(2005) 03 RAJ CK 0016

In the Rajasthan High Court

Rishab Rolling and Grading Mills — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 8, 9

Citation : (2008) 11 VST 766

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

Question relates to continued exemption on inter-State sales of processed cereal-wheat for the assessment period under notification issued u/s 8(5) of the Central Sales Tax Act, 1956 dated March 6, 1978 which has not been withdrawn.

2. The petitioner-firm is a dealer under the Rajasthan Sales Tax Act as well as the Central Sales Tax Act. The petitioner also holds a recommendation certificate issued by the Khadi and Gramodhyog Board, Rajasthan, constituted under the Rajasthan Khadi and village Industries Board Act, 1955. A Notification No. F. 4(21) FD/Gr. IV/78-6 dated March 6, 1978 was issued by the State Government as a delegate of the Parliament u/s 8(5) of the Central Sales Tax Act, 1956 granting exemption from tax, sales of certain commodities by any dealer, having his place of business in the State, and who holds an exemption certificate without payment of any fees issued to him on the recommendation of the Rajasthan Khadi and Village Industries Commission constituted under the Rajasthan Khadi and Village Industries Board Act, 1955, in respect of the sale by him from any such place of business in the course of inter-State trade or commerce, of the goods specified in the list appended hereto. The said list appended to the aforesaid notification annexure 6 dated March 6, 1978 included processing cereals and pulses.

3. The petitioner has claimed exemption under the aforesaid notification under the Central Sales Tax Act in respect of processed wheat sold by him by way of inter-State sales. The cereal-wheat was sold by the assessee after processing the same by removing the stones, polishing and grading. The said exemption was allowed to the petitioner under the regular assessment under the Central Sales Tax Act by the assessing authority.

4. However, the Commercial Taxes Officer (Anti Evasion), conducted a survey of assessee''s premises on October 31, 2003. The CTO (Anti Evasion) was not the assessing officer of the assessee, and the assessee was being regularly assessed by CTO, Circle B, Bhilwara. However, CTO (Anti Evasion) issued two notices dated December 30, 2003 u/s 30 of the Rajasthan Sales Tax Act, 1994 read with Section 9 of the Central Sales Tax Act for reopening the assessments for the periods of 1999-2000 and 2000-2001 stating that the State Government in its notification dated March 27, 1995 has clearly stated that "in exercise of the powers conferred by Section 4(2) of the RST Act, 1954 and in supersession of all notifications issued in this behalf, the State Government hereby exempts from the tax with immediate effect the sale of products manufactured in the State and sold by any person...."

5. He opined that on the basis of the aforesaid notification, the exemption from the tax is granted only on the sale of products manufactured in the State. But because the assessee is involved only in the processing of cereals and not production of cereals, he was not entitled to claim exemption under the aforesaid notification dated March 6, 1978 issued under the Central Sales Tax Act and it was liable to pay tax at four per cent under the CST Act on the turnover which has escaped assessment under the CST Act by wrongful allowance of claim to exemption.

6. The petitioner challenged the aforesaid notice issued u/s 30 of the RST Act read with Section 9 of the CST Act for reopening the assessment under the CST Act by filing writ petition on January 8, 2004, inter alia, on the ground that the Commercial Taxes Officer (Anti Evasion) had assumed jurisdiction which was not his domain and that too on non-existent facts inasmuch as unless notification of exemption issued u/s 8(5) of the CST Act on March 6, 1978 is withdrawn or cancelled by the delegate in exercise of power conferred under the CST Act, the fact of withdrawal of notification issued under the powers conferred under the RST Act, cannot automatically result in withdrawal of exemption under the CST Act also whereunder the State Government acts as delegatee of Parliament and the notification issued in exercise of that power is a delegated legislation under the Central enactment which does not stand repealed or cancelled automatically by repeal of State law. It was also challenged on the ground that the Commercial Taxes Officer (Anti Evasion) was not the assessing authority within the meaning of Section 30 of the Rajasthan Sales Tax Act, 1994. Thus, the challenge to notice was founded on the ground of lack of jurisdiction in Commercial Taxes Officer (Anti Evasion) and exercise of jurisdiction on non-existent fact on its face by the

concerned authority. The notices exhibits 11 and 12 were issued on December 30, 2003 for reopening the assessment under the CST Act for the assessment periods.

