

(2014) 12 KL CK 0004
In the High Court Of Kerala
Case No : S.T. Rev. No. 4 of 2012

State of Kerala

APPELLANT

Vs

Vasantha Modern Rice Mill

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 15(a)
Constitution of India, 1950 — Article 141, 277, 286, 286(3)
Kerala General Sales Tax Act, 1963 — Section 10, 17(1), 3, 4, 5

Citation : AIR 2015 Ker 211 : (2014) 4 KHC 855 : (2015) 1 KLJ 37 : (2015) 1 KLT 468 : (2015) 79 VST 307

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J; A.K. Jayasankaran Nambiar, J

Bench : Full Bench

Advocate : Bobby John, Government Pleader, Advocate for the Appellant; T.M. Sreedharan, Sr. Adv., Nisha John, V.P. Narayanan, Bobby M. Sekhar and Divya Ravindran, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. These two Sales Tax Revisions have been placed before this Full Bench to answer the reference made by a Division Bench vide order dated 17.6.2014.

2. The Division Bench, while hearing these two Sales Tax Revisions, expressed its doubt on the correctness of earlier three judgments of this Court in *State of Kerala v. P.D. Thomas* (S.T. Rev. No. 104 of 2010) decided on 15.11.2010 and *Empees Modern Rice Mills Vs. State of Kerala*, as well as another judgment following *Empees Modern Rice Mills's* case (supra) in S.T. Revision Nos. 107, 108, 109 and 110 of 2012 decided on 19.11.2013. Now the brief facts giving rise to the reference order dated 19.6.2014 need to be noted.

3. S.T. Rev. No. 4 of 2012 relates to assessment year 1998-99 and S.T. Rev. No. 5 of 2012 relates to assessment year 2001-2002. The assessee is a Rice Mill engaged in manufacture of rice. Assessment was completed under the Kerala

General Sales Tax Act, 1963 (hereinafter referred to as "the Act, 1963"), in which no purchase tax was levied on the assessee on the purchase of paddy. The assessment was reopened on the basis of suo motu revision under the Act, 1963 initiated by the Deputy Commissioner. Paddy purchased from agriculturists/unregistered dealers was computed for arriving taxable turnover and the tax due was adjusted against the sales tax exemption available. The assessee, a small scale industrial unit, is eligible for exemption from sales tax on sale of rice and bran. Tax under Section 5A of the Act, 1963 was levied, against which First Appeal was filed by the dealer, which was dismissed. The assessee approached the Sales Tax Appellate Tribunal. The Tribunal vide its judgment dated 26.9.2009 allowed the appeal of the assessee holding that the assessing authority cannot levy tax on purchase under Section 5A of the Act 1963, when the stage of levy is already fixed in the State Enactment. The Tribunal placed reliance on the judgment of the Apex Court in Civil Appeal No. 263/2006. The State, aggrieved by the order of the Tribunal, has filed revision. In Sales Tax Revision No. 4/2012 the following two questions of law have been framed:

"A. Has not the Tribunal gone wrong in applying the decision of the Supreme Court reported in (2007) 15 KTR 273 (SC) to the facts of the above case and is not the finding of the Tribunal based on the said decision of the Supreme Court, perverse in the facts and circumstances of the case?

B. Ought not the Tribunal have held that the assessee's purchase of paddy from unregistered dealers is liable to tax under section 5A and there is no question of any shifting of levy violating the restriction under section 15 of the CST Act?"

4. The facts in S.T. Rev. No. 5 of 2012 are more or less similar and the same questions as noted above have also been framed in S.T. Rev. No. 5/2012.

5. When the Sales Tax Revisions came up for hearing before the Division Bench, the learned Government Pleader placed reliance on P.D. Thomas's case (supra) and Empees Modern Rice Mills's case (supra) contending that assessee was liable to pay tax on purchase of paddy. The learned Government Pleader further contended that the judgment of the Apex Court in Peekay Re-Rolling Mills (P) Ltd. v. Assistant Commissioner and another ((2007) 15 KTR 273 SC) is not attracted. The Division Bench noticed the ratio of two Division Bench judgments and was of the view that the above two Division Bench judgments cannot be followed in view of the law laid down by the Apex Court in Peekay Re-Rolling Mills's case (supra). Expressing doubt over the correctness of the above mentioned two judgments, reference has been made by order dated 17.6.2014.

6. Before we look into the correctness of the two Division Bench judgments, which have been doubted by the Division Bench as well as the law laid down by the Apex Court in Peekay Re-Rolling Mills's case (supra), it is relevant to note the statutory provisions, which were applicable while framing the assessment.

