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Court : Karnataka

Decided On : Jun-16-1994

Reported in : ILR1994KAR2196; 1995(39)KarLJ18

Judge : R.V. Raveendran, J.

Acts : Karnataka Sales Tax Act, 1957 - Sections 5(3), 6B, 12(2), 12(3), 12A, 21(2), 21(3), 22A, 25 and 25A

Appeal No. : Writ Petitions Nos. 10826 to 10829, 10922 to 10930, 11284 to 11290, 11363 to 11370, 11567 to 11575,

Appellant : Brindavan Roller Flour Mills Pvt. Ltd.

Respondent : Joint Commissioner of Commercial Taxes

Advocate for Def. : Ms. Vidya, HCGP

Advocate for Pet/Ap. : M.N. Shankara Gowda ;for M/s Vasan Associates, Adv., ;A. Satyanarayan and ;B.V. Kategeri, Advs.

Judgement :

R.V. Raveendran, J.

1. These matters which involve a common question of law were listed for preliminary hearing and were finally heard by consent and are disposed of by this order. The common question that arises for consideration in these cases is whether the decision of the Supreme Court in Rajasthan Roller Flour Mills Association v. State of Rajasthan and State of Karnataka v. New Swastik Flour Mills [1993] 91 STC 408, is only prospective in its application and does not apply to transactions which had taken place prior to the date of the said decision, namely, September 1, 1993.

2. The necessary facts are :

Under section 6B of the Karnataka Sales Tax Act, 1957 ('the Act', for short), the total turnover of every dealer is liable to turnover tax. The proviso to the said section however excludes the turnover relating to several transactions listed therein from turnover tax. Item (ii) under the proviso excludes the turnover relating to sale or purchase of goods specified in the Fourth Schedule to the Act. Wheat is one of the items listed in the Fourth Schedule to the Act and therefore the turnover relating to wheat is exempted from turnover tax.

3. The Revenue considered 'wheat products' as different from 'wheat' and therefore the exemption which was available in respect of wheat listed in the Fourth Schedule was not extended to wheat products. Consequently the turnover relating to wheat products like soji, maida and atta subjected to turnover tax under section 6B, as they did not fall under any of the exempted items.

4. The question whether 'wheat products' like soji, atta and maida were the same as 'wheat' came up for

consideration before a Division Bench of this Court in New Swastik Flour Mill v. State of Karnataka [1992] 84 STC 49. This Court on March 7, 1991, held that wheat, one of the declared goods, is a staple food article which was capable of being consumed only in the form of broken wheat of flour or rava; and therefore these products could not be treated as different from wheat; and consequently atta, maida and soji which were produced out of wheat, though different in form were nothing but wheat in substance, and are declared goods. This Court consequently held the turnover of these items could not be subjected to tax under section 5(3)(a) of the Karnataka Sales Tax Act, 1957, if the wheat out of which they were prepared had already suffered tax as declared goods. The State challenged the said decision before the Supreme Court. Though special leave was granted, the operation of the decision in New Swastik [1992] 84 STC 49 (Kar) was not stayed.

5. Relying on the decision in New Swastik [1992] 84 STC 49 (Kar), the assessees contended that wheat products were the same as wheat and therefore, wheat products should also be deemed to be exempted from payment of turnover tax. The Commissioner of Commercial Taxes also issued a circular dated August 25, 1992, informing the assessing authorities about the decision in New Swastik [1992] 84 STC 49 (Kar) and issuing instructions in terms of the said decision. In view of the decision in New Swastik [1992] 84 STC 49 (Kar), the assessing authorities passed orders either under section 12(2) or under section 12(3) or under section 12A or under section 25A of the Karnataka Sales Tax Act exempting or deleting the turnover relating to the wheat products from turnover tax, and wherever turnover tax had been collected, it was also refunded to the assessees.

6. On September 1, 1993, the Supreme Court reversed the decision of this Court is State of Karnataka v. New Swastik Flour Mills (C.A. No. 4749 to 4801 of 1991) reported in [1993] 91 STC 408 under the caption Rajasthan Roller Flour Mills Association v. State of Rajasthan holding that when wheat is consumed for producing flour or maida or soji, the commodities obtained are different from wheat as wheat loses its identity, and gets consumed and in its place, new commodities emerge; and the new goods so emerging have a higher utility than the commodity consumed and commercially speaking, they are different goods. In that view, the Supreme Court held that flour, maida and soji derived from wheat are not 'wheat', but are goods which are different and distinct from wheat; and therefore they are not declared goods.