7. The assessee filed a reply to the show cause notice on January 15, 2004 taking aforesaid objection. He also informed that he has filed writ petition in the High Court on January 8, 2004 challenging the jurisdiction of the ACTO (Anti Evasion) to reopen the assessment and next date of hearing was fixed on January 23, 2004 and requested to await the outcome of hearing of writ petition. Show cause notice was issued by the learned single judge on January 23, 2004. However, meanwhile the assessing officer appears to have passed reassessment order on January 16, 2004 itself, the very day after written reply was submitted informing the respondents about challenge to his jurisdiction before this court. The assessment orders were not served on assessee until issue of show cause notice by this court.

8. The respondents passed reassessment orders for the two periods in question by levying tax at four per cent on inter-State turnover under the CST Act and raised the demand in pursuance of the said notice which led the petitioner to amend the writ petition challenging the assessment also founded on invalid notice of reassessment. The amendment was allowed by the court on January 28, 2004.

9. However, when the matter came up for hearing, the learned single Judge dismissed the writ petition1 on the ground that the writ petition is not maintainable because alternative remedy of appeal against the order of assessing officer is available to the petitioner. Hence, this appeal.

10. In the present case, the assessee has challenged the assumption of jurisdiction by the respondent with respect to assessment on non-existent ground and absence of existence of pre-condition. If the proceedings itself are wholly without jurisdiction, no assessment could be founded on that. This fact also cannot be lost sight of that the petitioner-appellant had approached this Court on receipt of notice of reopening on aforesaid grounds. He also promptly informed the respondent officer who had issued notices about his having approached this Court by way of writ petition and sought time to await its result. The assessee had not indulged in prolonging the proceedings. Time for completion of assessment was also not to expire shortly. Yet soon on receiving the information about filing of writ petition, the respondent proceeded to pass assessment order on January 16, 2004 itself, betrays that the assessing officer has acted in hot haste without even considering the petitioner''s request and objections to notices in an attempt to infructuate the remedy availed by the assessee to challenge the proceedings on the ground of inherent lack of jurisdiction. Ordinarily in the circumstances as were present in present case, the respondent assessing officer ought to have at least waited until the petition was taken up for consideration by this Court or required the assessee to produce the orders of court. In view thereof, merely because, the assessment has been

passed during the pendency of the writ petition, the challenge of the petitioner that the assessing officer by wrongfully assuming the jurisdiction which did not vest in him by assuming non-existent fact, cannot result in exercise of jurisdiction vested in the assessing authority, if it is otherwise, not vesting in him. Moreover, the question being involved about the ambit and scope of exercise of delegated power by the State Government under one enactment when it happens to be delegate under two different enactments, one as a delegate of the State Legislature and another as a delegate of the Parliament is a question of substantial general importance, the existence of alternative remedy in the present case ought not to come in the way of courts to desist from deciding the issue on merit on undisputed facts.

11. The fact that the notification under which the petitioner claims exemption and which has been allowed to him as being issued under the CST Act in exercise of power conferred on the State Government u/s 8(5) of the CST Act and that notification dated March 6, 1978 as such, has not been revoked or cancelled is not in dispute. However the other notification which has been issued contemporaneously by the State Government in exercise of its power conferred for granting exemption from payment of tax leviable under the RST Act, has been subsequently substituted by another notification which we shall presently notice.

12. The notification to which reference has been made by the Commercial Taxes Officer (Anti Evasion) in its notice u/s 30 is the issue of notification u/s 30 of the RST Act, 1994. However, he has assumed jurisdiction under RST Act read with Section 9 of the CST Act. In terms of Section 30 of the RST Act where tax has been wholly or in part unassessed or under-assessed in any way or under any circumstances, it shall be deemed an escaped assessment and the assessing authority shall on the basis of the material on record or after making such enquiry as it may consider necessary, complete such assessment within the time-limit provided in Sub-section (3) of Section 30. Sub-section (2) of Section 30 enables the Commissioner or a Deputy Commissioner (Administration) who has reason to believe that a dealer has escaped the assessment to tax in any manner provided in Sub-section (1), he may at any time, subject to the time-limit specified in Sub-section (3), either direct the assessing authority to assess the tax or the fee or other sum or himself proceed to assess the same.