7. The assessee Rice Mill purchases paddy from the agriculturists/unregistered dealers and after hulling, effects sale of rice. Small scale industries exemption

has been granted to the assessee from payment of sales tax for the goods manufactured and sold. In the present case assessee has been assessed under Section 5A of the Act, 1963 on the purchase of paddy. We, thus, are only concerned with levability of purchase tax under Section 5A on the assessee.

8. Section 5 of the Act, 1963 is the charging Section. Paddy as well as rice, both are mentioned in serial No. 9 of second schedule of the Act and are declared goods in respect of which only a single point tax is leviable. Second schedule as well as serial No. 9 is quoted as below:

Section 5A provides for levy of purchase tax. Section 5A(1) is quoted as below:

"5A. Levy of purchase tax:- (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of section 5 and either,-

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) uses or disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5."

9. It is relevant to note that in the present case assessee having purchased paddy from agriculturists, no tax was leviable or realised on the first sale of paddy, since the sale was from agriculturists, who were exempted to pay any sales tax.

10. Paddy being a declared goods under the Central Sales Tax Act, 1956 as well as the second schedule of the Act, 1963, the provisions of Section 15 of the Central Sales Tax Act, 1956 are also attracted. Section 14 of the Central Sales Tax Act, 1956 enumerates the goods, which have been declared as goods of special importance in Inter State trade or commerce. Under Section 14, paddy and rice both have been declared as goods of special importance. Section 15(a) of the Central Sales Tax Act, 1956, as before it was amended by Act 20 of 2002 with effect from 11.5.2002, provides as follows:

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State:-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;"

The relevant provision under Section 15(a) for the present case is that Section 15 contains the restrictions that no law of a State shall levy tax on the sale or purchase of declared goods at more than one stage.

11. As noted above, under Section 5 read with second schedule to the Act, 1963, sales tax was leviable on sale of paddy. Although the tax is leviable on the sale of paddy as per second schedule, tax could not be collected on account of exemption to the agriculturists in sale of their paddy. The assessing officer although initially did not assess the assessee for any purchase tax on paddy, but subsequently, assessment was reopened and assessee was held liable to pay purchase tax under Section 5A on the purchase of paddy.

12. Now we proceed to note in detail judgment of the Apex Court in Peekay Re-Rolling Mills's case (supra). In the said case the Apex Court had occasion to consider the provisions of the Act, 1963 and Sections 5, 5A as well as 15 of the Central Sales Tax Act, 1956. In the said case the assessee was carrying on the business of Steel re-rolling Mills. The raw material was steal ingots. The manufacturing unit, from whom the assessee purchased the steal ingots, were exempted from payment of sales tax by virtue of exemption notification. The facts in the above case is noticed in paragraph 4 of the judgment, which is quoted as below:

"4. The appellant is a company registered under the Companies Act, 1956 having its registered office at Kozikode. It is a registered dealer under the Kerala General Sales Tax Act, 1963 (for short "the State Act"). It carried on the business of steel re-rolling mills at Nallalam, Kozikode. The raw material used by the appellant in the production of bars and rods, is steel ingots, which the appellant either manufactures or purchases from other manufacturers from within or outside the State. Purchase of steel ingots effected by the appellant within the State are from manufacturing units, which are exempt from the payment of sales tax on the sale of such ingots by virtue of an exemption notification issued under Section 10 of the State Act."

The assessee was issued notice under Section 5A, which was challenged in a Writ Petition before the High Court. The Writ Petition was dismissed, against which two Writ Appeals were filed, which were also dismissed by the Division Bench. The findings of the High Court dismissing the Writ Appeals have been noted in paragraph 8 of the judgment, which is quoted below:

"8. Aggrieved by the above order of the learned Single Judge, the appellant preferred two separate writ appeals. The Division Bench dismissed the writ appeals by a common order and held that the learned Single Judge was in error in directing the appellant to avail the remedies provided under the State Act. The Division Bench, however, rejected the main contention of the appellant that in view of the provisions of Article 286(3) of the Constitution of India read with Section 15 of the Central Sales Tax Act (for short "the Central Act"), it was

impermissible to levy purchase tax under Section 5A of the State Act. In support of this contention, it was submitted by the counsel for the appellant that the iron ingots being declared goods could be subjected to tax under Section 5 read with the Second Schedule of the State Act in the hands of the seller only; that the declared goods like the one involved in the present case could be subjected to levy only at one point and that point had been specified by the statute as being "first sale"; that goods could not be subjected to purchase tax in the hands of the purchaser under Section 5A of the State Act. The Division Bench of the High Court relying upon a judgment of this Court rejected these contentions and held that the expression "levy" includes collection of tax as well and not mere imposition. It was held that in the absence of collection of tax, there is no levy and since the goods were exempted from payment of sales tax, the goods could be subjected to levy of purchase tax under Section 5A of the State Act. That the levy did not mean imposition only, the same included the collection of tax as well. Where there is no collection, there is no levy and accordingly, the goods which are not subjected to levy of tax at the point of sale could be subjected to levy of purchase tax under Section 5A."