7. In pursuance of the said decision of the Supreme Court, the revisional authorities under the Act have passed the impugned orders under section 21(2), setting aside the orders passed by the assessing authorities either under section 12(2) or 12(3) or 12A or 25A exempting the turnover relating to wheat products. The revisional authorities have held that the assessing authorities had passed the orders under revision exempting wheat products from turnover tax, on the basis of the decision of this Court in New Swastik [1992] 84 STC 49, that the Supreme Court has in [1993] 91 STC 408 (Rajasthan Roller Flour Mills Association v. State of Rajasthan) reversed the decision in New Swastik [1992] 84 STC 49 holding that wheat and wheat products have to be considered as different commodities and therefore the turnovers relating to wheat products are liable for turnover tax under section 6B. Consequently the gross and taxable turnovers were determined by subjecting the turnover relating to wheat products also to turnover tax. These orders in revision are challenged in most of these writ petitions. (A few of the writ petitions challenge the orders made in appeal affirming the levy of turnover tax on the turnover relating to wheat products and a few of the petitions relate to orders of assessment passed by assessing authorities or orders passed under section 22-A applying turnover tax to turnover relating to wheat products). This order primarily deals with the petitions challenging the orders passed in revision. As the other cases are also based on the decision of the Supreme Court in Rajasthan Roller Flour Mills : AIR1994SC64 , they are also incidentally disposed of by this order.

8. The main contention urged by the petitioners is that the decision of the Supreme Court in Rajasthan Roller Flour Mills : AIR1994SC64 dated September 1,1993, should be applied only prospectively and shall not be made applicable to the turnover/transactions relating to wheat products prior to September 1,1993. They relied on the decisions of the Supreme Court in West Bengal Hosiery Association v. State of Bihar [1988] 71 STC 298, Video Electronics Pvt. Ltd. v. State of Rajasthan [1988] 71 STC 304, Hi-Beam Electronics Pvt. Ltd. v. State of Andhra Pradesh [1988] 71 STC 305 and Besta Electronics Pvt. Ltd. v. State of Madhya Pradesh [1988]

71 STC 307. In all these cases, the Supreme Court quashed notifications issued by several State Governments exempting or reducing sales tax on goods manufactured within their respective States and thereby discriminating against the goods manufactured outside their respective States. But while quashing the notifications, the Supreme Court took note of the fact that the quashing of the notification might lead to undue hardship to the dealers in the respective States who might have manufactured the goods locally without taking into account the liability to sales tax in view of the impugned notifications and therefore in order to obviate hardship, directed that the arrears of sales tax which would become payable by the dealers in the State in respect of sales of local goods up to the date of quashing the notifications should not be collected. In order words, the Supreme Court while holding that the notifications were ab initio void, specifically directed that the past transactions will not be affected. Relying on these decisions, the petitioners contended that the decision of the Supreme Court holding that 'wheat products' are different from 'wheat', should not to be given effect in respect of transactions prior to the decision (September 1, 1993), to avoid hardship to the dealers.

9. The petitioners next relied on the decision of the Andhra Pradesh High Court in Coromandel Fertilisers Ltd. v. C.T.O. : 1992(1)ALT327 wherein the question that arose for consideration was whether the decision in Indian Cement Ltd. v. State of Andhra Pradesh : [1988]2SCR574 could be applied to past transactions. The Andhra Pradesh High Court noted that wherever orders issued by State Governments under sales tax enactments favoring sales of indigenous products at reduced rates of tax were found to be illegal and unconstitutional, the Supreme Court had been consistent in directing that past transactions which took place on the strength of the impugned orders were not to be reopened. But in Indian Cement's case : [1988]2SCR574 , the Supreme Court while quashing the orders of the Andhra Pradesh Government granting a reduction in the rate of sales tax on cement manufactured in the State, did not clarify that past transactions will not be affected. It was contended before the Andhra Pradesh High Court that the persons affected by quashing of the notifications by the Supreme Court (dealers in cement) could not be held liable to pay the arrears of difference in tax for the period during which the concessional rate of sales tax granted by the State Government was in force, even though there was no specific order observation in the decision of the Supreme Court in Indian Cement's case : [1988]2SCR574 to the effect that past transactions will not be affected. The Andhra Pradesh High Court held that it would be unjust and unreasonable to permit the authorities to collect the difference of sales tax on the basis that the said Government orders were not in force by reason of the quashing by the Supreme Court. The reasons leading to such decision were (a) the persons who questioned the notifications before the Supreme Court in Indian Cement case : [1988]2SCR574 were not the persons who were affected by quashing of the impugned notifications and the persons who were affected by the quashing of the notification were not before the Supreme Court and were not heard; and (B) the Supreme Court in similar cases, namely in the cases of West Bengal Hosiery Association [1988] 71 298, Video Electronics [1988] 71 STC 304, Hi-Beam Electronics [1988] 71 STC 305 and Besta Electronics [1988] 71 STC 307, had directed that past transactions will not be affected. Thus, even in a case where the Supreme Court had failed to specify that past transactions will not be affected, the Andhra Pradesh High Court held that past transactions will not be affected.

