiled rice bran are one and the same and therefore, it should be held that there is no manufacturing process involved in the extraction of oil out of the rice bran brought within the local area. The real question is as to whether there is any manufacturing process involved while producing oil from the rice bran? There cannot be any dispute that the oil produced out of the rice bran is a different product from the rice bran. When out of an Article a new product like oil is produced, in our considered view, the production takes place and the fresh finished product/goods are produced on account of the manufacturing process involved. The Chambers 21st Century Dictionary refers to manufacture: (1) to make something from raw materials, especially in large quantities using machinery (2) to invent or fabricate something (3) to produce something in a mechanical fashion. In our considered view, so long as finished goods produced is different and distinct from the original goods or articles, the process by which the resultant product or finished goods produced could only be by way of manufacturing process involved. The distinction between processing and manufacturing is that in the case of processing, the quality of existing material gets improved. However, in the case of manufacture, new finished product is produced. The observation made by the Supreme Court--(1) in the case of Devi Dass Gopal Krishnan [1967] 20 STC 430, (2) in the case of B. Raghurama Shetty [1981] 47 STC 369; and (3) in the case of Modern Proteins Ltd. [1994] 95 STC 181 supports our view. Therefore, since the oil produced out of the rice bran is a different product from the rice bran, as noticed by us earlier, the process involved for producing oil is essentially one of manufacturing process which is liable for entry tax.

11. In the case of Devi Dass Gopal Krishnan [1967] 20 STC 430; Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , the assessing authority levied purchase tax on the purchase of oil seeds "for use in the manufacture of goods for sale". In that connection, the question that came up for consideration before the Supreme Court was whether the purchase tax was not leviable on oil seeds as the assessee in those cases did not manufacture oil out of the seeds, but only produced oil. While considering the said question, the Supreme Court at paragraph 30 (page 446 of STC) of the judgment, has taken the view that when

oil is produced out of the seeds, the process certainly transforms raw materials into different Article for use. In this connection, it is useful to refer to the observation made at paragraph 30 (page 446 of STC) of the judgment which reads as hereunder:

(30) The last argument is that the said definition only takes in the purchase of goods for use in the manufacture of goods but tax is imposed on the purchase of goods for producing oil. To state it differently, oil is not manufactured out of oil seed but only produced. Reliance is placed upon the user of two words in the Act, viz., manufacturing or processing in the proviso to Sub-section (2) of Section 4 and Sub-section (5) thereof and the expression "edible oils produced" in entry 57 of Schedule B to the Act and a contention is raised that the Act itself makes a distinction between manufacturing and processing and manufacture and production and, therefore, oil is not manufactured but only produced from oil seeds. Support is sought to be derived from this argument from the decision of this Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, . But a perusal of the judgment shows that this Court only held that refined oil produced out of seeds was only an intermediate stage in the manufacture and was, therefore, not liable to excise duty. On the other hand, the dictionary meaning of "manufacture" is "transform or fashion raw materials into a changed form for use". When oil is produced out of the seeds the process certainly transforms raw material into different Article for use. We cannot, therefore, accept this contention.

(Here italicised)

12. In the case of Modern Proteins Ltd. [1994] 95 STC 181; [1994] 2 suppl. SCC 496, the Supreme Court has observed that since a separate commercial commodity comes into existence or emerges from the production or manufacture, it becomes a separate taxable entity or goods for the purpose of sales tax and the word "manufacture" has got various shades of meanings and there may be a manufacture of a complicated object like the super constellation or there might be manufacture of a simple object like a toy kit and, etc. At paragraph 4 (page 184 of STC) of the judgment, the Supreme Court has observed as follows:

4. Having given our anxious and careful consideration and thought to the respective contentions, we are of a considered view that the argument of Shri Salve, though attractive, does not command itself for acceptance. Sales tax law is intended to tax sale or supply of different commercial commodities and not to tax the production or manufacture of particular substance out of which the commodities may have been made. As soon as a separate commercial commodity comes into existence or emerges from the production or manufacture, it becomes a separately taxable entity or goods for the purpose of sales tax. When commercial goods without change of their identity as such goods are merely subjected to some processing or finishing or are merely joined together, they remain commercially known as same goods, cannot be taxed

again in a series of sales, so long as they retain their identity as goods of a particular original type. In *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, , this Court considering, whether the rice after de-husking remains to be paddy or whether liable to sales tax as rice, held that it is true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after de-husking. It had changed its identity. Rice is not known as paddy. It is misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence, quite clearly when paddy is de-husked and rice produced there has been a change in the identity of the goods. Accordingly, it was taxed as rice. In *State of Karnataka Vs. B. Raghurama Shetty and Others*, this court, considering the same question gave an illustration whether wheat flour be called wheat and considered the distinction from the economic perspective. In *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, this Court while considering whether flour, maida and suji derived from the wheat are not "wheat" within the meaning of section 14 of the CST Act, held that flour, maida and suji are different and distinct goods from wheat. In other words, flour, maida and suji are not declared goods. Though flour, maida and suji are derived from wheat but they are not wheat. In *Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another*, this Court was to consider whether metal take within its ambit the fabricated forms of metal "all kinds of metals" including minerals, ores, metals, alloys and sheets, this Court held that metal was used u/s 3A(2) of the U.P. Sales Tax Act, 1948, in its primary sense, i.e., in the form in which it is marketable as the primary commodity and that the primary form and the forms fabricated from the primary form constitute two distinct commodities marketable as such and must be regarded as different commercial commodities.... In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Coco Fibres*, , the question was whether coconut fibre is a separate entity from the coconut husk. This Court laid the test thus: "The essential point to remember is whether something is brought into existence which is different from that originally, existing, in the sense that the thing produced is by itself a commercial commodity and is capable as such of being sold or supplied. It is not necessary that the stuff or the material or the original Article must lose its character or identity or it should become transformed in its basic and essential properties". The test is whether the Article which comes into being is commercially different from the one from which it is made or manufactured. In that case it was held that coconut fibre is a separate entity from coconut husk in commercial parlance. In *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, , this Court held that the purpose of enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it. It was held that "iron and steel" when converted into steel rounds, flats, angles and bars are separately taxable entities for the purpose of sales tax, each of them form a separate species in each series of sales although they may all belong to the genus "iron and steel".

In *G.R. Kulkarni v. State* [1957] 8 STC 294, Hidayatullah, C.J., (as he then was), speaking on behalf of a division Bench of the Madhya Pradesh High Court, considered the question whether breaking boulders into stone is manufacture within the meaning of Section 2(i) of the M.P. Sales Tax Act. It was held that after quarrying if an attempt is made to break them (stone), may be by manual labour, into sizes for sales as gitti, the stone is shaped into an object of a different size, "The word "manufacture" has got various shades of meanings. There may be manufacture of a complicated object like the super-constellation, or there might be manufacture of a simple object like a toy kit.... When they are broken into metal or gitti there is some process, manual though it may be, for the purpose of shaping the stones into another marketable commodity.

Accordingly, it was held that stone making is a new Article exigible to sales tax.

(Here italicised)

13. In the light of the principles enunciated by the Supreme Court in the cases referred to above, we are of the view that the decision of the Supreme Court in the case of *Commissioner of Central Excise, Chandigarh-I and Collector of Central Excise, Chandigarh Vs. Markfed Vanaspati and Allied Industries and Others*, relied upon by Sri Prasad is of no assistance to him. In the said case, the question that came up for consideration before the Supreme Court was whether the goods become excisable merely because it falls within a tariff item. While considering the said question, the Supreme Court took the view that the duty having been paid on "earth", no duty was leviable on "spent earth" as the "earth" and the "spent earth" remained the same product. The principle enunciated by the Supreme Court in the said case has no bearing to the facts of the present case. Similarly, the case of *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, is also of no assistance to Sri Prasad. In the said decision, the question that came up for consideration before the Supreme Court was what is meant by "processing". Further, the observation made by the Supreme Court in the case of *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, , at paragraph 15 of the judgment supports our view that the word "manufacture" is generally understood to mean bringing into existence a new substance and does not mean merely to produce some change in the substance.