Before the Apex Court the assessee raised submissions on the basis of Section 15 of the Central Sales Tax Act. The Apex Court noted provisions of Section 15 of the Central Sales Tax Act and noted the issue to be adjudicated. The following was laid down in paragraphs 20 and 22 of the judgment:

"20. Article 286(3) of the Constitution of India places restriction on the power of every State to impose or authorise the imposition of tax on sale or purchase of declared goods. Article 286 and Sections 14/ 15 of the Central Act are solely concerned with the declared commodities. We are concerned with the taxation of goods which under Section 14 of the Central Act have been declared to be of special importance in inter-State trade or commerce. In case turnover of such goods is subjected to tax under the sales tax laws, Section 15 prescribes the maximum rate at which such tax shall be levied and the same could not be levied at more than one stage. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not subjected to heavy taxation within the State occasioned by excessive rate of tax or by multipoint taxation. If either of the two conditions is not satisfied, the imposition of sales tax will not be valid.

Xx xx xx

22. The controversy in the instant case arises when a tax is sought to be levied under Section 5A of the State Act on the same goods that are taxable under Section 5, but exempted. The essential question that we are required to adjudicate upon is whether the tax sought to be levied under Section 5A on these goods, would amount to tax at a second stage and therefore violate Section 15 of the Central Act."

The Apex Court, after considering several judgments on the issue, held that

taxability under Section 5 remains unaffected by an exemption and the State cannot validly shift the burden of tax to the purchaser under Section 5A of the Act, 1963 for the same would violate the condition of single-stage tax under Section 15 of the Central Act. In paragraphs 45 and 46 of the judgment the following was stated:

"45. In the light of the above two cases, it is evident that collection and levy are distinct and that collection is not an essential facet of levy. It is true that collection of a tax may sometimes be indicative of a lawful levy of tax, but in our opinion it does not logically follow that absence of collection means an absence of liability. We are also of the opinion that the reliance on Town Municipal Committees by the Division Bench which involved an interpretation of "continued to be levied" and "to be applied to the same purposes" in Article 277 of the Constitution was misplaced. While that case did hold that in the circumstances before them "levy" was intended to include "collection", in our opinion the logic or ratio of that case cannot be extended so far as to say that every "levy" must include collection and without such collection no levy can be said to have been made.

46. Thus, after an examination of the relevant case-law, we find that the liability to tax or taxability under Section 5 of the State Act remains unaffected by an exemption under Section 10 of the State Act. Consequently, the respondent cannot validly shift the burden of tax to the purchaser under Section 5A of the State Act for the same would violate the condition of single-stage tax under Section 15 of the Central Act."

13. It is relevant to note that along with Peekay Re-Rolling Mills's case (supra), the Apex Court also has decided another case, i.e., Civil Appeal No. 4406 of 2006. The Apex Court allowed all the appeals.

14. Now we note the Division Bench judgments on which reliance has been placed by the learned Government Pleader in support of his submission. First we consider the judgment in P.D. Thomas's case (supra). In the said case the assessee was a Rice Mill. The Tribunal in the aforesaid case held that Rice Mill is not liable to pay purchase tax relying on Peekay Re-Rolling Mills's case (supra). The State filed the revision. The Division Bench in P.D. Thomas's case (supra) distinguished Peekay Re-Rolling Mills's case (supra) by laying down the following in paragraphs 3 and 4:

3. Before us Government Pleader submitted that Peekay Restrvt 104/2010 3 Rolling Mills (P) Ltd.'s case decided by the Supreme Court is now referred to Larger Bench of the Supreme Court and he produced copy of Reference Order issued by the Supreme Court before us. We notice that the Supreme Court has not considered the factual position in regard to rice mill while deciding the case in Surendra Modern Rice Mills' case. In fact the Supreme Court just applied the decision in Peekay Re-Rolling Mills (P) Ltd.'s case to the Rice Mill's case as such though factual position is different in the case of rice mill. As already stated,