10. But the decisions relied on by the petitioners do not support the contention of the petitioners that the judgment in Rajasthan Roller Flour Mills Association [1993] 91 STC 408 will apply only prospectively and will not affect past transactions. On the contrary, the decisions relied on by the petitioners impliedly recognise the position that all decisions declaring the law are 'retrospective' or 'retroactive' in operation provided however that the court may, having regard to the facts and exigencies, mould the relief by giving an appropriate direction that the decision will not affect past transactions. That in a particular case, the Supreme Court directed that its decision will not affect past transactions and will operate only prospectively does not lead to an inference that all decisions of the Supreme Court operate prospectively. To obviate hardship or to promote justice and to avoid injustice, the court may in equity, while rendering a decision choose to restrict its operation to future transactions only and declare that it will not apply to past transactions. But unless such restriction is specified by the decision itself, the decision will necessarily be retrospective.

10(1). Salmond on Jurisprudence (Twelfth Edition) puts it thus (at page 148) :

'As we have seen, the theory of case law is that a Judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence, any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regard matters that are res judicata, or accounts that have been settled in the meantime.'

The above is in consonance with the Blackstonian view that courts do not make or pronounce a new law but only expound and declare the true position of the existing law. This view did not contemplate prospective overruling or giving only prospective operation to decisions. A modification to this view was suggested by Benjamin N. Cardozo in his celebrated lecture relating in 'Adherence to precedent' in the following words. (See 'The Nature of the Judicial Process' as pages 146-148) :

'I say, therefore, that in the vast majority of cases the retrospective effect of judge-made law is felt either to involve no hardship or only such hardship as is inevitable where no rule has been declared. I think it is significant that when the hardship is felt to be too great or to be unnecessary, retrospective operation is withheld. Take the cases where a court of final appeal has declared a statute void and afterward, reversing itself, declares the statute valid. Intervening transactions have been governed by the first decision. What shall be said of the validity of such transactions when the decision is overruled Most courts in a spirit of realism have held that the operation of the statute has been suspended in the interval. It may be hard to square such a ruling with abstract dogmas and definitions. When so much else that a court does is done with retroactive force, why draw the line here The answer is, I think, that the line is drawn here, because the injustice and oppression of a refusal to draw it would be so great as to be intolerable. We will not help out the man who has trusted to the judgment of some inferior court. In this case, the chance of miscalculation is felt to be a fair risk of the game of life, not different in degree from the risk of any other misconception of right or duty. He knows that he has taken a chance, which caution often might have avoided. The judgment of a court of final appeal is felt to stand upon a different basis. I am not sure that any adequate distinction is to be drawn between a change of ruling in respect of the meaning or operation of a statute, or even in respect of the meaning or operation of a rule of common law. Where the line of division will some day be located, I will make no attempt to say. I feel assured, however, that its location, wherever it shall be, will be governed, not by metaphysical conceptions of the nature of judge-made law, nor by the fetish of some implacable tenet, such as that of the division of Governmental powers, but by consideration of convenience, of utility, and of the deepest sentiments of justice.'

