# Rajasthan Roller Flour Mills Assn vs State Of Rajasthan on 1 September, 1993

## Equivalent citations: 1994 AIR 64, 1994 SCC SUPL. (1) 413, AIR 1994 SUPREME COURT 64, 1993 AIR SCW 3118, 1993 KERLJ(TAX) 599, (1993) 5 JT 138 (SC), 1994 (1) SCC(SUPP) 413, 1994 (19) UPSTJ 30

## Author: B.P. Jeevan Reddy

## Bench: B.P. Jeevan Reddy, S.P Bharucha

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           PETITIONER:
RAJASTHAN  ROLLER  FLOUR  MILLS  ASSN.

        Vs.

RESPONDENT:
STATE   OF  RAJASTHAN

DATE OF JUDGMENT01/09/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
BHARUCHA S.P. (J)

CITATION:
 1994 AIR   64            1994 SCC  Supl.  (1) 413
 JT 1993 (5)   138        1993 SCALE  (3)600


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- A difference of opinion has arisen among the High Courts in the country over the question whether the expression 'wheat' in Section 14(i)(iii) of Central Sales Tax Act (Act) includes flour, maida and 'suji'. Karnataka and Patna High Courts have held that it does so include, while Andhra Pradesh, Rajasthan and - we are told - Madras High Courts have taken a contrary view.

2. Section 14 occurs in Chapter IV which carries the heading "Goods of special importance in Inter-State Trade or Commerce". Section 14 declares certain goods to be of special importance in inter-State trade and commerce, hereinafter referred to as "declared goods". The first clause, introduced in 1976+ is cereals. As many as ten commodities are mentioned under clause (i) which reads as follows:

> "14. Certain goods to be of special importance in inter-State trade or commerce.- It is hereby declared that the following goods are of special importance in inter-State trade or commerce:-
>
> [(i) cereals, that is to say,-
>
> (i) paddy (Oryza sativa L.);
>
> (ii) rice (Oryza sativa L.);
>
> (iii) wheat (Triticum vulgare, T. compactum, T. sphaerococcum, T durum, T. aestivum L., T. dicoccum);
>
> (iv) jowar or milo (Sorghum vulgare Pers);
>
> (v) bajra (Pennisetum typhoideum L.);
>
> (vi) maize (Zea mays, D.);
>
> (vii) ragi (Eleusine coracana Gaertn.);
>
> (viii) kodon (Paspalum scrobiculatum L.);
>
> (ix) kutki (Panicum miliare L.);
>
> (x) barley (Hordeum vulgare L.);]"

3. Section 15 imposes certain restrictions upon, and conditions in regard to the imposition of tax on sale or purchase of declared goods by a State Legislature. It says that "every sales tax law of a State shall, insofar 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……. Section 15 specifies four restrictions/conditions. They are: (a) the tax on declared goods shall not exceed 4 per cent and the tax shall not be levied at more than one stage; (b) where a tax has been levied on an intra-state sale and such goods are later sold in the course of inter-State trade or commerce, the tax levied on intraState sale shall be reimbursed to the person effecting the inter-State sale; (c) if a tax has been levied on the sale or purchase of paddy, and the rice derived from such paddy is sold later, the tax on sale of rice shall be reduced by the amount of tax paid on paddy; and (d) the pulses referred to in clause (vi-a) of Section 14 shall mean and include pulses whole or separated, and pulses with or

without husk.

+ The then existing clause (i) was renumbered as clause

(ii)

4. Clause (i) (cereals), clause (vi) (oilseeds) in Section 14 and clauses (c) and (d) in Section 15, it may be noted, were inserted by Central Sales Tax (Amendment) Act 103 of 1976, with effect from September 7, 1976.

5. Under the scheme of our Constitution, the power to levy tax on the sale of goods is vested in the States by Entry 54 in List 11 of the Seventh Schedule but this power is subject to the limitations contained in Article 286. Article 286, before its amendment by the Constitution (Sixth Amendment) Act, 1956, declared that the State Legislature shall not be competent to levy tax on interState sales in the course of import and export (into or from India) and on the sale of declared goods. After the said amendment, the prohibition with respect to inter-State sales and sales effected in the course of import/export remains though framed differently. However, so far as the declared goods are concerned, the absolute prohibition has given way to restrictions and conditions as may be imposed by Parliament by law. Clause (3) of Article 286, which is immediately relevant for our purpose, read and reads as follows before and after the Sixth Amendment Act:

> Before the Sixth Amendment Act (3) No law made by the Legislature of a State imposing or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it is been reserved for the consideration of the President and has received his assent.