Legislature itself has provided safeguard against multiplicity of levy of tax on both paddy and rice falling under declared goods. So much so, the position is such that levy of tax on both paddy and rice has to be considered at the hands of dealer. In Peekay Rerolling Mills (P) Ltd.'s case Supreme Court found that there is levy of tax at the point of purchase of ingots by the SSI unit because it was purchased from another industrial unit which was liable to pay tax, but for the exemption granted to that unit. So much so, the Supreme Court held that there is levy at the hands of the seller of ingots, no matter such levy did not lead to collection of tax. So far as the case of paddy is concerned, there is no such position available here. It is not known where from respondent procured paddy. If purchase is not from STRV 104/2010 4 any dealer liable to pay tax, then there cannot be any levy of tax on paddy at all. In fact, purchase may be from farmers, petty dealers, etc. who are not liable to tax as dealers under the Act. However, unless there is proof of levy of tax at the hands of selling dealer, Section 5A is applicable because respondent admittedly purchased paddy from unregistered dealers and manufactured rice out of the same. In fact, exemption is obtained by respondent under SRO 1729 of 1993 on the ground that it is engaged in manufacture of rice from paddy. So much so, tax is to be levied on the purchase of paddy under Section 5A as all the conditions of Section 5A are satisfied. We have in a detailed judgment in Empees Modern Rice Mills Vs. State of Kerala, considered this issue and declared that levy of tax on paddy on an industrial unit which enjoys sales tax exemption on sale of products, namely, rice, rice bran, etc., is perfectly in order. We feel the above decision squarely applies here and so much so, the decision of the Tribunal has to be reversed and we do so.

4. It is seen from the assessment order that the assessee is given set-off of tax levied on paddy against tax liability on rice and only net amount is allowed set-off from the exemption available in the certificate. In view of the scheme of levy stated as above, it will be STRV 104/2010 5 perfectly in order to set off the tax liability determined under Section 5A also against exemption available under certificate of exemption along with net tax determined on rice after reducing the tax levied on paddy. In other words, the total amount to be set off against exemption granted under certificate should be the tax levied on rice without granting rebate of tax on paddy. The assessing officer is directed to verify the exemption granted for all the years based on the certificate and the scheme suggested above will be applied only if the assessee continued business till full exemption available under certificate is set off as indicated above.

15. The other Division Bench judgment in Empees Modern Rice Mills's case (supra) was again case of a Rice Mill, on whom purchase tax was levied under Section 5A. Following was laid down in paragraph 2 of the judgment:

"2. The first contention raised by counsel for the petitioner is that when Section 5A is applied in the hands of any dealer, such commodity becomes taxable at the point of last purchase in the State as it is consumed in the manufacture of the

final product. However, Government Pleader submitted that goods taxable at the point of last purchase in the State as contained in the notification are only goods which are specifically made taxable at the point of last purchase in the First Schedule to the KGST Act. If petitioner's contention is accepted, then every commodity when assessed under Section 5A will become taxable at the point of last purchase and so much so, benefit of notification will be available. This is obviously not intended by the Government while issuing the notification because applying this logic, every commodity when purchased and consumed in manufacture by an SSI unit becomes taxable at the point of last purchase in the State and will be entitled to exemption. On the other hand, notification has to be read consistent with the other provisions of the Act. The charging section namely, Section 5(1) says that sales tax in respect of commodities is payable at the point of sale or purchase and at the rates specified in the Schedules to the Act. Goods taxable at last purchase point are specifically mentioned in the First Schedule to the Act. Therefore, whenever the notification refers to goods taxable at last purchase point or first sale point, the goods so referred should be identified with the items mentioned in the Schedules to the Act. All cereals including paddy and rice are specifically covered by Entry 9 of the Second Schedule to the KGST Act which are taxable at the point of first sale in the State. Therefore, petitioner's contention that paddy assumes the character of goods taxable at last purchase point when it is assessed under Section 5A is untenable and we, therefore, reject the contention. Since the item is taxable at sale point, petitioner is liable to pay tax under Section 5A as no tax is borne on the commodity at sale point. Even though petitioner's claim for exemption under the Notification is rejected, it is seen that by virtue of operation of the charging Section, the petitioner is entitled to rebate of tax paid on paddy against demand of tax on sale of rice. In other words, Explanation to Entry 9 of the Second Schedule to the Act which is extracted hereunder, specifically entitles a dealer in rice to get the rebate if he pays tax on the purchase of paddy.

The rebate available apply not only to sales tax paid at first sale point, but the tax leviable under Section 5A on the very same dealer. So much so, sales tax payable on the sale of rice is reduced by the tax borne on the purchase turnover of paddy. In view of the provision for rebate contained in the charging entry, the petitioner cannot have any grievance because the tax liability set off from the total amount of exemption certified will be only the net liability for sales tax payable on rice as reduced by the tax paid on paddy. We, therefore, dismiss the S.T. Revision case as devoid of any merit."