10 (2). Justice Cardozo emphasised that it is for the court to decide, on consideration of all relevant matters, whether its decision should apply retroactively or only prospectively, while trying to harmonize the doctrine of prospective overruling with that of stare decisis, in Great Northern Railway Company v. Sunburst Oil & Refining Co. (1932) 287 US 358 in the following words :

'A State in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions.... but never has doubt been expressed that it may so treat them if it pleases, whenever injustice of hardship will thereby be averted.... On the other hand, it may hold to the ancient dogma that the law declared by its courts had a Platonic or ideal existence before the act of declaration, in which event the discredited declaration will be viewed as if it had never been, and the reconsidered declaration as law from the beginning.... The choice for any State may be determined by the juristic philosophy of the Judges of her courts, their conceptions of law, its origin and nature.'

The principle of prospective overruling was recognised and applied in India in Golak Nath v. State of Punjab : [1967]2SCR762 . In the recent decision in Managing Director, ECIL v. B. Karunakaran : (1994)ILLJ162SC the Supreme Court referring to the decision in Golak Nath : [1967]2SCR762 , observed :

'The court ..... pointed out that the modern doctrine as opposed to the Blackstonian theory was suitable for a fast moving society. It was a pragmatic solution reconciling the two doctrines. It found law but restricted its operation to the future and thus enabled the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It was left to the discretion of the court to prescribe the limits of the retroactivity. Thereby, it enabled the court to mould the reliefs to meet the ends of justice. The court then pointed out that there was no statutory prohibition against the court refusing to give retroactivity to the law declared by it. The doctrine of res judicata precluded any scope for retroactivity in respect of a subject-matter that had been finally decided between the parties. The court pointed out that the courts in this land also, by interpretation, reject retroactivity of statutory provisions though couched in general terms on the ground that they affect vested rights. The court then referred to articles 141 and 142 to point out that they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation therein is reason, restraint and injustice. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such direction or pass such order as in necessary to do complete justice. The court then held that in the circumstances to deny the power to the Supreme Court to declare the operation of law prospectively on the basis of some outmoded theory that the court only finds law but does not make it is to make ineffective a powerful instrument of justice placed in the hands of the highest judiciary of this land. The court then observing that it was for the first time called upon to apply the doctrine of prospective overruling evolved in a different country under different circumstance, stated that it would like to move warily in the beginning. Proceeding further, the court laid down the following proposition :

'(1) The doctrine of prospective overruling can be invoked only in the matters arising under our Constitutions; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.'

..... Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well'.

The supreme court, thereafter noticed that in the interests of public or administrative realities, in the suitable cases, the court had on several occasions, given only prospective operation to its decisions.

10(3). A Narayana Pai, J. (as he then was), speaking for a division Bench of this court in M. V. Govindaraju Chetty v. Commercial Tax Officer [1968] 22 STC 46; (1967) 2 Mys LJ 385 held :

'TO say that a decision of the Supreme Court to the effect that a particular levy was wrong or not in accordance with law means that the levy was at no time good, is nothing more than to state in clear terms the real effect of a decision of the court. The decision gets rid of the order as it was originally made which gave rise to the appeal to the supreme court in which the decision in question was rendered. That is the position so far as the particular case decided is concerned. It is no doubt true that every decision does not reopen every other concluded matter. But it is equally emphatic that under article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India. Whenever, therefore, any court or any authority in India has occasion to apply the law, it is bound to apply it as declared by the Supreme Court. Although a decision of the Supreme Court may not reopen a concluded decision, if an appeal is pending against an order at the time a decision of the Supreme Court is rendered, there is no question that the appeal will have to be decided in accordance with the decision of the Supreme Court applying the law as declared by the Supreme Court. If an appeal had not been filed, but the time for presenting the same has not expired, the appellant is certainly entitled to ask the appellate court to reverse the original in the light of the decision of the Supreme Court'.

10(4). K. S. Paripoornan, J., speaking for a Division Bench of the Kerala High Court held in Kil Kotagiri Tea and

Coffee Estates Co. Ltd. v. Income-tax appellate Tribunal : [1988]174ITR579(Ker) as follows :

'An order of assessment, based upon an interpretation or application of law which is ultimately found to be wrong in the light of judicial pronouncements rendered subsequently, discloses a mistake apparent from the record. When the court decides a matter, it does not make the law in any sense but all it does is that it interprets the law and states what the law has always been and must be understood to have been. Where an order is made by an authority, on the basis of a particular decision, the reversal of such decision in further proceedings will justify a rectification of the order based on that decision...