After the Sixth Amendment Act (w.e.f. 11-9-1956) (3) Any law of a State shall insofar as it imposes or authorises the imposition of,-

(a) a tax on the sale or purchase of goods declared by parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods being a tax of the nature referred to in sub-clause (b) sub-clause (c) or sub-clause (d) of clause (29-A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as parliament may by law specify."

[Note - Clause (b) was inserted by Forty -sixth Amendment Act]

6. As contemplated by the unamended clause (3) of Article 286, the Parliament had enacted the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 declaring certain goods as essential for the life of the community. It came into force on August 9, 1952. The Schedule to the Act contained the list of 'declared goods'. Item 1 in the Schedule pertained to cereals and

pulses. It read thus:

> "I Cereals and pulses in all forms, including bread and flour, including atta, maida, suji and bran (except when any such article is sold in sealed containers)"

7. The 1952 Act was repealed by Section 16 of the Central Sales Tax Act (as originally erracted). The Act came into force on and with effect from September 1, 1957. It is a post-Sixth Amendment enactment.

8. Section 14, as originally enacted, did not contain any clause relating to cereals - or for that matter relating to pulses. Both of them were introduced by the 1976 (Amendment) Act as already mentioned. Clause (i) has been set out hereinbefore. Clause (vi-a) may now be set out:

> "(vi-a) pulses, that is to say,-
>
> (i) gram or gulab gram (Cicerarietinum L.);
>
> (ii) tur or arhar (Cajanus cajan);
>
> (iii) moong or green gram (Phaseolus aureus);
>
> (iv) masur or lentil (Lens esculenta Moench, Lens culinaris Medic)
>
> (v) urad or black gram (Phaseolus mungo);
>
> (vi) moth (Phaseolus aconitifolius Jacq);
>
> (vii) lakh or khesari (Lathyrus sativus L.)"

9. Section 15, omitting clauses (c) and (d) may also be set out at this stage:

> " 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, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely--
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed [four per cent] of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied

> under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State."

10. The restrictions, to reiterate are: (i) the State tax on intra-State sale of declared goods shall not exceed 4%,

(ii) the tax shall not be imposed at more than one stage, and (iii) if declared goods are subjected to State tax on their sale within the State (intra-State sale) and such goods are later sold in the course of inter-State trade or commerce (inter-State sale), the tax paid on such intra- State sale shall be reimbursed to the person effecting inter-State sale.

11. Clauses (c) and (d) in Section 15 qualify the goods mentioned in Section 14(i)(ii) and Section 14(vi-a) respectively. The 1976 (Amendment) Act specified both 'paddy' and 'rice' as declared goods. Evidently, with a view to reduce the burden upon the consumer, the Parliament provided by clause (c) that where tax has been levied upon sale/purchase of paddy sold/purchased within the State and later rice derived from such paddy is sold/purchased, the tax leviable on rice shall be reduced by the amount of tax paid on paddy. Clause (d) of Section 15 seeks to explain that pulses in clause (vi-a) of Section 14 would include pulses whole or separated and pulses with or without husk.

[Pulses are set out in clause (vi-a) in the same manner as the cereals are set out in clause (i)].

12. It is in the light of the above provisions of law that the question at issue has to be answered. The learned counsel for the dealers put their case in the following fashion: Wheat is the staple food of a majority of population of this country. Wheat is not consumed as such. It has to be ground/milled into flour before it is consumed. For certain purposes, wheat is milled into maida or suji, as the case may be. Flour, maida and suji are not commodities different from wheat. Even after being milled, they remain and continue to be wheat. They are merely different forms of wheat. The very idea behind the 1976 (Amendment) Act which introduced clause (i) in Section 14 is to save the cereals including 'wheat' from excessive or multiple taxation by the States. The idea is to make the same available to consumers without being unnecessarily loaded by the tax burden. Any interpretation placed upon the said expression 'wheat' should be consistent with and should be designed to further the object underlying the provision. Since the provisions in Sections 14 and 15 are beneficial in nature and are meant to provide relief to common man, they should be construed liberally. In common parlance wheat and wheat flour are not different and are not understood to be different. Taxing the wheat as well as the flour, maida and suji treating them as different commodities would defeat the very purpose and object for achieving which clause (i) was introduced in Section 14.