The Division Bench held that since paddy is taxable at sale point, the assessee is liable to pay tax under Section 5A, as no tax is borne on the commodity at sale point.

16. Another Division Bench judgment, which followed *Empees Modern Rice Mills's case* (supra) is *State of Kerala v. C.R. Augustine Sree Muruga Rice Mills* (S.T. Rev. No. 107/2012 & connected cases). The Rice Mill was assessed under

Section 5A on purchase of paddy. The Tribunal allowed the assessee's claim and held that levy of purchase tax was illegal. The State filed a revision. The Division Bench held that the Tribunal committed error in following Peekay Re-Rolling Mills's case (supra). Following was laid down in paragraphs 2, 3 and 4 of the judgment:

"2. Aggrieved by this, the respondent assessee seeking exemption on entire tax payable without deducting any amount in respect of rice and bran approached the first appellate authority and the appeal came to be dismissed and in the second appeal Tribunal partly allowed it. Later, a S.T. Rev. Nos. 107, 108, 109 and 110 of 2012 rectification petition was filed by the assessee relying on the decision of the Apex Court in Surendra Modern Rice Mill's case in which case reference was made to Peekay Re-rolling Mills (P) Ltd. Vs. The Assistant Commissioner and Another, . Referring to this decision of the Apex Court Tribunal opined, levying purchase tax was illegal. Aggrieved by the same, the State is before this Court in the above revisions pertaining to different assessment years.

3. The law relied upon by the Tribunal is incorrect as the facts in the said case were with reference to iron and steel and the same principle cannot be applied to the present case having regard to the fact that the same was referred to larger Bench. Even otherwise, according to the learned Government Pleader, in Empees Modern Rice Mills Vs. State of Kerala, this court had considered the issue in detail distinguishing the facts in the said case from the facts available in the case of apex court judgment which has reached finality.

4. As a matter of fact, in another unreported judgment of a Division Bench of this Court in S.T. Rev. No. 104 of 2010 dated 15.11.2010, similar issues came up for S.T. Rev. Nos. 107, 108, 109 and 110 of 2012 consideration. After referring to Empees Modern Rice Mill's (supra) wherein how levy of tax on paddy in industrial unit has to be levied so far as exemption of sales tax taking into consideration sale of different products i.e. rice, bran etc., learned Judge opined that Empees Modern Rice Mill's (supra) is the perfect law which is applicable to the facts of the said case. The facts in the present case are similar to the one in Empees Modern Rice Mill's (supra) and so also the unreported revision referred to above."

17. The learned Government Pleader, in support of the revisions submitted that the Miller, who purchased paddy from unregistered dealer is liable to pay purchase tax, since paddy and rice are two commercially different commodities, hence levy of purchase tax cannot be considered as double tax on the same commodity. He submitted that the restriction contained in Section 15(a) of the Central Sales Tax Act against the levy of tax at multipoint regarding declared goods, is applicable only if the commodity is same, hence, the said restriction is not applicable in the present case. Sales tax under Section 5 of the Act, 1963 is levied on one commodity, i.e., rice and purchase tax under Section 5A on another commodity, i.e., paddy. The Apex Court in Peekay Re-Rolling Mills's case (supra) has rendered on different set of issues which case has no application. He

submitted that three Judge judgment of this Court in State of Karnataka Vs. B. Raghurama Shetty and Others, had laid down that paddy and rice are not identical goods, hence, the assessee is not exposed to double tax, both on purchase of paddy and sale of rice. The learned Government Pleader submitted that the issue is covered by three Judge Bench judgment in B. Raghurama Shetty's case (supra) in preference to two Judge judgment in Peekay Re-Rolling Mills's case (supra).

18. Learned counsel for the assessee, to the contrary, has submitted that the Tribunal has rightly relied on the judgment of the Apex Court in Peekay Re-Rolling Mills's case (supra) and the Division Bench judgment of this Court relied on by the learned Government Pleader does not lay down the correct law. It is contended that ratio of the judgment in Peekay Re-Rolling Mills's case (supra) has not been correctly comprehended by two Division Bench judgments of this court in P.D. Thomas's case (supra) and C.R. Augustine Sree Muruga Rice Mills's case (supra), hence both Division Benches erred in justifying levy of purchase tax on the assessee.

