

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.831 of 2010

M/S Shree Bishwanathjee Mills, a partnership firm having its place of business at Itarhi Road, P.O. Gajadharganj, District-Buxar through its one of the partners Hem Prakash son of Sri Hari Shankar Prasad.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 832 of 2010

M/S Shree Bishwanathjee Mills, a partnership firm having its place of business at Itarhi Road, P.O. Gajadharganj, District-Buxar through its one of the partners Hem Prakash son of Sri Hari Shankar Prasad.

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1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 833 of 2010

M/S Shree Bishwanathjee Mills, a partnership firm having its place of business at Itarhi Road, P.O. Gajadharganj, District-Buxar through its one of the partners Hem Prakash son of Sri Hari Shankar Prasad.

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2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 834 of 2010

M/S Shree Bishwanathjee Mills, a partnership firm having its place of business at Itarhi Road, P.O. Gajadharganj, District-Buxar through its one of the partners Hem Prakash son of Sri Hari Shankar Prasad.

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2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 849 of 2010

M/S Shree Shankar Rice Mills, partnership firm having its place of business at Akhuripur Gola, Chausa, District-Buxar through its authorised signatory Om Prakash Gupta, son of late Lal Muni Prasad.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 850 of 2010

M/S Shree Shankar Rice Mills, partnership firm having its place of business at Akhuripur Gola, Chausa, District-Buxar through its authorised signatory Om Prakash Gupta son of late Lal Muni Prasad.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 858 of 2010

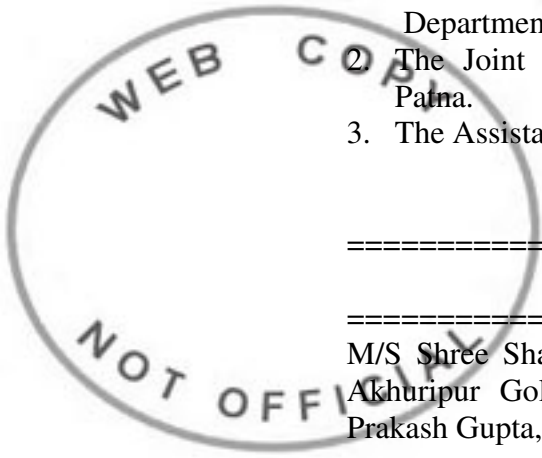
M/S Shree Shankar Rice Mills, partnership firm having its place of business at Akhuripur Gola, Chausa, District-Buxar through its authorised signatory Om Prakash Gupta son of late Lal Muni Prasad.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s



With

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Miscellaneous Appeal No. 862 of 2010

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M/S Shree Shankar Rice Mills, partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its authorised signatory Om Prakash Gupta son of late Lal Muni Prasad.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

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Miscellaneous Appeal No. 857 of 2010

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M/S Shree Durga Rice Mill, a partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its one of the partners Anunay Kumar son of Sri Binod Kumar.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

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Miscellaneous Appeal No. 864 of 2010

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M/S Shree Durga Rice Mill, a partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its one of the partners Anunay Kumar son of Sri Binod Kumar.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

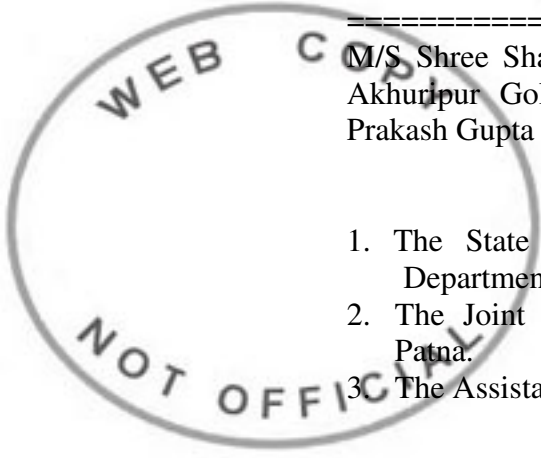
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Miscellaneous Appeal No. 865 of 2010

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M/S Shree Durga Rice Mill, a partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its one of the partners Anunay Kumar son of Sri Binod Kumar.

.... Petitioner-Appellant/s



Versus

- 1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
- 2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
- 3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 866 of 2010

M/S Shree Durga Rice Mill, a partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its one of the partners Anunay Kumar son of Sri Binod Kumar.