13. On the other hand, the learned counsel appearing for the States of Karnataka, Rajasthan, Bihar and Andhra Pradesh submit that wheat, flour, maida and suji are commercially different goods and are understood as such in common parlance. What is specified as a declared goods by Section 14(i)(iii) is wheat in its primary form and not the products derived therefrom. Learned counsel emphasised the distinction in the language employed in Entry I of the Schedule to the 1952 Act and sub-clause (iii) of clause (i) of Section 14. They point out that whereas in the case of pulses specified

under clause (vi-a) (which are also mentioned in the same manner as the cereals), clause (d) of Section 15 hastens to explain that pulses even after they are separated and de-husked still remain to be pulses for the purposes of clause (vi-a) in Section 14. No such explanation is provided with respect to wheat. If 'wheat' includes flour derived from it, then paddy should include rice because just as wheat is obtained by milling wheat, rice is obtained by milling paddy; yet rice is mentioned as a separate commodity in sub-clause (ii) of clause (i). If the dealers' contention is correct then sub-clause (ii) of clause (i) in Section 14 is superfluous. Conversely, if rice is a different commodity from paddy, so is flour, maida and suji different from wheat. Sections 14 and 15 of the Act read with clause (3) of Article 286 of the Constitution constitute restrictions upon the plenary power of the State Legislatures to levy tax upon the sale of goods. Such restrictions ought to be construed strictly and not liberally. Moreover, the use of the words "that is to say"

> occurring in clause (i) of Section 14 clearly indicates the intention of the Parliament to limit the restriction to those goods alone as are specifically mentioned therein. The ambit of the several sub-clauses cannot be extended by a process of interpretation. Clause (i) is not of an inclusive nature. In such a situation, there is no room for reading other commodities than those specifically mentioned into it.

14. Entry 54 of List 11 of the Seventh Schedule to the Constitution vests in the State Legislatures the power to levy "taxes on the sale or purchase of goods other than newspapers subject to the provisions of Entry 92-A of List I". Entry 92-A of List 1, introduced by the Sixth Amendment, empowers the Parliament to levy tax on inter- State sales/purchases of goods other than newspapers whereas Entry 92 in List I relates to taxes on the sale or purchases of newspapers and on advertisements published therein. Similarly, Entry 42 in List I empowers the Parliament to make laws with respect to inter-State trade or commerce. Article 286 as already stated contains certain prohibitions and restrictions upon the power of the State Legislatures to levy tax on the sale of goods. As stated by this Court in J.K. Jute Mills Co. Ltd. v. State of U.P.1 and affirmed in Chowringhee Sales Bureau (P) Ltd. v. CIT2: "Where transaction is one of sale of goods as known to law, the power of the Legislature to impose a tax thereon, in our view, is plenary and unrestricted subject only to any limitation which might have been imposed by the Government of India Act or the Constitution." Article 286 represents mainly the limitations contemplated in the above passage. Clause (3) of Article 286 read with Sections 14 and 15 of the Act disables the State Legislatures from taxing even the intra-State sales/purchases of declared goods at a rate exceeding 4% and at more than one stage. They further compel the States to refund the sales tax levied and collected by them on intra-State sales of declared goods in cases where such goods are subsequently sold in the course of inter-State trade or commerce; the refund of tax has to be made to the person effecting the inter-State sale. We are, therefore, inclined to agree with the learned counsel for the States that the provisions of Sections 14 and 15 of the Act, being restrictions upon plenary power of the State Legislatures to levy tax on sale/purchase of goods, must be construed strictly*. In other words, the restriction must be limited to the goods expressly mentioned and nothing more must be read into it except what it says clearly. This is the view taken by the Constitution Bench of this Court in a somewhat similar situation in Ishwari Khetan Sugar Mills (P) Ltd. v. State of U. p. 3 to which we shall presently refer.

15. It must also be remembered that wheat flour - and similarly maida and suji - are different commodities from wheat. Three decisions of this Court4 have held that rice (it is also derived from paddy just as flour is derived from wheat by the process of milling) is different from paddy. We shall refer to these decisions at some detail a little while later. Indeed, in one of the decisions, this Court has, by way of illustration, explained that wheat is different from wheat 1 (1961) 12 STC 429: AIR 1961 SC 1534: (1962) 2 SCR 1 2 (1973) 1 SCC 46: 1973 SCC (Tax) 163 ++ We do not wish to, nor is it necessary to, consider and examine the issue in terms of federalism or the need to maintain a balance between the powers of the federal government and the States, as has been done in certain decisions of the U.S. Supreme Court rendered with reference to the 'commerce clause'.

3 (1980) 4 SCC 136 4 (1) Ganesh Trading Co. v. State of Haryana, (1974) 3 SCC 620: 1974 SCC (Tax) 100: (1973) 32 STC 623; (2) Babu Ram Jagdish Kumar and Co. v. State of Punjab, (1979) 3 SCC 616:

> 1979 SCC (Tax) 265: (1979) 44 STC 159 and (3) State of Karnataka v. Raghurama Shetty, (1 981) 2 SCC 564: 1981 SCC (Tax) 134: (1981) 47 STC 369 flour. The principle of all these three decisions is that where certain goods are consumed to bring into existence different goods - different in commercial and common parlance - both of them must be treated as different goods.