13. Therefore, subjective satisfaction of the officer, before taking any action u/s 30 about the escapement of tax for any reason has to exist in the mind of the assessing officer. The opinion on the basis of which the assessing authority is required to take action u/s 30 is subjective one. However subjective may be the opinion which the assessing authority may have, its inherent limit is that it cannot be founded on the non-existing fact. The reference in this connection may be made to the decision in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, in which the apex court said that:

...No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the Section exists, the action might be exposed to interference unless the existence of the circumstances is made out. Since the existence of ''circumstances'' is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusion of certain definiteness.

14. The circumstances of the fact which has been used as a vehicle for initiating proceedings u/s 30 of the RST Act read with Section 9 of the CST Act, as noticed above is issuance of the notification by the State Government on March 27, 1995 in exercise of power conferred u/s 4(2) of the RST Act, 1954 whereas reassessment proceedings are initiated in respect of assessment under the CST Act. We may notice here that the Rajasthan Sales Tax Act, 1994 came into force with effect from October 1, 1995 after the above notification dated March 27, 1995 was issued prior to its commencement under the old Act.

15. It has to be seen that State Legislature has no authority to legislate to levy tax on sale or purchase of goods in the course of inter-State trade or commerce or outside a State or in the course of import or export. Article 286 makes it clear that the Parliament alone is authorised to impose tax on sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce, outside the State or in the course of import of the goods into or export of the goods outside the territory of India. Therefore, the sale which takes place outside the State, if any tax is to be levied on such sales by the State from which goods have moved in pursuance of sale, then the imposition can only be by an Act of Parliament. Consequently, any incidental and subordinate or delegated legislation for giving effect to the levy of such imposition is also the subject-matter of the legislation to be made by Parliament or its delegate. It operates in the same field of legislation as parent and primary legislation. It is in exercise of this power that the CST Act, 1956 was enacted by the Parliament and tax was imposed on the sale or purchase which takes place in the course of inter-State trade or commerce which is termed as inter-State sale or purchase. Exemption from CST also comes within the domain of same legislative field.

16. It may not be out of place here to refer to relevant legislative development in this regard.

17. Section 9 of the CST Act deals with levy and collection of tax imposed under the Act. As originally enacted Section 9 did not contain Sub-section (2A). The Parliament adopted the provisions of general sales tax laws relating to procedure of assessment and collection of Central sales tax on behalf of Government of India. It provided that CST imposed under the Act shall be levied and collected by the appropriate State Government in accordance with the provisions made under general sales tax law of that State relating to assessment, collection and

enforcement of payment of tax and in the same manner as the tax on sale or purchase is assessed, collected and paid under the general sales tax law of the State. However, within the province of this general adoption of procedure for levy and collection was not included power to levy penalties or prosecution for offences provided under the State law as consequences of breaches of procedural provisions. Hence levy of penalties other than specifically provided under the CST Act could not be resorted to as an effective tool of levy and collection of tax. The apex court held in Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra [1975] 35 STC 571 that penalty is not merely sanction. It is not merely an adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act...penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax. In order to levy penalty under the Act, there must be special provision for that that purpose.

18. The same view was reiterated in Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur,

19. This ultimately led to insertion of Sub-section (2A) in Section 9 retrospectively, with effect from January 5,1957 vide Amending Act No. 103 of 1976.

20. So also Sub-section (5) of Section 8 in its original form had enabled the Central Government to grant exemption or provide for tax at lower rate than otherwise leviable under the CST Act. It read "Notwithstanding anything contained in this section, the Central Government may, if it is satisfied that it is necessary so to do in the public interest...direct that...no tax under this Act shall be payable by any dealer having a place of business in any union territory in respect of sale by him from such place of business...or that the tax on such sales shall be calculated at such lower rates, than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification".

21. Thus, power to exempt from tax or grant concession in rate of tax vested "with Central Government and that too only in respect of registered dealers who had their place of business in the union territories. In Sub-section (5) the words "State Government" and the "State" were substituted for words "Central Government" and "Union Territory" respectively by Section 2 of CST (Amendment) Act, 1957. Only after this amendment that appropriate State Government was enabled to direct exemption from payment of tax under the CST Act or concession in rate of tax under the CST Act in place of Central Government. In the present form, Sub-section (5) came into existence with effect from April 1, 1973 vide CST (Amendment) Act, 1972.