.... Petitioner-Appellant/s

Versus

- 1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
- 2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
- 3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

With

Miscellaneous Appeal No. 874 of 2010

M/S Shree Durga Rice Mill, a partnership firm having its place of business at Akhouripur Gola, Chausa, District-Buxar through its one of the partners Anunay Kumar son of Sri Binod Kumar.

.... Petitioner-Appellant/s

Versus

- 1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
- 2. The Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna.
- 3. The Assistant Commissioner of Commercial Taxes, Buxar Circle, Buxar.

.... Respondents- Respondent/s

Appearance :

(In all the appeals)

For the Appellant/s : Mr. R. K. Agrawal, Advocate
Mr. Shive Kumar, Advocate

For the Respondent/s : Mr. Lalit Kishore, P.A.A.G.-1
Mr. Vikash Kumar, S.C.-11
M. S. Krishna, A.C. to S.C.-11

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C. A. V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-09-2016

This order shall dispose of thirteen Appeals filed by three set of appellants pertaining to assessment years 1997-98 to 2001-02. Since the issue is common, all the Appeals are taken up for hearing together.

2. Ten Appeals (M.A. Nos.831, 833, 834, 849, 850, 858, 864, 865, 866 and 874, all of 2010) arise out of a common order passed by the Commercial Taxes Tribunal, Bihar, Patna (hereinafter referred to as 'the Tribunal') on 30th May, 2007 whereby the revision petitions filed by the appellants were dismissed, whereas three Appeals (M.A. Nos.832, 857 and 862, all of 2010) arise out of a common order passed by the Tribunal on 31st July, 2007 dismissing the revisions filed by the appellants arising out of orders passed by the Joint Commissioner of Commercial Taxes (Appeals), Patna Division, Patna in appeals affirming the orders of the Assessing Officer reviewing its own order and imposing purchase tax.

3. The appellants are the registered dealers under the provision of the Bihar Finance Act, 1981 (hereinafter referred to as 'the Bihar Act') as a manufacturer and wholesale dealer. The registration



certificate specifically permits the appellants to purchase paddy free of special sales tax for the purpose of manufacturing. The appellants also hold registration certificate under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act'). The issue in these appeals is liability of the appellants to pay purchase tax on the purchase of paddy in the State and sold to exporters outside the State.

4. Section 5 of the Central Act deals with the situation when sale or purchase of goods can be said to have taken place in the course of import or export. Section 5 read as under:

“5. When is a sale or purchase of goods said to take place in the course of import or export.—(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly

filled and signed by the exported to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation.—For the purposes of this sub-section, “designated Indian carrier” means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.”

5. The levy of purchase tax under the Bihar Act is contemplated under Section 4 thereof which read as under:-

“4. Levy of purchase tax.- Subject to the provisions of sections 5, 6 and 7 of this Part, every dealer liable to pay tax under section 3, who purchases goods in circumstances in which no sales tax is payable or has been paid on the sale price of such goods and 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 sale in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the same sale price of such goods under section 12.”

6. The exemptions under the Bihar Finance Act are contemplated under Section 7 of the Bihar Act which read as under:

“7. Exemption.- (1) No tax shall be payable under this part on sales or purchases of goods which have taken place-

- (a) in the course of inter-State trade or commerce;
- (b) outside the State;
- (c) in the course of import of goods into, or export of the goods out of the territory of India.

(2) The provisions of the Central Sales Tax Act 1956

(LXXIV of 1956) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in clauses (a), (b) or (c) of sub-section (1).

(3) The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the sales tax or purchase tax-

(a) sales of any goods or class or description of goods;

(b) sales of any goods or class or description of goods to or by any class of dealers;

(c) any sale or category or description of sales; and

(d) purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods.

4.”