The meaning and content of the expression "consuming" has also been explained in these decisions. If so, there appears to be no warrant for reading flour, maida and suji into the expression 'wheat' in Section 14(i)(iii). If the dealers' contention is correct then it should mean that rice is included in paddy - in which case it was not necessary for the Parliament to mention rice separately under sub-clause (ii) of clause (i) of Section 14. [The counsel for the States may probably be right when they suggest that flour, maida and suji were not separately mentioned in clause (i) of Section 14 for the reason that in the year 1976 when the said clause was introduced, the volume of trade in flour, maida and suji and more particularly inter- State trade therein was at an insignificant level whereas the trade in both paddy and rice was substantial, for which reason rice was mentioned as a separate declared goods but not flour, maida or suji]. It is in this context that clause (d) of Section 15 becomes relevant. Clause (vi-a) of Section 14 was introduced simultaneously with clause (i) by the 1976 (Amendment) Act. But while introducing clause (d) to explain the scope and content of clause (vi-a) no such explanation or qualification was provided in the case of wheat nor were the flour, maida and suji mentioned as separate commodities in Section 14. Further the fact that while re-specifying cereals and pulses as declared goods in 1976, the Parliament departed from the language employed in Item I in the Schedule to the 1952 Act is not without relevance.

16. The learned counsel for the States also appear to be justified in emphasising the meaning and significance of the phrase "that is to say" occurring in clause (i) of Section

14. The clause reads: "(i) cereals, that is to say,- (i) paddy (ii) rice (iii) wheat..... The meaning and purport of the words "that is to say" is explained by a four-Judge Bench of this Court in State of TN. v. Pyare Lal Malhotra5. Beg, J., speaking for the Bench first quoted the meaning of the words "that is to say" assigned in Stroud's Judicial Dictionary (Fourth Edn.) Vol. 5 at page 2753 to the following effect:

> "That is to say.- (1) 'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it: see this explained with many examples, Stukeley v. Butler, (1614) Hob, 171: 80 ER 316."

17. The learned Judge then proceeded to observe: (SCC p. 839, para 7) "The quotation, given above, from Stroud's Judicial Dictionary shows that, ordinarily, the expression, 'that is to say' is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed ... but, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods in a given list. The 5 (1976) 1 SCC 834: 1976 SCC (Tax) 102: (1976) 37 STC 319 purpose of an 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."

18. In this connection, it would be equally relevant to bear in mind the following statement of law from the very same decision:

> (SCC p. 840, para 10) "[S]ales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

19. We may at this stage refer to the decisions mentioned hereinabove at some detail.

20. In Ishwari Khetan Sugar Mills Pvt. Ltd. v. State of Up.3 a Constitution Bench of this Court pointed out the approach to be adopted by the courts in matters where the legislative power of the State is trenched upon by Parliament. Entry 24 of List 11 speaks of industries but it is made subject to the provisions of Entries 7 and 52 of List 1. Entry 52 of List I reads: "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest." Dealing with the impact of Entry 52 List I on Entry 24 of List 11, Desai, J., speaking for himself and two other learned Judges observed:

> (SCC pp. 145-6, para 11) "Industry as a legislative head finds its place in Entry 24, List II. The State Legislature can be denied legislative power under Entry 24 to the extent Parliament makes declaration under Entry 52 and by such declaration Parliament

> acquires power to legislate only in respect of those industries in respect of which declaration is made and to the extent as manifested by legislation incorporating the declaration and no more. The Act prescribes the extent of control and specifies it. As the declaration trenches upon the State legislative power it has to be construed strictly."

21. In our opinion, the restrictions upon the legislative power of the States provided by Sections 14 and 15 read with clause (3) of Article 286 must similarly be construed strictly. Therefore, commodities other than those specified cannot be introduced into the relevant provisions on the ground that they are derived from the primary commodities mentioned in Section 14(i). The said clause refers to certain primary commodities; the goods produced or manufactured out of them cannot be included in those commodities. Otherwise, problem of 'where to draw the line' would also arise. May be that part of the tax collected on inter-State sales is ultimately made over to the States as contemplated by Article 269(1)(g) but that aspect has no relevance to the question of power of the State Legislatures.