We would state, that the view of the Appellate Tribunal, that rectification contemplated by section 254(2) or section 154 of the Income-tax Act, must be of a mistake which is a mistake in the light of the law in force at the time when the order sought to be rectified was passed, is a clear error. A binding decision rendered by a court is always retrospective and the decision which is overruled was never the law. The overruling decision should be deemed to have been in force even on the day when the order sought to be rectified was passed. We are further of the view that the Appellate Tribunal was in error in holding that the subsequent decision of the High Court has no retrospective operation as in the case of subsequent legislation or the decision of the Supreme Court. A subsequent binding decision of the Supreme Court or of the High Court has retrospective operation and overruling is always retrospective.'

10 (5). In Mysore Cements Limited v. Deputy Commissioner of Commercial Taxes (W.P. Nos. 16881 to 16895 of 1993 decided on November 15, 1993) [1994] 93 STC 464; while dissenting with a contrary view expressed by the Calcutta High Court in Jiyajeerao Cotton Mills Ltd. v. Income-tax Officer : [1981]130ITR710(Cal) and by the Madras High Court in State of Tamil Nadu v. M. G. Meenambal and Co. [1984] 56 STC 82, I had observed :

'The Calcutta and Madras High Courts have proceeded on the basis that an order ex facie legal and correct, when made, cannot become erroneous by reason of any subsequent declaration of law by the Supreme Court or the respective High Court. They further assume that a 'mistake apparent on the record' should be demonstrated on the date of making of the order and not with reference to any subsequent binding decision of a superior court. There is an inherent fallacy in this reasoning. In Jiyajeerao's case [1981] 130 ITR 107 (Cal) and Meenambal's case [1984] 56 STC 82 (Mad.) though the principle that when a superior court whose declarations of law are binding, declares what the law is, it takes effect not from the date of judgment but from the very inception of the law in question has been referred, it was not give effect, as they made a distinction between the retrospective operation of statutes and retrospective operation of binding decisions of superior courts. When a superior Court declares the law, it is not 'making' law on the date of judgment but merely declaring the law. The decision being an enunciation of the true and correct position of law, becomes applicable from the date when the concerned law came into effect. If, therefore, the Supreme Court or the concerned High Court declared the true position on the point of law, it relates back to the date of the enactment itself. If so, the law so declared is deemed to have existed and applied, on the date of the order which is sought to be rectified. Hence the validity of the order will necessarily have to be examined with reference to the legal position as enunciated by the Supreme Court, even though such enunciation may be subsequent to the order of assessment.'

10 (6). A decision of the Supreme Court, being a declaration of the true and correct position of law, becomes applicable to all transactions and proceedings which have not become final and concluded. The common use of the words 'prospective operation' and 'retrospective operation' with reference to a decision of the Supreme Court is misleading. The use of the words 'prospective' and 'retrospective' are more appropriate while referring to statutes. Rendering of a judgment by the Supreme Court is not the same as enactment of a statute. A decision of the Supreme Court does not make the law, but merely explains and puts in proper perspective the true position and effect of law by declaring the law. The true position of law so declared exists from the very date of making the law and not from the date of declaration by the Supreme Court. The distinction between a statute and a decision of the Supreme Court declaring the law can be illustrated by comparing them to an 'invention' and a 'discovery'respectively. An invention creates or brings into existence,

something which was not in existence earlier; but a discovery does not create something, but brings to light something, which was already in existence. Similarly when a Legislature enacts a statute, it creates rights or obligations and therefore, its operation can be prospective or retrospective, depending on the provisions of the statute. But when the Supreme Court gives decision declaring the law, it does not create rights/obligations, but merely identifies and declares the pre-existing rights/obligations and declares the true position of law. Consequently, the terms 'prospective' and 'retrospective' strictly do not apply to decisions of the Supreme Court, as all decisions are 'retrospective'. It is thus a cardinal principle of construction that every statute is presumed to be prospective unless it is expressly or by necessary implication made retrospective in operation; and every decision of the Supreme Court declaring the law is retrospective, unless it is expressly or by necessary implication restricted to prospective operation. The above principles would apply not only to decisions of the Supreme Court, but binding decisions of the respective High Courts.