7. The State Government in exercise of the powers conferred under Section 6(3) (b) of the Bihar Sales Tax Ordinance, 1976, i.e. Section 7 (3) (b) of the Bihar Act has issued a Notification dated 15th December, 1976 whereby exemption was granted from the levy of sales tax and purchase tax on the purchase of raw material as mentioned in Schedule II required directly for the purpose of processing, milling, making or manufacturing for resale inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India. The said Notification though issued under the Bihar Sales Tax Ordinance, 1976, continues to be valid under the provisions of the Bihar Act. The relevant extract from the said Notification read as under:

“The 15th December, 1976

No.Bikrikar/San-1005/76-14199, F.T.- In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 of the Bihar

Sales Tax Ordinance, 1976 (Bihar Ordinance no.209, 1976) the Governor of Bihar is pleased to-

- (i)
- (ii) Exempt from the levy of both “general sales tax” and “special sales tax” or “purchase tax” sales of such raw materials to registered dealers as are specified in his registration certificate as being required by him directly for the purpose of processing, milling, making or manufacturing for re-sale inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India the goods specified in the second column of Schedule II hereto annexed subject to the conditions and restrictions specified in the third column thereof.

SCHEDULE II

Sl.no.	Name of goods	Conditions and restrictions subject to which exemption has been allowed.
1	2	3
1	(i) Processed, milled or manufactured cereals and pulses. (ii) Besan, Sattu, flour including atta, maida and suji. (iii) (a) Mustard Oil, rape oil and mixture of mustard oil and rape oil. (b) Caster Oil and linseed oil.	If the Selling dealer produces before the assessing authority in respect of each such sale, a true declaration in writing by the purchasing dealer or his manager, if any, declared under section 10 of the Act, to the effect that the goods in question are actually required by the purchasing dealer for the purposes of processing, milling, making or manufacturing for re-sale inside Bihar or in the course of Inter-State trade or Commerce, the goods specified in column 2 of this Schedule and are specified in his registration certificate as being so required by him.



8. The appellants have sold rice in course of export to the exporters on production of Form-H under the provisions of the Central Act. The Assessing Officer did not impose any Central Sales Tax in the assessment orders passed under the Central Act, but purchase tax was imposed on purchase of paddy under Section 4 of the Bihar Act. The appeals against the order of assessment were dismissed by the Joint Commissioner of Commercial Taxes, Patna in view of the judgment of the Hon'ble Supreme Court in Monga Rice Mill Vs. State of Haryana and another, (2004) 6 SCC 101. The further appeals/revisions were dismissed. Still aggrieved, the appellants are before this Court.

9. The argument of learned counsel for the appellants is that in view of the Notification dated 15.12.1976, the appellants' Rice Mills are not liable to pay purchase tax on the purchase of paddy. It is contended that the judgment of the Supreme Court in Monga Rice Mill's case (supra) is not applicable to the facts of the present case as the appellants are entitled to exemption from payment of purchase tax under Section 4 and Section 7 of the Bihar Act and the Notification dated 15th December, 1976. The similar provisions were not before the Supreme Court. On such basis, the appellants claimed many substantial questions of law.

10. This Court while admitting the Appeals

(M.A.Nos.831, 832, 833, 834, 849, 850, 858, 862 and 874, all of 2010) for hearing on 24th of April; 2012, framed the following substantial question of law for consideration:-

“Whether the notification dated 15th December, 1976 requires interpretation in favour of the assessee on account of apparent conflict in clause (ii) which covers export out of India of the goods specified in Schedule II of the notification and the conditions and restrictions incorporated in column 3 of Schedule II which retains the re-sale inside Bihar or in course of inter-State trade but omits the expression “export out of the territory of India” and whether interpretation, if required should be in favour of the assessee?”

11. On 29th of June, 2016, this Court further framed the following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in not accepting the claim of the appellants for exemption from purchase tax in view of notification No.14199 dated 15.12.1976?”

12. On 31st July, 2015, this Court while admitting the Appeals bearing M.A.Nos.857, 864, 865 and 866 of 2010, to be heard along with M.A.No.831 of 2010 and its analogous cases, framed the following question of law:-

“ Whether on the facts and in the circumstances of the case, the Tribunal was correct in interpreting the notification dated 15.12.1976 against the assessee on account of apparent conflict in clause (ii) which covers export out of India of the goods specified in Schedule II of

the notification and the conditions and restrictions incorporated in column 3 of Schedule II which retains the re-sale inside Bihar or in course of inter-State trade but omits the expression “export out of the territory of India” and whether the interpretation ought to have been in favour of the assessee.”