22. These changes show that power of the State Government to levy and collect tax imposable under the CST Act, as per procedure under State sales tax law, power to levy penalty provided under State law, and power to exempt or grant concession under the CST Act are exercisable only as a delegate of Parliament,

within the province of the CST Act and not beyond. In acting as delegate of Parliament, the subordinate legislation which the delegate brings into existence is independent of its power under general tax law of the State and is not conferred by State law a priorate.

23. In the present case, the very fact that the reassessment notice under the CST Act shows that the sales have taken place outside the State shows that the State Legislature has no authority to deal with as a subject of imposition of tax under entry 54 of List II of the Seventh Schedule. But in terms of the provision of Article 286, the State Government from which the movement of goods subject of such inter-State sale commences, is authorised to collect the tax on behalf of Government of India as per provision of the CST Act.

24. The grant of exemption by the Central Government under the CST Act is in the nature of subordinate legislation and is part of Central legislation. The State Legislature has no authority to deal with the subject-matter which falls strictly within the domain of the Parliament in all its aspects. So also, delegate of State in the matter of grant of exemption or withdrawal of exemption under respective legislation suffers from the same limitation under which a delegate of particular legislation is usually subject to in the matter of grant and revocation of regular exemption. It has to be by same procedure.

25. However, the exercise of power under the State Legislature does not affect the exercise of power under the CST Act or vice versa unless otherwise provided by respective laws. It is for this reason that while enacting the CST Act, the Parliament instead of providing an independent machinery for levy and collection of tax, made a provision u/s 9 of the CST Act that the tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within Clause (a) or Clause (b) of Section 3, shall be levied by the Government of India and the tax so levied or collected by that Government in accordance with the provisions of Sub-section (2), in the State from which the movement of the goods commenced. Thus, the site of levy of tax imposition became the territories of the States from which the movement of goods commenced in the inter-State trade or commerce. The levy is to be imposed by the Parliament and is to be collected by the Government of India. But for the purpose of availing existing machinery provisions under State laws, Sub-section (2) of Section 9 envisages that subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State to assess or collect the tax under the CST Act and the

provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to such business shall apply accordingly. Therefore, it is because of this statutory adoption, the State machinery set up for levy and collection of the tax under the general sales tax law in force in a particular State, also become the machinery for the purpose of levy and collection of the imposition by Government of India for Government of India on its behalf. But for this provision, existing machinery of the general sales tax law would not have authority to levy and collection of the Central sales tax on its own.

26. It is in the light of this scheme of the legislative enactments emanating from different sources that the exemption Clauses have to be viewed. Provision was made to authorise the State Government to exempt the tax u/s 4 of the RST Act, 1954 corresponding to Section 15 of the 1994 Act. As per Section 15 of the RST Act, 1994, "Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt fully or partially, whether prospectively or retrospectively from tax the sale or purchase of any goods or class of goods or any person or class of persons, without any condition or with such condition as may be specified in the notification". The exemption of tax u/s 4 of the Act of 1954 or for that matter u/s 15 of the Act of 1994, which came into force with effect from October 1, 1995 is restricted to the extent of the subject relating to intra-State sale or purchase, the subject of imposition by the State legislation and not beyond. In exercise of power u/s 4(2) of the Act of 1954 or Section 15 of the Act of 1994, the State Government cannot grant exemption or concession in respect of inter-State sale and purchase over which the State Legislature has no authority to legislate.

27. However, Section 8(5) of the CST Act also envisages that notwithstanding anything contained in this section, the State Government may on the fulfilment of the requirements laid down in Sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer or to the Government from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification and that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer or the Government by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the

tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

28. The repeal of a State legislation itself would have resulted in repeal of subordinate legislation made under the repealed State Act, if the law on the same subject is not re-enacted, but such repeal would not result in repeal of the subordinate or delegated legislation made under the central legislation. Therefore, mere withdrawal of or supersession of exemption notification under State Act will not result automatically in cancellation or supersession of a live notification issued u/s 8(5) of the CST Act, notwithstanding the delegate authority under the two Acts happens to be the same.

29. Though, the delegate in either case may be the same person for two different legislations, the principle is well-settled in this regard that the State Government when it exercises power conferred upon it u/s 8(5) to totally exempt such inter-State sales or to levy tax at a concessional rate than what has otherwise been prescribed in Section 8(1) and (2) of the Central Sales Tax Act, it functions and acts as a delegate of Parliament and does not act as a delegate of State Legislature within the domain of legislative power of the State.