19. Judgment of the Apex Court in B. Raghurama Shetty's case (supra) on which reliance has been placed by the learned Government Pleader, also needs to be considered. In the above case the Apex Court was considering the provisions of Section 6(i) of the Karnataka Sales Tax Act, 1957. The assessee had purchased paddy from agriculturists, who were not liable to pay sales tax. Purchase tax was levied on the Rice Mills. In the above case the Apex Court held that the paddy was consumed by Rice Miller in manufacture of rice, which is a different commodity. In the said case the assessee's contention was that paddy and rice being the same, it cannot be said that they have manufactured other goods out of paddy and hence Section 6(i) was not applicable. Section 6(i) of the Karnataka Sales Tax Act, 1957 as quoted in B. Raghurama Shetty's case (supra) itself is to the following effect:

"6. Levy of purchase tax under certain circumstances.- Subject to the provisions of subsection (5) of Section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax under Section 5 is leviable on the sale price of such goods and,

(i) either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State, or"

The Apex Court rejected the submission of the assessee and laid down the following:

"There is no merit in the submission made on behalf of the assessee that they had not consumed paddy when they produced rice from it by merely carrying out the process of dehusking at their mills. Consumption in the true economic sense does not mean only use of goods in the production of consumers' goods or final utilisation of consumers' goods by consumers involving activities like eating of

food, drinking of beverages, wearing of clothes or using of an automobile by its owner for domestic purposes. A manufacturer also consumes commodities which are ordinarily called raw materials when he produces semi-finished goods which have to undergo further processes of production before they can be transformed into consumers' goods. At every such intermediate stage of production, some utility or value is added to goods which are used as raw materials and at every such stage the raw materials are consumed. Take the case of bread. It passes through the first stage of production when wheat is grown by the farmer, the second stage of production when wheat is converted into flour by the miller and the third stage of production when flour is utilised by the baker to manufacture bread out of it. The miller and the baker have consumed wheat and flour respectively in the course of their business."

In the aforesaid case there was no issue based on Section 15(a) of the Central Sales Tax Act as well as the point of levability of charge. In the said case the assessee's only contention was that since he has not manufactured any new goods, no tax is leviable on paddy, which was rejected. Thus, in the above case the issues and the ratio, which have been considered in Peekay Re-Rolling Mills's case (supra), were neither considered nor were subject matter of the issue. Thus, the above three Judge judgment is not attracted in the present case. The learned Government Pleader also placed reliance on various judgments on Article 141 of the Constitution of India laying down that the judgment of the Larger Bench is binding on the judgment of a smaller Bench. There cannot be any dispute to the above proposition, hence it is not necessary even to refer to the said case which laid down the said proposition. As observed above, the three Judge judgment in B. Raghurama Shetty's case (supra) was considering different issues and no such ratio has been laid down in the judgment, which can be said to be in conflict with any ratio laid down in Peekay Re-Rolling Mills's case (supra).

20. Now, we revert to the facts of the present case. Serial No. 9 of Schedule 2 to the Act, 1963 refers to paddy as the goods on which tax can be levied. The point of levy is as follows:

"At the point first sale in the State by a dealer, who is liable to pay tax under Section 5."

The liability to pay tax on first sale is very much there on the paddy. In the present case the first sale was by agriculturists in favour of the assessee, who were not liable to pay tax. The mere fact that payment of tax was exempted cannot furnish any basis for the respondents to shift the liability of tax on purchase, whereas, under second Schedule, liability is only on first sale. As per Section 15(a), there is restriction in levying tax by a State Legislature on more than one stage. When the second schedule has levied the tax on the first sale, there is no jurisdiction in the respondents to shift the levy on purchase.

21. In Peekay Re-Rolling Mills's case (supra) Sections 5, 5A as well as second schedule has been considered by the Apex Court. The Apex Court noticed in the

said case that tax is sought to be levied on Section 5A on the same goods that are taxable under Section 5, but exempted. The Apex Court noted that the question to be required to be adjudicated was whether the tax sought to be levied under Section 5A on declared goods would amount to tax at a second stage, therefore, violative of Section 15 of the Central Act. The Apex Court further held that Sections 5 and 5A of the Act, 1963 are independent Sections referring to the judgment of the Apex Court in Shanmuga Traders and Others Vs. State of T.N. and Others, .

22. In the above case, the Apex Court had occasion to consider the provisions of Section 15 of the Central Sales Tax Act as well as the provisions of Tamil Nadu General Sales Tax Act, 1959 as well as the circular dated 29.1.1993 issued by the Commissioner of Commercial Tax. The facts of the case and the issue were noted by the Apex Court in Shanmuga Traders's case (supra) in paragraphs 3, 4 and 5, which are to the following effect:

"3. The goods in question are iron and steel and were sold by the Tamil Nadu Electricity Board to the appellants and petitioners. Being sold by the said Board, they were covered by a notification dated 1-12-1982 issued by the 1st respondent under the provisions of Section 17(1) of the State Act and, therefore, exempt from tax payable under the State Act.