10 (7). The true and correct position of law declared by the Supreme Court applies not only to transactions and proceedings subsequent to the decision, but also to transactions and proceedings prior to the decision. This of course is subject to the rule of finality of proceedings, that is the law declared by the decision cannot be used to reopen concluded decisions which have become final; it will apply to all pending transactions and proceedings. A proceeding in regard to which there is a provision for appeal, revision, review or rectification and the time prescribed for such remedy, has not expired, then such a proceeding cannot be said to have become final or concluded. In the cases on hand, there is no dispute that provisions for appeal, revision, rectification exist and the time prescribed for exercising the respective powers in appeal/revision/rectification as the case may be has not expired, with reference to the orders sought to be revised. Hence the impugned orders imposing or applying turnover tax in the light of the law declared by the Supreme Court in Rajasthan Flour Mills case [1993] 91 STC 408 do not suffer from any infirmity.

10 (8). It is no doubt true that where injustice and oppression will be caused by applying the decision to past transactions/proceedings, the court while giving the decisions, may stipulate that it will not affect past transactions. When and where the line should be drawn, restricting the application of the decision, are to be decided by the court rendering the decision, having regard to the considerations of justice, convenience, utility and finality. When the Supreme Court while rendering a decision, does not choose to restrict its operation, it will not be proper for the High Court to read such a restriction into the decision of the Supreme Court. In Rajasthan Roller Flour Mills case [1993] 91 STC 408, the Supreme Court did not restrict its application or operation to prospective transactions only, nor direct that it should not apply to past transactions. Hence it has to be held that the decision in Rajasthan Roller Flour Mills : AIR1994SC64 is retroactive and applies to past transactions also.

11. The next question is whether the decision of the Supreme Court in Rajasthan Roller Flour Mills : AIR1994SC64 should be read as applying to future transactions only. It is pointed out that the Andhra Pradesh High Court in Coromandel : 1992(1)ALT327 has read such a restriction in regard to the decision of the Supreme Court in Indian Cement : [1988]2SCR574 , on the ground that in several similar matters while quashing notifications affecting freedom of trade, the Supreme Court had consistently ruled that such decisions will not affect the past transactions. But the principles relating to prospective overruling/operation enunciated by the Supreme Court in Golak Nath : [1967]2SCR762 and ECIL : (1994)ILLJ162SC show that the discretion to restrict the operation of a decision prospectively vests only in the court rendering the decision. It is therefore doubtful whether a High Court can hold that a decision of the apex Court will operate only prospectively, as held by the Andhra Pradesh High Court, in the absence of an indication to that effecting the decision of the apex Court itself. Even assuming such a course is possible, it is easily demonstrable that in the cases on hand, on facts, such a course is not warranted as none of the circumstances which persuaded the Supreme Court to apply prospective overruling/operation in the cases referred to above, exist in this case. There is absolutely no ground to hold that the decision of the Supreme Court in Rajasthan Roller Flour Mills' case : AIR1994SC64 will apply to future transactions only, by reading an implied restriction that it will not apply to past transactions.

12. Till the decision of this Court in New Swastik's case [1992] 84 STC 49, wheat products were treated as distinct and different from wheat and were being subjected to turnover tax. When this Court held in New Swastik [1992] 84 STC 49, that 'wheat' and 'wheat products' were not different, the Revenue did not accept the decision, but promptly challenged it before the Supreme Court in Civil Appeals Nos. 4749 to 4801 of 1991. The Supreme Court granted special leave but did not grant stay. As stay of operation of New Swastik [1992] 84 STC 49 was not granted, the turnover tax collected was refunded and further collection of turnover tax on wheat products were stopped, in accordance with the decision in New Swastik [1992] 84 STC 49. Immediately after the Supreme Court reversed the decision in New Swastik [1992] 84 STC 49 (Kar), the revisional powers were exercised under section 21(2) to correct the orders passed under sections 21(2), setting aside the orders passed by the assessing authorities either under section 12(2) / 12(3) / 12A / 25A treating 'wheat' and 'wheat products' as same and thus exempting 'wheat products' from turnover tax. Under section 21(3), the revisional authority is entitled to exercise the power of revision within a period of your years from the data of the order proposed to be revised. As long as the period prescribed for revision had not been expired, the order was amenable to revision, in the light of the decision of the Supreme Court. The assesses petitioners were aware of the stand of the Revenue and that the Revenue had challenged the decision in New Swastik [1992] 84 STC 49 (Kar) before the Supreme Court. Further the turnover tax is not a levy that could be passed on to the purchasers, but is a tax which has to be paid by the assesses on their turnover. Hence the revisional authorities were justified in passing the impugned orders giving effect to the decision of the Supreme Court. The principles of estoppel, acquiescence, waiver and prospective overruling sought to be pressed into service by the petitioners to avoid revision, do not apply at all. Hence, even assuming that this Court can examine the question whether the decision in Rajasthan Roller Flour Mills : AIR1994SC64 is only prospective in its application, the answer is that there is no justification for such restricted application.