22. In three decisions of this Court viz., Ganesh Trading Co., Kamal v. State of Haryana4, Babu Ram Jagdish Kumar and Co. v. State of Punjab4 and State of Karnataka v. Raghurama Shetty4 it has been held that paddy and rice are two distinct commodities and that milling of paddy involves a manufacturing process. This was so held without reference to the fact that paddy and rice are mentioned as two separate commodities in Section 14 of the Central Sales Tax Act. In Ganesh Trading Co.4 it was stated: (SCC p. 623, para 6) "Now, the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods."

23. The following observations of Venkataramiah, J. in Raghurama Shetty4 can usefully be quoted: (SCC pp. 566-7, paras 8-

11) "There is no merit in the submission made on behalf of the assessees 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. We have to understand the word 'consumes' in Section 6(i) of the Act in this economic sense. ... At every stage of production, it is obvious there is consumption of goods even though at the end of it there may not be final consumption of goods but only production of goods with higher utility which may be used in further productive processes. ... Applying the above test, it has to be held that the assessees had consumed the paddy purchased by them when they converted it into rice which is commercially a different commodity." (emphasis supplied)

24. Applying the reasoning adopted hereinabove, it must be held that when wheat is consumed for producing flour or maida or suji, the commodities so obtained are different commodities from wheat. The wheat loses its identity. It gets consumed and in its place new goods/ commodities emerge. The new goods so emerging have a higher utility than the commodity consumed. They are different goods commercially Speaking. Indeed, the portion underlined by us in the above extract clearly affirms the said aspect.

25. The High Courts which have held in favour of the dealers have uniformly relied upon certain decisions of this Court which need to be examined. The judgment uniformly relied upon is in Alladi Venkateswarlu v. Government of A.p.6 a judgment rendered by a Bench comprising Beg and Untwalia, JJ. The matter did not concern Sections 14/15 of the Central Sales Tax Act. The only question there was whether parched rice (Atukulu) and puffed rice (Muramaralu) are 'rice' within the meaning of Entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. Entry 66 read thus:

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"Description of goods Point of levy Rate of tax

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66.Rice (a) Rice not At the point of sale by 6 paise in covered by sub- the first whole-sale rupee item (b) below. dealer in the State effecting the sale.

Provided that a rebate of two paise in the rupee shall be allowed on the rice sold and consumed in the State in accordance with such rules as may be prescribed.

(b) Rice obtained from At the point of sale by 1 paise in paddy that has met the first whole-sale rupee"

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tax under this Act.    dealer in the State
                       effecting the sale.
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26. Parched rice or puffed rice were not mentioned under any of the entries in any of the Schedules to the Act. According to the scheme of the Andhra Pradesh General Sales Tax Act, as it then

obtained, goods not falling in any of the Schedules to the Act were treated as general goods and were subject to multi-point tax @4% or 5%, as the case may be, under Section 5(1) of the Act. The High Court had taken the view that parched rice and puffed rice were different commodities and were taxable as such. The question arising for consideration before the Supreme Court was posed by the Bench in the following terms: (SCC p. 557, para 9) "The question, therefore, before us is whether 'rice', which obtained from paddy, already taxed under Item 8 of the Second Schedule, ceases to be 'rice' falling 'prima facie' under Item 66(b) as rice on which a tax was already paid when it was in the form of paddy? Does heating or parching only to make it edible have that effect?"

27. It was answered in the following words:

> (SCC p. 557, para 10) "It is clear that there is a distinction between 'paddy', as found in Item 8 of the Second Schedule, and 'rice', as mentioned under Item 66 of the First Schedule. Apparently, the removal of the husk makes this difference. It is true that the First Schedule, which contains as many as 136 items, includes a number of separate fairly detailed entries. Entry 58 is for bran or husk of 'rice', and Entry 59 is for 'deoiled bran of rice'. It appears, therefore, that 'rice in husk' is 'paddy'. When it is removed from husk, the husk and rice become separately taxable. But, there are no separate entries for rice and rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in chemical composition.
>
> 6 (1978) 2 SCC 552: 1978 SCC (Tax) 11 2:
>
> (1978) 41 STC 394 The term 'rice' is wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain is not edible. Parched rice and puffed rice are edible. But, the entry 'rice' seems to us to cover both forms of rice. At any rate, it is wide enough to cover them."

28. The Bench also relied upon the earlier decision in Tungabhadra Industries Ltd., Kumool v. CTO7 in support of its opinion. It is thus clear that what influenced the decision mainly was the fact that parched rice and puffed rice were not mentioned as separate commodities under any other item in any of the Schedules to the Act. It was, therefore, held that the term 'rice' in Entry 66(b) includes rice in all its forms. The High Courts while applying the principle of this judgment to the question at issue herein ignored the fact that the said decision did not deal with the meaning and ambit of the several sub-clauses in clause

(i) of Section 14 of the Central Sales Tax Act and also the fact that the Andhra Pradesh Act did not place parched rice and puffed rice under separate entries in any of the Schedules to the Act. In our opinion, the principle of the said decision has no application in the context and scheme of Sections 14 and 15.