30. The actions of the State Legislature or its delegate under the provisions of the State Sales Tax Act are entirely different and they serve a different purpose. Once a notification has been issued by the appropriate authority u/s 8(5), it cannot become inoperative through obsolescence or by an attempted disturbance of such State of affairs by a totally unconnected or different legislative body or its delegate. It is only the authority which can grant exemption or concession u/s 8(5) that can withdraw or modify such exemption or concession through another notification issued under that very provision. The State Legislature has no say in the matter.

31. In dealing with this aspect, reference may be made to the case of M. Ishwarlal & Co. v. State of Madras reported in [1973] 32 STC 377Mad . The Madras High Court was to consider a case where exemption granted to inter-State sales of jaggery and gur by notification u/s 8(5) of the Central Act was withdrawn on March 21, 1969. However, by another notification, exemption in respect of intra-State sale of jaggery and gur was withdrawn prior to it from January 1, 1968 vide Madras General Sales Tax (Amendment) Act (2 of 1968). A question was raised before the Madras High Court whether exemption in respect of inter-State sales of jaggery and gur after January 1, 1968 should be deemed to be withdrawn because of the legislative repeal of the notification of exemption withdrawn under the Madras General Sales Tax Act, as State legislation.

32. The question was answered by the court in negative. It referred to the principle that delegated authority u/s 8(5) of the Central Sales Tax Act, 1956, has a particular function to perform and the local legislature and its delegate have an altogether different legislative function which has no impact upon the legislative functions of either the Parliament or its delegate under that Act. In

their respective fields, these laws, Rules and notifications shall prevail and operate and are paramount. Exemption from payment of Central Sales Tax was granted to inter-State sales of jaggery and gur from April 23, 1958, by notification issued under the Central Sales Tax Act, 1956 but this exemption was withdrawn only by another notification dated March 21, 1969 issued by the State Government u/s 8(5) of that Act. Intra-State sales of jaggery and gur were also exempt from payment of sales tax under the Madras General Sales Tax Act, 1959 but said exemption under State Act was withdrawn earlier from January 1, 1968 by the Madras General Sales Tax (Amendment) Act, 1968.

33. It may be noticed that the facts and circumstances were very much similar to case at hand except the notification issued under the CST Act has not been withdrawn at all so far. The court has held as under:

The second argument is that by reason of Madras Act 2 of 1968, there is an implied repeal of the notification of exemption granted u/s 8(5) of the Central Sales Tax Act with effect from that date. I am unable to agree. It is only the authority which can grant an exemption that can withdraw the exemption by exercising the power under the specific provision of the statute which enables them to grant or cancel the exemption. This right cannot be a matter of extraneous inference. The State Legislature for some reason with which we are not concerned, enacted Madras Act 2 of 1968 and removed jaggery and gur from the exemptible items under the Third Schedule to the said Act. By reason of such removal under the local Act it does not automatically follow that the exemption gained in respect of inter-State sales of such commodities under the Central Sales Tax Act should also be deemed to have been removed. It is this aspect which is pressed under the principle of implied repeal. The answer is, can the local Legislature, by enacting an Act of its own, repeal a notification issued by a different legislative body under a different but Central enactment? I am afraid it cannot. A repeal of an Act or a rule can be effected either expressly or by necessary implication. Generally the repeal of the Act wipes out the prior law. But in the case of implied repeals, the authority claiming to repeal a pre-existing law should have the power to do so. It cannot be said that the Madras Legislature had the power to cancel a notification issued by the delegate of Parliament functioning u/s 8(5) of the Central Sales Tax Act. It is accepted law that all Acts and Rules and notifications having the force of law do not age out or become obsolete by non-user or non-adoption.

34. The principle emanating from M. Ishwarlal & Co. case [1973] 32 STC Mad 377 has been summarised as under:

(1) that the Madras Legislature had no power to cancel the notification issued by the delegate of Parliament functioning u/s 8(5) of the Central Act and, therefore, inter-State sales of jaggery and gur between 23rd April, 1958 and 20th March, 1969 were exempt from payment of Central sales tax;

(2) that it is only the authority which can grant an exemption that can withdraw

the exemption by exercising the power under the specific provision of the Statute which enables them to grant or cancel the exemption. This right cannot be a matter of extraneous inference;

(3) that once a notification has been made by the appropriate authority u/s 8(5), it can never become inoperative through obsolescence or by an attempted disturbance of such state of affairs by a totally unconnected and different legislative body;

(4) that both the exemption granted u/s 8(5) of the Central Act and the amendment as made under Madras Act 2 of 1968 can function without one having an impact on the other.