13. The learned Tribunal recorded the following findings of fact:

“The petitioner’s counsel placed heavy reliance on the aforesaid Notification in support of his claim for non-levy of purchase tax on paddy under Section 4 of the Act. But on careful perusal of the permanent records of the two petitioners, we find that in column No.-12 (c) of the Registration certificates granted to them by the circle concerned, the words, “for export” have been struck off which goes to prove that the petitioners were not entitled for purchase of raw material paddy for manufacturing rice for export purpose. It is thus clear that the condition prescribed in clause II of the aforesaid Notification regarding specification of raw materials in registration certificate for manufacturing goods for availing exemption is not fulfilled. Further, in column-3 of Schedule II of this Notification, exemption facility is to be availed only for the purpose of resale of goods inside Bihar or in course of inter-State trade or commerce and not for the purpose of export out of the territory of India. The condition of furnishing declaration in Form IX as prescribed for the purpose of claiming exemption from tax on purchase of raw material in column-3 of Schedule-II also does not provide for export of goods out of the territory of India and as such no exemption is to be granted for purchase of paddy for manufacturing rice for the purpose of export. The petitioners do not fulfill this condition too. The case law in case of the State of Karnataka and others Vs. Balaji Computers and others reported in (2007) 2 SCC 743 and cited by the petitioner’s counsel is of

no assistance to petitioners as we do not find lack of clarity in the aforesaid Notification. In view of the above discussions, we are unable to accept the claim of petitioners for exemption for purchase tax on paddy (raw material) in terms of the aforesaid Notifications.”

14. The Tribunal found that in terms of Section 5 of the Central Act, three conditions are required to be specified before exemption from payment of tax can be claimed by an assessee. The conditions are- (1) that the appellants are millers within the State. (2) It buys paddy and processes rice there from within the State and as such it is a local sale which do not fall under Section 5(3). (3) It is a sale for export and not a sale which occasions export. The petitioners have made sales to exporters and not a direct export sale to importers and thus it found that the matter is covered by Supreme Court judgment in Monga Rice Mill's case which makes a distinction between sale for export and sale in course of export. The Tribunal also held that after the insertion of clause (ca) in Section 15 of the Central Act, the rice and paddy are treated to be the same commodity, but this amendment has a limited deeming fiction which applies to sale of rice by the exporter. The Tribunal held that Form- H issued by the exporters does not in any way affect the levy of purchase tax on paddy.

15. In the memorandum of appeal, there is specific assertion that the appellants are not relying upon Section 15 (ca) of the Central Act for the purpose of exemption from payment of purchase tax

on purchase of paddy from the farmers, but the learned counsel for the appellants did argue that the appellants are entitled to exemption in terms of Section 15(ca) of the Act.

16. A reading of Section 4 of Bihar Act shows that the appellants have purchased goods on which no sales tax was payable as the farmers are not registered dealers and not liable to pay tax. The appellants have used such goods in the manufacture of rice and have disposed of such goods other than by way of sale in the State or sale in the course of inter-State trade or commerce. The rice produced after milling of paddy has been used for export out of the country and, therefore, the purchase of paddy attracts purchase tax in terms of Section 4 of the Act. Such purchase would be exempt only if it falls within sub-section (1) of Section 7 or within the scope of the Notification dated 15th December, 1976. In either situation, the appellant does not satisfy the requirement of exemption from payment of purchase tax.

17. The Supreme Court in Monga Rice Mill's case (supra) was dealing with identical provisions which are evident from the following extract:

“10. In the present case, the appellant is a miller within the State; it buys paddy and produces rice therefrom within the State and sells it to the exporter within the State and as such it is a local sale which does not fall under Section 5(3). It is a sale for export and not a sale which occasions export..... Applying the test

propounded by this Court in *Hotel Balaji case v. State of A.P., 1993 Supp (4) SCC 536*, we hold that clause (ca) of Section 15 contains a limited deeming fiction by which tax exemption is given only to the sale of rice by the exporter and not to the sale by the appellant miller to the exporter.