29. The next decision relied upon by the High Courts is in Tungabhadra Industries Ltd., Kumool v. Commercial Tax Officer, Kumool7. The question arose under the Madras General Sales Tax Act and the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. Rule 18(2) provided for

deduction of the tax paid by a manufacturer on purchase of groundnut and/or kernel from out of the tax paid by him on the sale of oil derived therefrom. It would be appropriate to set out Rule 18:

> "18. (1) Any dealer who manufactures groundnut oil and cake from groundnut and/or kernel purchased by him may, on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of groundnut oil and cake.
>
> (2) Every such registered manufacturer of groundnut oil will be entitled to a deduction under clause (k) of sub-rule (1) of Rule 5 equal to the value of the groundnut and/or kernel, purchased by him and converted into oil and cake if he has paid the tax to the State on such purchases:
>
> Provided that the amount for which the oil is sold is included in his net turnover: Provided further that the amount of the turnover in respect of which deduction is allowed shall not exceed the amount of the turnover attributable to the groundnut and/or kernel used in the manufacture of oil and included in the net turnover."

30. It is in the context of the said rule that question arose whether refined groundnut oil and hydrogenated groundnut oil, popularly known as "Vanaspati", is groundnut oil to merit the deduction provided by Rule 18(2). The High Court had taken the view that while refined groundnut oil is groundnut oil, hydrogenated oil is not. The process adopted in obtaining the vanaspati was stated by the High Court in the following words:

> "... in the-case of hydrogenated oil which is prepared from refined oil by the process of passing hydrogen into heated oil in the presence of a catalyst (usually finely powdered nickel), two atoms of hydrogen are 7 (1960) 11 STC 827: AIR 1961 SC 412 :(1961) 2 SCR 14 absorbed. A portion of the oleic acid which formed a good part of the content of the groundnut oil in its raw state is converted, by the absorption of the hydrogen atoms, into stearic acid and it is this which gives the characteristic appearance as well as the semi- solid condition which it attains. In the language of the Chemist, an inter-molecular or configurational chemical change take place which results in the hardening of the oil. Though it continues to be the same edible fat that it was before the hardening, and its nutritional properties continue to be the same, it has acquired new properties in that the tendency to rancidity is greatly removed, is easier to keep and to transport."

31. This Court was of the opinion that the process of hydrogenation does not change the identity of the commodity and that it is merely a process adopted to render the oil more stable and thereby improve its quality and utility. This again was not a case, it must be pointed out, arising under Sections 14 and 15 of the Central Sales Tax Act. It is equally well to remember that at the relevant time, the Madras General Sales Tax Act did not treat groundnut oil and vanaspati as two distinct commodities.

32. Devi Dass Gopal Krishnan v. State of Punjab8 was a case arising under the Punjab General Sales Tax Act. One of the questions considered by the Constitution Bench in this decision was whether oilseeds and the oil produced from out of them constitute same or different commodity. The contention for the dealer was that clause (ff) of Section 2 of the Act offends Section 15 of the Central Sales Tax Act, 1956 (as it then stood), which imposed a restriction on the State not to tax the same goods at more than one stage. This contention was rejected holding that the goods purchased and the goods sold viz., oilseeds and oil derived from such seeds are not identical goods. The manufacturing process, it is stated, changes the identity of the goods. The relevant paragraph reads thus:

> "Then it is contended that while Section 15 of the Central Sales Tax Act, 1956 (Act 74 of 1956) imposes a restriction on the State not to tax at more than one stage, the amending Act by introducing the definition of 'purchase' enables the State to tax the same goods at the purchase point and at the sale point. But this argument misses the point that goods purchased and the goods sold are not identical ones. Manufacture changes the identity. Therefore, the same goods are not taxed at two stages."

33. Clause (vi) of Section 14, as it stood at the relevant time, i.e., prior to the Central Sales Tax (Amendment) Act, 1972 read as follows:

> "(vi) Oilseeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like."

In fact, this decision tends to support the States' contention.