35. We are in respectful agreement with the aforesaid ratio.

36. The twin cases of State of Rajasthan and Another Vs. Gopal Oil Mills and Another, and State of Rajasthan and Another Vs. M/s Mahaveer Oil Industries and Others, , have arisen in slightly different contexts, but the ratio laid in them demonstrates that it is not necessary that when an exemption is withdrawn under the State Act, it is necessarily withdrawal under the Central Act. Benefit of Sales Tax Incentive Scheme was extended simultaneously u/s 4(2) of the RST Act, 1954 and u/s 8(5) of the CST Act by two separate notifications dated May 23, 1987. Vide two separate notifications, such exemption in the case of oil extractions and manufacturing industry was withdrawn by including the name of oil industry amongst ineligible industry vide two notifications dated May 7, 1990. By yet another notification dated July 26, 1991 the notification dated May 7, 1990 under the CST Act alone to that extent was revoked.

37. State Government sought parity in denial of exemption scheme in favour of oil industry in view of continued operation of notification dated May 7, 1990 under the State Act. The assessee sought relief on the basis of revocation of notification under the CST Act on the ground that no public purpose existed to withdraw exemption under State Act and claimed parity of continued exemption under both.

38. The apex court while in the case of Gopal Oil Mills''s case [1999] 115 STC 25 upheld the contention of assessee for uninterrupted benefit of exemption under incentive scheme to continue under the CST Act without break, in Mahaveer Oil Industries case [1999] 115 STC 29, upheld that supervening public purpose was shown to exist for withdrawing exemption under incentive scheme under the States Act.

39. In view thereof, as the notice u/s 30 was issued on the basis of non-existing material, namely, the supersession of notification under the CST Act when there was in fact no withdrawal or supersession of notification under the CST Act under which the exemption to processed cereals and pulses was granted in respect of inter-State sales, the question of holding any opinion on the escapement of assessment of the turnover of sale or purchase because of wrongful availing of

exemptions under the CST Act could not arise.

40. It is to be noticed that the fact that goods which were sold by the assessee have undergone the processing is beyond doubt as per statement made in show cause notice itself. It has clearly been stated in the notice that "assessee has only processed the goods but has not manufactured the goods". It cannot be doubted and disputed that the goods involved were the processed cereals. The exemption under notification dated March 6, 1978 under the CST Act extended to the sale of processed cereals or/and pulses. It is clear indication that the exemption availed by the petitioner was in accordance with the notification dated March 6,1978 under the CST Act about which there is no dispute. Unless said notification is withdrawn, it cannot form basis of any opinion that any part of the turnover relating to inter-State sale or processed cereal has escaped the assessment or has been taxed at a lower rate.

41. We may also notice that the Commissioner of Commercial Taxes has also accepted this position that the cancellation of notification under the'' RST Act did not impair the exemption flowing from the notification under the CST Act. This is apparent from the circular issued by the Commissioner vide annexure 9 dated May 26, 1995. This has been issued in response to certain doubts which have been expressed as to the continuity of exemption under the CST Act after the notification dated March 27, 1995 under the RST Act, 1954 superseding all previous notifications was issued. In annexure 9 it was stated in no uncertain terms that the benefit of inter-State sales under notification dated March 6, 1978 (S. No. 384) will continue.

42. Thus no doubt could be entertained by the Commercial Taxes Officer (Anti Evasion) in this respect about non-availability of benefit of notification dated March 6, 1978 in respect of inter-State sales of processed cereals notwithstanding issue of notification dated March 27, 1995 modifying the scheme of exemption under the RST Act. Consequently, he wrongfully assumed jurisdiction to issue the impugned notice u/s 30 of the RST Act read with Section 9 of the CST Act and issuance of such notice was wholly without jurisdiction. Consequently, assessments founded on such notices, also cannot be sustained as the same are invalid.

43. In view thereof, the special appeal succeeds. Judgment under appeal is set aside. The writ petition is allowed. Notices annexures 11 and 12 as well as assessment orders under the CST Act passed in pursuance thereof and demand notices (annexures 15 and 16) are quashed. No costs.