14. In the case of *Chowgule & Co.* [1981] 47 STC 124, the question that came up for consideration before the Supreme Court was what was manufacturing and processing of ore. While considering the said question, the court pointed out that commonly manufacture is the end result of one or more processes through which the original commodity is made to pass and it is only when the change or 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 court further observed that the test to decide whether the process involved is a manufacturing process or not, the question that is required to be considered is that the processing of the original commodity bring into existence a commercially distinct

and different commodity. However, on the facts of the said case, the court took the view that the blending of the ore did not involve any manufacturing process. It is useful to refer to the observation made by the court at page 130 of the judgment which reads as hereunder:

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 May 9, 1980 in Civil Appeal No. 2398 of 1978, in Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63 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.

(Here italicised.)

15. The observation made by the Supreme Court extracted above, as noticed by us earlier, instead of supporting the contention of the learned counsel appearing for the appellant, it supports our view that if new products or goods are produced, the process used for production of such a new product should be considered as a manufacturing process. In the light of the discussion made above, we are of the view that the first and second contention urged by Sri Prasad requires to be answered against him.

16. Now, the only other question that would arise for consideration is whether it was not permissible for the revisional authority to interfere against the order of

assessment made by the assessing authority as he has followed the decision of the revisional authority who has under similar circumstances taken the view that there was no manufacturing process. No doubt, the division Bench decision of the Calcutta High Court in the case of Russell Properties Pvt. Ltd. Vs. A. Chowdhury, Addl. Commissioner of Income Tax and Others, supports the contention of Sri Prasad that the subordinate authority is bound to follow the decision of the higher authority. In our view, the principle enunciated in the said decision has no application to the facts of the present case. It is necessary to point out that the revisional authority who had passed the impugned order was also holding the post of Joint Commissioner. However, it is only by means Act No. 5 of 1993 the post of Joint Commissioner was upgraded as Additional Commissioner with retrospective effect from November 9, 1992. Under these circumstances, the Joint Commissioner who has passed the impugned order was not holding the post below the rank of the Joint Commissioner who had decided the case of Habib Oil Mills (Pvt.) Ltd., Srirangapatna. Further, when the matter is required to be inquired into by this court, ultimately, the question is whether the order passed by the assessing authority is legally sustainable. The conclusion reached by us above shows that the order passed by the assessing authority was legally unsustainable. Sub-section (3) of Section 15 of the Act confers power on the Joint Commissioner to call for and examine the records in respect of a proceeding under the Act and if he considers that if any order passed therein by an officer who is not above the rank of a Deputy Commissioner is erroneous in so far as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary pass such order as circumstances of the case justify including an order enhancing or modifying the assessment or cancelling the assessment or directing fresh assessment. In the instant case, the order of assessment was made by an officer who was an Entry Tax Officer and who was not above the rank of the Deputy Commissioner. Therefore, it was permissible for the Joint Commissioner to call for records and examine the correctness of the order of assessment made by the Entry Tax Officer and modify the same, provided he was satisfied that the order passed by the entry tax officer was erroneous in so far it was prejudicial to the interest of the Revenue. If the order passed by the assessing authority was contrary to law and on account of that, if the tax which was leviable was unjustifiably exempt from levy of tax, there cannot be any doubt that the order passed by the assessing authority would be prejudicial to the interest of the Revenue. Merely because the assessing authority has relied upon a decision of the Joint Commissioner in the case of Habib Oil Mills (Pvt.) Ltd., in our view, would not prevent the revisional authority from examining the correctness of the order passed by the assessing authority. The wrong order made by an assessing authority cannot remain uncorrected on the ground that the assessing authority has followed an order made by an higher officer and the same binds the subordinate officers. Such principle, if upheld as correct in law, it will have serious consequence so far as the State revenue is concerned. Under these circumstances, if a revisional authority who is conferred

with the power of examining the correctness of the orders passed by the subordinate officers, on such examination is satisfied that the decision of the subordinate officer is erroneous in law, even if he has followed the decision of the higher authorities, we are of the view that under these circumstances, it must be held that the revisional authority is within his jurisdiction to interfere against such a decision of the assessing authority/subordinate officer. Therefore, we are unable to persuade ourselves to accept the third submission of Sri Prasad.

17. In the light of the discussion made above, these appeals are liable to be rejected. Accordingly, they are rejected. However, no order is made as to costs.

Sri B. Anand, learned Additional Government Advocate is given four weeks" time to file his memo of appearance.