11. At one stage, it was sought to be contended on behalf of the appellant in Civil Appeals Nos. 1117-21 of 2003 that the terms “rice” and “paddy” were interchangeable under clause (ca) from which it follows that what the appellant sold to the exporter was paddy and, therefore, the last purchaser of such paddy was the exporter and not the appellant and consequently the appellant was not liable for payment of purchase tax. We do not find merit in this argument. Clause (ca) of Section 15 *inter alia* states that where a tax on purchase of paddy is leviable under the State law and the rice procured out of such paddy is exported, then for the purposes of Section 5(3), paddy and rice shall be treated as a single commodity. As stated above, clause (ca) contains a limited deeming fiction, which only applies to sale of rice by the exporter. This fiction is attached to the purchased commodity which is paddy from which rice is procured and not the exported commodity. Clause (ca) equates the two commodities only in cases where rice procured from paddy is exported and not to any other case. Accordingly, we hold that the purchase of paddy by the appellants in these cases is not exempt from the levy of a tax. Such purchases do not fall within Section 5 of the 1956 Act. The sale by the exporter is, however, exempt under Section 5(1) and the purchase of paddy by the miller-cum-exporter is covered under Section 5(3) of the 1956 Act.”

18. In the present case, the appellants have sold rice outside State for the purpose of export. A perusal of the above extracts from the judgments would show that the paddy and rice are treated to be single commodity by virtue of clause (ca) of Section 15 of the



Central Act when the levy of Tax is imposed in terms of such Statute but not on the purchase of paddy from the farmers, as such sale falls within the scope of Bihar Act alone. Section 5 (3) of the Central Act does not absolve the assessee of levy of purchase tax under the State Act. The appellants have already been granted benefit from the levy of tax under the Central Act. Therefore, the appellants have rightly stated in the memorandum of appeal that their case is not based upon Section 15(ca) of the Central Act.

19. The question is whether the purchase of paddy is exempt from payment of purchase tax in terms of Notification dated 15th of December, 1976. The purchase of paddy is a distinct transaction, then sale of rice during the course of export. The rice has been found to be exempt from the payment of taxes under the Central Act. The question is whether the paddy is exempt from payment of the purchase tax during the course of intra-State purchase.

20. Clause (ii) of the Notification dated 15th December, 1976 exempts from the levy of purchase tax, sale of raw materials to registered dealers for the purpose of processing, milling, making or manufacturing for re-sale within Bihar or in course of inter-State trade or commerce or export out of the territory of India subject to conditions as specified in the third Column of Schedule II. Column 3 of the Schedule II shows that exemption is available if the goods are actually



required by the purchasing dealer for the purpose of processing, milling and manufacturing for re-sale inside Bihar or in the course of Inter-State trade or commerce. Therefore, such purchases would be exempt from the payment of purchase tax if the goods are processed, milled for resale in the State of Bihar or in course of inter-State trade or Commerce. Since as per the appellants, the goods were exported out of the country, such goods are not exempt from payment of purchase tax as only goods sold within the State of Bihar or in the course of inter-State trade or commerce are exempt from the payment of purchase tax. Therefore, the claim of the appellants that the purchase of paddy within the State of Bihar but the rice exported out of the country cannot be treated to be exempt from the levy of purchase tax within the State.

21. The argument of learned counsel for the appellants that the words, “export out of the territory of India” find mentioned in substantive provision of (ii) of the Notification dated 15th December, 1976, therefore, the export of the rice out of the paddy purchased would be exempt in terms of the Notification dated 15th December, 1976 even if the words, “export out of the territory of India” do not find mention in the 3rd column of Schedule II. Learned counsel for the appellants refers to the judgments of the Supreme Court reported as Central Bureau of Investigation, Bank Securities and Fraud Cell Versus Ramesh Gelli and others, (2016) 3 SCC 788, Richa Mishra Versus

State of Chhatisgarh and others, (2016) 4 SCC 179; and Surjit Singh Kalra Versus Union of India and another, (1991) 2 SCC 87 to contend that in suitable case, to give effect to the statute, the courts can add words as part of the process of interpretation of statutes.

22. We do not find any merit in the said argument. Though clause (ii) deals with exemption from levy of sales tax and purchase tax required by the assessee for the purposes of processing, milling, making or manufacturing for re-sale inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India, but such transactions are exempt subject to the conditions and restrictions specified in the third column of Schedule II. The Schedule II does not contain the words, “export out of the territory of India”. Once the Statutory Notification does not find certain words, the Court while interpreting the provisions of the Notification dated 15th of December, 1976 will not add to the words to the Notification. The Rule of interpretation is to read the Notification as a whole and not to add words to the notification.