4. Under Section 14 of the Central Sales Tax Act iron and steel are declared to be goods of special importance in inter-State trade and commerce. They are, by reason of the provisions of Section 15 of the Central Act, liable to tax at a rate that does not exceed 4% of the sale or purchase price thereof and "such tax shall not be levied at more than one stage". Section 3 of the State Act requires every dealer, subject to the turnover therein mentioned, to pay a tax for each year "in accordance with the provisions of this Act". Section 4 deals with the tax on declared goods and states that it would be payable

"by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year".

The Second Schedule requires payment of tax on iron and steel as therein described "at the point of first sale in the State".

5. It is contended by learned counsel for the appellants/petitioners that iron and steel being declared goods, they are exigible only to single-point tax and that at the point of first sale, having regard to the provisions of the Central and State Acts aforementioned. The circular under challenge has the effect of shifting the incidence of tax on iron and steel sold by the said Board to the second or subsequent sale. This is impermissible since it would offend the statutory provisions which provide for the levy of the tax only at the point of first sale."

23. The Apex Court held that the goods, which was the subject matter for consideration, being declared goods, can only be taxed at a single point, i.e.,

only one sale in the State can be subjected to tax. It was further held that it is for the State to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the State and if the single point is fixed by the State, the point of first sale and the State exempts the first sale, sold goods may not be subjected to tax at either that point of first sale or any subsequent sale in the State. Following was laid down in paragraphs 12 and 13 of the judgment:

"12. We do not think that the conclusion reached by the Madras High Court in the order under appeal can be upheld. The goods with which we are concerned being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax. It is for the State to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the State. If the single point is fixed by the State at, say, the point of first sale and the State exempts the first sale from payment of tax, either by a general provision or a specific provision applicable to a class of seller, the particular seller or the goods sold may not be subjected to tax at either that point of first sale or any subsequent sale in the State.

13. The Second Schedule of the State Act specifies the single point; it is "the point of first sale in the State". The first sale in the State was the sale by the said Board to the appellants/petitioners. That sale was exempt from tax by reason of the notification dated 1-12-1982 aforementioned. The iron and steel sold by the said Board to the appellants/petitioners was, therefore, not liable to tax either at the point of first sale or any subsequent sale in the State."

24. As noted above, in the present case the State having decided to levy tax at single point, i.e., point of first sale of paddy, no liability can be fixed on the assessees, who were the purchaser, there being statutory restrictions under Section 15(a) for levying tax at more than one point.

25. The learned Government Pleader has also referred to some more judgments for the proposition that paddy and rice are commercially two different commodities. He placed reliance on a Division Bench judgment of this Court reported in *M. Narayanan Nambiyar v. State of Kerala* ((1979) 44 STC 191). The Division Bench in the above case has laid down that paddy and rice are commercially two different articles and commodities. There cannot be any dispute to the above proposition, nor any submission has been made by the assessee to the fact that paddy and rice are same commodity. Judgment of the Apex Court relying on the same proposition in *Ganesh Trading Co. v. State of Haryana* ((1973) 32 STC 623) has again been relied on by the learned Government Pleader, which also does not help the State in the present case.

26. The Division Bench in *Empees Modern Rice Mill's* (supra) neither refers to Section 15(a) of the Central Sales Tax Act, 1956 nor the judgment of the Apex Court in *Peekay Re-Rolling Mills's* case (supra). The Division Bench in *P.D. Thomas's* case (supra) although refers to *Peekay Re-Rolling Mills's* case (supra),

but observed that the Supreme Court applied the case of Peekay Re-Rolling Mills's case (supra) in Surendra Modern Rice Mill's case (supra), where factual position is different in the case of Rice Mill. The following was observed in paragraph 3 of the judgment:

"We notice that the Supreme Court has not considered the factual position in regard to rice mill while deciding the case in Surendra Modern Rice Mills" case. In fact the Supreme Court just applied the decision in Peekay Re-Rolling Mills (P) Ltd."s case to the Rice Mill"s case as such though factual position is different in the case of rice mill. As already stated, Legislature itself has provided safeguard against multiplicity of levy of tax on both paddy and rice falling under declared goods. So much so, the position is such that levy of tax on both paddy and rice has to be considered at the hands of dealer. In Peekay Re-rolling Mills (P) Ltd."s case Supreme Court found that there is levy of tax at the point of purchase of ingots by the SSI unit because it was purchased from another industrial unit which was liable to pay tax, but for the exemption granted to that unit. So much so, the Supreme Court held that there is levy at the hands of the seller of ingots, no matter such levy did not lead to collection of tax. So far as the case of paddy is concerned, there is no such position available here. It is not known wherefrom respondent procured paddy. If purchase is not from any dealer liable to pay tax, then there cannot be any levy of tax on paddy at all. In fact, purchase may be from farmers, petty dealers, etc. who are not liable to tax as dealers under the Act. However, unless there is proof of levy of tax at the hands of selling dealer, Section 5A is applicable because respondent admittedly purchased paddy from unregistered dealers and manufactured rice out of the same. In fact, exemption is obtained by respondent under SRO 1729 of 1993 on the ground that it is engaged in manufacture of rice from paddy. So much so, tax is to be levied on the purchase of paddy under Section 5A as all the conditions of Section 5A are satisfied. We have in a detailed judgment in Empees Modern Rice Mills Vs. State of Kerala, considered this issue and declared that levy of tax on paddy on an industrial unit which enjoys sales tax exemption on sale of products, namely, rice, rice bran, etc., is perfectly in order. We feel the above decision squarely applies here and so much so, the decision of the Tribunal has to be reversed and we do so."

The Division Bench said that the Legislature itself has provided safeguard against multiplicity of levy of tax on both paddy and rice falling under declared goods.

27. Before we proceed further, it is relevant to note the principle of construction of taxing statute. Justice G.P. Singh in "Principles of Statutory Interpretation" 13th Edition, while expounding the principle elaborated the principle in following words:

"A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSELEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to

the natural construction of its words". In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. Relying upon this passage LORD UPJOHN said: "Fiscal measures are not built upon any theory of taxation."

28. The Apex Court in *A.V. Fernandez Vs. The State of Kerala*, had occasion to interpret Travancore-Cochin General Sales Tax Act. While examining the principle of construction of the said Act, the following was laid down in paragraph 29:

"29. It is no doubt, true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities."

29. The Apex Court in *Commissioner of Wealth Tax, Gujarat-III, Ahmedabad Vs. Ellis Bridge Gymkhana*, has laid down the following in paragraph 5:

"5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all."

30. Similar proposition was laid down by the Apex Court in its Constitution Bench in *Mathuram Agrawal Vs. State of Madhya Pradesh*, . The Apex Court in the above case has held that it is not possible to assume any intention or governing purpose beyond what is stated in plain language. The following was laid down in paragraphs 12, 13 and 14 of the judgment:

"12. Another question that arises for consideration in this connection is whether

subsection (1) of Section 127-A and the proviso to sub-section (2)(b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

13. In the case of *Bank of Chettinad Ltd. v. CIT* the Privy Council quoted with approval the following passage from the opinion of Lord Russell of Killowen in *IRC v. Duke of Westminster*:

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in *Partington v. Attorney General* at p. 122: "As I understand the principle of all fiscal legislation, it is this; if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be."

14. In the case of *Russell (Inspector of Taxes) v. Scott* Lord Simonds in his opinion at p. 5 observed:

"My Lords, there is a maxim of income tax law which, though it may sometimes be overstressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion."

31. As noted above, the Division Bench in *P.D. Thomas's case* (supra) has laid down that since the Legislature has itself provided safeguard against multiplicity

of levy of tax on both paddy and rice falling under declared goods, tax on purchase of paddy under Section 5A is valid.

32. The principles of statutory interpretation of taxing statute, as noted above, clearly indicates that true letter of law has to be found out while examining the leviability of tax. The provisions of Section 5A of the Act, 1963 read with serial No. 9 of second schedule as well as Section 15(a) of the Central Sales Tax Act being clear, the Act had to be given full effect.

33. The ratio as laid down in Peekay Re-Rolling Mills's case (supra) being fully attracted in the present case, which case interpret Sections 5, 5A and second schedule to the Act, 1963 as well as Section 15(a) of the Central Sales Tax Act, 1956, we are of the view that the judgment of the Tribunal holding that levy of purchase tax on the assessee is illegal, was fully in accordance with law. The Division Bench in Empees Modern Rice Mill's (supra) as well as P.D. Thomas's case (supra) and the judgment in State of Kerala v. C.R. Augustine Sree Muruga Rice Mills (S.T. Rev. Nos. 107, 108, 109 and 110 of 2012), thus, has not laid down correct law and are being disapproved.

34. We confirm the judgment of the Tribunal which rightly deleted the levy of purchase tax on the assessee and committed no error in following the Apex Court judgment in Peekay Re-Rolling Mills's case (supra).

In the result, the reference is answered accordingly. Both the Sales Tax Revisions are dismissed.