

SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs.

Kanodia Flour Mills

C.A.No.73 of 2000

(C. K. Thakker, Mrs.Ruma Pal and Arijit Pasayat JJ.)

16.03.2005

JUDGMENT

C. K. Thakker, J.

1. The question in issue in this appeal is as to who is liable to pay purchase tax under the *U. P. Sales Tax Act, 1948*:

2. Explanation II to section 3-D of the Act provides as :

"Explanation II.-For the purposes of this sub-section, in relation to purchase of foodgrains in pursuance of any order made under section 3 of the *Essential Commodities Act 1955*, including any purchase in excess of the levy share, the purchase first made by a dealer from the State Government or its purchasing agent shall be the first purchase of such foodgrains and the tax shall accordingly be levied at that point on such dealer."

3. The Explanation was construed in a decision of the High Court in *Rajin-dra flour and Allied Industries (Put.) Ltd. v. State of Uttar Pradesh*¹ in which it was held that unless it was established that the purchases of foodgrains by the Regional Food Controller were in pursuance of any order made under section 3 of the *Essential Commodities Act, 1955*, the purchasers from the Regional Food Controller would not be treated as a first purchaser and the Regional Food Controller would be liable to issue form IIIC(2) to the roller flour mills certifying in respect of the wheat sold by it to the roller flour mills.

3. In this case the Regional Food Controller, Varanasi, had sold rejected wheat to the respondents-flour mills. The appellant sought to levy purchase tax on the respondent on the ground that the respondents were the first purchasers of the rejected wheat. It was contended by the appellant that by virtue of Explanation II to section 3-D of the Act, the respondents were deemed to be the first purchasers of the wheat. The High Court negated this contention following the decision in *Rajindra Flour and Allied Industries (Pvt.) Ltd.*. The High Court directed the Regional Food Controller at Varanasi and Regional Food Controller,

Moradabad, to issue the requisite certificates in form mC(2) to the respondents for the wheat sold by them to the assesseees for the financial years 1982-83 and 1983-84.

4. After the appeal was preferred to this court, no stay was granted to the appellant. In due compliance with the order of the High Court the requisite forms were furnished by the appellant to the respondents and the respondents have produced the same before the assessing authorities. It is submitted by the learned counsel appearing on behalf of the respondents that this appeal has become infructuous. We do not agree. The appellant was bound to comply with the High Court's order in the absence of any stay granted by this court. By complying with the order it could not be said that the appellant have in any fashion waived the rights to pursue their appeal before this court.

5. According to the appellant, the High Court had misconstrued the decision in Rajindra Flour and Allied Industries (Pvt.) Ltd. It is pointed out to us that the division Bench in that case has found, as a matter of fact that there was nothing to show that the orders passed by the State Government for purchasing the rejected wheat by the roller flour mills was issued under the provisions of the Essential Commodities Act. Learned counsel appearing for the appellant has pointed out to us that, in this case, it was on record that the wheat had been procured under the Support Price Scheme. During the years 1981-82 and 1982-83, all orders for purchase under the scheme had been issued under section 3 of the Essential Commodities Act, 1955. We have satisfied ourselves that this fact was on record before the High Court. The High Court has failed to address its mind to this distinguishing element. A reading of the decision in Rajindra Flour and Allied Industries (Pvt.) Ltd. appears to be correct. The High Court should have considered the truth of the statement as made by the appellants in their counter-affidavit read with the letter dated September 5, 1985. Accordingly, we set aside the decision of the High Court and remand the matter back in order to enable the High Court to redetermine this fact.

6. The appeal is, accordingly, allowed but without any order as to costs.

¹[1994] UPTC 1017