23. In Ramesh Gelli's case (supra), the Court has noticed that rule of *casus omissus* i.e. “what has not been provided for in the statute cannot be supplied by the Courts” is a strict rule of interpretation, but the Court found omission to continue to extend the deeming provisions in Section 46A of the Banking Regulation Act,



1949 to the offences under Section 7 to 12 of the Prevention of Corruption Act must be understood to be clearly unintended and hence is capable of admitting a judicial exercise to fill up the same. The said opinion of the Court is in respect of applicability of Prevention of Corruption Act to treat the employees/office bearers of the Banking Company as public servants for the purpose of Chapter IX of the Indian Penal Code. The said judgment does not support the argument that the Court can add words to a Statute.

24. In Surjit Singh Kalra's case (supra) it was held that purposeful construction should be adopted by the Court as the purpose and object of classification of the landlords to seek summary eviction of the tenant would practically obliterate. The said order is in respect of the particular Statute considering special provision of the Statute. Therefore, the said judgment is not of universal application that the Court can always add words to a Statute.

25. In Richa Mishra's case (supra), the Court held that lacuna in Chhattisgarh Police Executive (Gazetted) Service Recruitment and Promotion Rules, 2000 got filled up when Madhya Pradesh Civil Services (Special Provision for Appointment of Women) Rules, 1997 were made applicable for the examination in question and that it is not a case of *casus omissus*. The said judgment is of no help to learned counsel for the appellants.

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26. The Constitutional Bench judgment reported as Sarah Mathew Versus Institute of Cardio Vascular Diseases and Ors., (2014) 2 SCC 62, has held that the rule of interpretation does not permit adding of a word as the Courts are not to add to read the words in the Statute. The relevant extract read as under:

“45. It is argued that a legislative casus omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Coop. Housing Society versus Swaraj Developments*, (2003) 6 SCC 659, *Bharat Aluminium Co. Versus Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552, and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case.”



27. In another judgment reported as Shiv Shakti Coop. Housing Society Versus Swaraj Developments, (2003) 6 SCC 659, it was held that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The Court held to the following effect:

“19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse*, (1997) 6 SCC 312: AIR 1998 SC 74. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, (1846) 6 Moo PCC 1 : 4 MIA 179, courts cannot aid the legislatures’ defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat v. Dilipbhai Nathjibhai Patel*, (1998) 3 SCC 234: 1998 SCC (Cri) 737: JT (1998) 2 SC 253. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tipton) Ltd.*, (1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)]. Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four

corners of the Act itself. (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, 1910 AC 444 : 1910 WN 161 (HL), quoted in *Jumma Masjid v. Kodimaniandra Deviah*, AIR 1962 SC 847)

23. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J. in *Artemiou v. Procopiou*, (1966) 1 QB 878 : (1965) 3 ALL ER 539: (1965) 3 WLR 1011 (CA) (All ER p. 544 I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. Per Lord Reid in *Luke v. IRC*, 1963 AC 557 : (1963) 1 ALL ER 655 : (1963) 2 WLR 559 (HL) where at AC p. 577 (All ER p. 664 I) he also observed: “This is not a new problem, though our standard of drafting is such that it rarely emerges.”

24. It is then true that,

“when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by

saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*".

"But," on the other hand,

"it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (see *Fenton v. Hampton*, (1858) 11 Moo PCC 347; 6 WR 341).

A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt leges*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute — *casus omissus et oblivioni datus dispositioni juris communis relinquitur*; "a *casus omissus*," observed Buller, J. in *Jones v. Smart*, 1 TR 44, 52 : 99 ER 963, "can in no case be supplied by a court of law, for that would be to make laws".

28. The Notification issued under the Statute is a law. The principle of interpretation of Notification under the Statute is the same as is while interpreting the provision of Statute. Therefore, the principles laid down above are applicable to the facts of the present cases with full force.

29. In view of the above, we find that the words, "export out of territory of India" cannot be read into column 3 of Schedule II of the Notification dated 15th December, 1976 on the basis of maxim *casus omissus*. Thus, the question of law framed on 24th of April, 2012

and 31st of July, 2015 is answered against the assesses and in favour of the Revenue.

30. In respect of question of law framed on 29th of June, 2016, we find that in view of the answer on the earlier question of law, the Tribunal was justified in not accepting the claim of the appellants for exemption from purchase tax in view of the Notification No.14199 dated 15.12.1976.

31. In view of the above, all the Appeals are dismissed.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

Sunil

AFR/NAFR	A.F.R.
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