13. The learned counsel for the petitioners next contended that the Commissioner having issued a circular dated August 25, 1992 (referred to in para 5 above) and the said circular not having so far been withdrawn or rescinded even after the decision in Rajasthan Roller Flour Mills : AIR1994SC64 , the authorities are bound to apply and follow the directions contained in the said circular. This contention is without merit. The circular merely brings to the notice of the assessing and other authorities the decision of this Court in New Swastik Flour Mill case [1992] 84 STC 49 and gave effect to the decision in New Swastik [1992] 84 STC 49 (Kar), as the Supreme Court had refused to stay the operation of New Swastik [1992] 84 STC 49 (Kar). When the decision in New Swastik [1992] 84 STC 49 (Kar) was reversed by the Supreme Court, the circular dated August 25, 1992, ceased to have any effect. It is not necessary that whenever the Supreme Court declares the law, the commissioner should issue a fresh circular to give effect to the decision of the Supreme Court.

14. Petitioners next contended that the decision of the Supreme Court did not deal with the section 6B of the Act and therefore, it was inapplicable. There is absolutely no merit in this contention. The revenue, which was earlier subjecting wheat products to turnover tax, ceased to do so in view of the decision of this Court in New Swastik [1992] 84 STC 49. The decision in New Swastik [1992] 84 STC 49 was challenged and the Supreme Court reversed the decision in New Swastik [1992] 84 STC 49. The impugned orders have merely applied the principle declared by the Supreme Court.

15. In regard do cases where revisional jurisdiction has been exercised by the Joint Commissioner against the orders passed by the Assistant Commissioner, it was also contended that the words 'Joint Commissioner' and 'Assistant Commissioner' were substituted in section 21(2) by Karnataka Act 5 of 1992 with effect from November 9, 1992; that the authority who passed the order under revision was not the 'Assistant Commissioner' when the order was passed; and therefore the Joint Commissioner has no jurisdiction to revise his orders. There is no basis, either in facts or in law for such a contention. Section 21(2) states that the Joint Commissioner may examine the record of any order/proceedings of an Assistant Commissioner of Commercial Taxes subordinate to him for the purpose of satisfying himself as to the legality or propriety of such order, in so far as it is prejudicial to the Revenue. The cases where the revisional power has been exercised by the Joint Commissioner are in regard to the orders of Assistant Commissioner of Commercial

Taxes, which is wholly in consonance with section 21(2) of the Act.

16. For the aforesaid reasons, it has to be held that there is no merit in these petitions and accordingly, they are rejected.

17. The learned counsel for the petitioners contended that considerable hardship will be caused to the petitioners if the petitioners are required to pay the amounts in question in a lump sum. It is no doubt true that the petitioners will be put to inconvenience and hardship if they are required to pay the amounts found due in a lump sum. Hence, I am sure that having regard to the facts and circumstances and the amounts due, the concerned authorities will grant suitable instalments to the petitioners to pay the amount, if proper applications are made by the petitioners seeking grant of instalments. It is also made clear that if petitioners have other grievances or grounds of challenge in regard to the impugned orders (other than turnover tax relating to wheat products) they are at liberty to have recourse to appeal or other remedies available to them in law, in regard to such matters, other than turnover tax relating to wheat products.

The above order was dictated on April 22, 1994. But just before the completion, the learned counsel for some of the petitioners submitted that he wanted to verify whether any other point remains to be urged in any of the cases and sought time to file a memo confirming that all cases were covered by the aforesaid common question of law. However, as such a memo was not filed, these matters were listed again on June 14, 1994. The counsel confirmed that all the cases raised the said common question of law. Accordingly this order is being pronounce today.

18. After pronouncement of the aforesaid order, the learned counsel for the petitioners orally pray for stay of recovery for a period of four weeks to enable them to make necessary applications before the concerned authorities for grant of time and/or to prefer appeals against his order. Having regard to the nature of the order, the request has to be granted. Accordingly there shall be stay of recovery of the amounts under the impugned order for a period of four weeks from today.