34. In Hindustan Aluminum Corpn. Ltd. v. State of U.P.9 a Bench comprising Tulzapurkar and Pathak, JJ. considered the question whether the expression 'metal' occurring in the notifications issued by the Uttar Pradesh 8 (1967) 20 STC 430: AIR 1967 SC 1895: (1967) 3 SCR 557 9 (1981) 3 SCC 578: 1981 SCC (Tax) 280: (1982) 1 SCR 129 Government under Section 3-A(2) of the Uttar Pradesh Sales Tax Act, 1948 takes in the fabricated forms of metal. The relevant words of the notification were "all kind of minerals, ores, metals and alloys including sheets..... It was held that the expression 'metal' has been employed in the notification to refer to the metal 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. While this is not a case dealing- with Sections 14 and 15 of the Central Sales Tax Act, it does hold that where the primary goods are consumed in bringing into existence different commoditie i.e., commodities the new commodities cannot yet be treated as the primary commodity. The Court reaffirmed the following rule of interpretation relevant under sales tax laws: (SCC p. 581, para 9) "... a word describing a commodity in a sales tax statute should be interpreted according to its popular sense, the sense being that in which people conversant with the subject-matter with which the statute is dealing would attribute to it. Words of everyday use must be construed not in their scientific or technical sense but as

understood in common parlance. That principle has been repeatedly reaffirmed in the decisions of this Court. It holds good where a contest exists between the scientific and technological connotation of the word on the one hand and its understanding in common parlance on the other. We are here concerned, however, with a very different situation. We are concerned, with the manner in which these and similar expressions have been employed by those who framed the relevant notifications, and with the inference that can be drawn fro m the particular arrangement of the entries in the notifications. We must derive the intent from a contextual scheme."

35. This was so held following the earlier decision of this Court in Porritts & Spencer (Asia) Ltd. v. State of Haryana10.

36. The decision of this Court in Deputy CST (Law), Board of Revenue (Taxes) v. Pio Food Packers11 is of no help to the dealers. That was a case where the question was where the pineapple is processed and cut into pineapple slices for the purpose of being sold in sealed cans, whether there is a consumption of original pineapple fruit for the purpose of manufacture of slices. It was held that no such manufacture was involved though a certain degree of processing was involved. It was held that by cutting the pineapple into slices and thereafter canning it, on adding sugar to preserve it, did not change the identity nor did it bring into existence different goods. However, so far as pineapple jam and pineapple squash were concerned, it was conceded by the dealer himself that they were different goods.

37. Strong reliance is placed by the learned counsel for the dealers on the decision of this Court in State of Gujarat v. Sakarwala Brothersl2 where it was held that sugar processed into 'patasa', 'harda' and 'alchidana' continued to be 10 (1979) 1 SCC 82: 1979 SCC (Tax) 38: (1978) 42 STC 433 11 1980 Supp SCC 174: 1980 SCC (Tax) 319: (1980) 46 STC 63 12 (1967) 19 STC 24 (SC) sugar and that by the said process the essential characteristic and identity of Sugar did not undergo a change. But this decision must be understood in the context of the language employed in the relevant Entry. Entry 47 in Schedule-A to the Bombay Sales Tax Act defined sugar "as defined in Item No. 8 of the First Schedule to the Central Excise and Salt Act, 1944". The said Item No. 8 read as follows: " 'sugar' means any form of sugar containing more than 90% of sucrose." The contention of the State was that the words "any form of sugar" do not mean "sugar in any form". But this argument was rejected by both the Gujarat High Court and this Court holding that 'patasa', 'harda' and 'alchidana' are but forms of sugar. The following observations bring out the ratio:

> "It is not disputed on behalf of the appellant that the chemical composition of patasa, harda and alchidana is the same as that of sugar, viz., there is more than 90 per cent of sucrose. Mr Bindra, however, laid stress on the argument that patasa, harda and alchidana were sweets used on festive occasions. But this circumstance has no relevance on the question of legal classification for the purpose of the Bombay Sales Tax Act. On the other hand, it appears from the judgment of th e Tribunal that it is possible to convert these articles into sugar by dissolving them in water and by subjecting the solution to an appropriate process. It is stated by the Tribunal that these articles can be put to the same use to which sugar-candy can be put. It is, therefore, manifest that patasa, harda and alchidana are only different forms of

> refined sugar with the requisite sucrose contents."

This decision has indeed been distinguished in the case of Ganesh Trading Co.4

38. We do not think any purpose will be served by referring to decisions of this Court in Gujarat Steel Tubes Ltd. v. State of Kerala13 since it was concerned with the question whether galvanising of steel pipes and tubes does bring about a change in the identity and character of pipes and tubes. The Court held, it does not. We see no analogy between that case and the one before us. Same is the case with respect to the decision in State of TN. v. Mahi Traders14 where it was held that leather splits (cuts and scrap of leather left after cutting out the sizes) are nothing but leather.

39. Certain decisions of High Courts have been brought to our notice by counsel for both sides. We do not think that it would be of any help on the question at issue since those decisions turned upon the particular language of the relevant enactment and the scheme of entries therein.

40. For the above reasons, we hold that flour, maida and suji derived from wheat are not 'wheat' within the meaning of Section 14(i)(iii) of the Central Sales Tax Act. Flour, maida and suji are different and distinct goods from wheat. In other words, flour, maida and suji are not declared goods.

41. Learned counsel for the dealers repeatedly emphasised that flour, maida and suji are commodities of daily use by a large segment of the population of this country and that our opinion may add to the burden on the common man. This submission would have carried some force if all the High Courts in the country had taken one uniform view and we proposed to upset it. As we shall 13 (1989) 3 SCC 127: 1989 SCC (Tax) 376: (1989) 74 STC 176 14 (1989) 1 SCC 724: 1989 SCC (Tax) 190 presently point out, there is no such unanimity, nor can it be said that decisions holding in favour of the dealers have held the field for a long time. On the contrary, it appears that the decisions upholding the States' contention are far earlier in point of time. Clause (i) in Section 14 was introduced in the year 1976. In the year 1982, two decisions were rendered by the Andhra Pradesh High Court. The earlier one was in Udata Narasimha Rao & Co. v. State of A. P. 15 It was held by a Bench that 'ravva' derived from rice is a different product from rice and that, therefore, 'ravva' is not declared goods within the meaning of Section 14 of the Central Sales Tax Act. ('Ravva' was mentioned as a separate commodity under Entry 144 of the First Schedule to the Andhra Pradesh General Sales Tax Act.) In the same year, another Bench in State of A.P. v. V. Venkata Subbaiah & Sons16 of which one of us (B.P. Jeevan Reddy, J.) was a member, held, following Alladi VenkateswarlU6 that 'ravva' drawn from rice is rice within the meaning of Entry 66 of the First Schedule to the said enactment. The decision in Venkata Subbaiahl6 dealt with the position obtaining prior to the 1976 (Amendment) Act. This decision has no relevance to the position obtaining under Section 14(i)(iii) or Section 15. Thereafter, in the year 1991, a Division Bench of the said High Court held following Udata Narasimha Rao"

> that flour, maida, ravva, suji and bran drawn from wheat are distinct and different commodities from wheat and cannot, therefore, be treated as declared goods.

> 42. In Karnataka, there does not appear to be any judgment holding one way or the other till the judgment now under appeal - rendered in the year 1991. The Karnataka High Court has held that the flour, maida and suji are included within the expression 'wheat' in Section 14(i)(iii) and, therefore, are declared goods. Reference may also be had to another decision of the Karnataka High Court in S.T.R.P. No. 99 of 1981 disposed of on June 23, 1982 where the question was "whether parched gram with or without husk is or is not a commodity different from gram with or without husk included in Entry No. 10 of the Fourth Schedule to the Act?"

The Fourth Schedule to the Karnataka Act refers to declared goods. It was held that parched gram with or without husk is the same as gram with or without husk. The decision was mainly influenced by the decision of this Court in Alladi Venkateswarlu6.

43. In Rajasthan High Court too, there does not appear to have been any decision one way or the other till the decision under appeal in Civil Appeal Nos. 3922-25 of 1991. The decision under appeal was rendered in August 1991, The Rajasthan High Court has held that flour, maida and suji being goods different from wheat are not declared goods.

44. In Patna High Court too, there does not appear to be any decision on the question until the one now under appeal, which was rendered in April 1989. The Patna High Court has taken the view that they are same goods. In fact, this decision was referred with approval by the Karnataka High Court but was dissented from by Rajasthan High Court. 15 (1982) 51 STC 126 (AP) 16 (1983) 54 STC 133 (AP)

45. We have been informed that recently the Madras High Court has taken the same view as the Andhra Pradesh High Court and that a special leave petition has been filed against it in this Court.

46. It is obvious that if the Parliament proposes to treat flour, maida and suji also as declared goods, it can always say so, by effecting necessary amendments.

47. We, therefore, set aside the judgments of the Karnataka and Patna High Courts and accordingly allow Civil Appeal Nos. 1291-98 of 1990, 5082-84 of 1991, 4749-4801 of 1991, 4996-5104 of 1991 and I.A. Nos. 3 and 4 of 1992 in C.A. No. 1291 of 1991 filed by the said States and dismiss the appeals preferred by the dealers being Civil Appeal Nos. 3922-25 of 1991, SLP (C) Nos. 185 of 1992 and 8275 of 1992 against the judgments of Andhra Pradesh and Rajasthan High Courts.