A COMMISSIONER OF TRADE TAX, U.P.

v.

M/S. NATIONAL INDUSTRIAL CORPORATION LTD.

(Civil Appeal Nos. 6938-6939 of 2008 etc.)

DECEMBER 02, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Uttar Pradesh Trade Tax Act,1948 – s.3 and 3D – Levy of sales tax – On 'Paddy Husk' – Assessee using 'Paddy C *husk' in manufacturing units – Assessment in terms of various Notifications issued since 7.9.1981 – Notification dated 6.6.1996 for the first time including 'Paddy husk' – Assessee claimed to be assessed only w.e.f. 6.6.1996 – Revenue contending that assessment in respect of 'Paddy husk' could* D *be done even prior to 6.6.1996 as 'Rice Husk' was liable to be taxed by earlier Notifications as 'Rice husk' and 'Paddy husk' are the same commodity – Held: 'Paddy husk' and 'Rice husk' are not the same commodity – Tax was liable to be levied on 'Paddy husk' by reason of Notification dated* E *6.6.1996 and not prior to that.*

Taxation – Levy of tax – Held: Levy of tax is permissible having regard to provisions contained in Article 265 of the Constitution and in terms of statute – Power to impose tax must be express – No equity can be claimed in such matter F *– Notification imposing fiscal liability not to be imposed by way of clarification or otherwise – Benefit of ambiguity in the Notification to go to the assessee – Constitution of India, 1950 – Article 265.*

G *Words and Phrases – 'husk' – Meaning of, in the context of Uttar Pradesh Trade Tax Act,1948 .*

Respondents use 'Paddy Husk' as fuel in their manufacturing units. They were assessed for payment of

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sales tax in terms of various Notifications issued u/s 3D of Uttar Pradesh Trade Tax Act, 1948. The respondent-assessee questioned the levey of the tax on the ground that as the paddy husk was included for the first time in the Notification dated 6.6.1996, the tax was leviable thereon by reason of that Notification and not prior thereto. Revenue stated that as 'Paddy husk' and 'Rice husk' are the same commodities ,therefore, 'Paddy husk' must be deemed to have been notified for the purpose of levy of sales tax from the very beginning. Trade Tax Tribunal, by majority held that both are different commodities. High Court confirmed the majority view of the Tribunal. Hence, the present appeals. A B C

Dismissing the appeals, the Court

HELD: 1.1. A notification imposing any fiscal liability cannot be imposed upon a dealer by way of clarification or otherwise. A tax must be levied having regard to the provisions contained in Article 265 of the Constitution of India, i.e., by authority of law. The power to impose tax must be express and no equity can be claimed in the matter of levy of tax. One has to look merely at what is clearly stated in the statute. Imposition of tax is permissible only in terms of the provisions of statute. Reasonable taxation is a part of the doctrine of good governance. If an entry contained in a Notification imposing tax is ambiguous, the assessee cannot suffer therefor. In the instant case, no attempt was made by the State to clearly state that rice husk is synonymous to paddy husk. It was necessary in view of the fact that admittedly paddy and rice are different commodities. It has been stated in High Court judgments that nothing is known as rice husk, however, opined that rice polish and rice brown are the same thing. [Para 10] [1038-C-E; 1039-D-H] D E F G

1.2. As paddy and rice are considered to be the H

A separate commodities, paddy husk cannot be treated to be rice husk. Not only in the notification dated 7.9.1981 but also in the notification dated 5.6.1985 'paddy husk' is not mentioned. By reason of Notification dated 6.6.1996 'paddy husk' was inserted. Even then, the 'rice husk' was B not deleted. No explanation was offered therefor. Both 'rice husk' and 'paddy husk' thus, found place in the Notification. Therefore, 'paddy husk' was subjected to for the first time by reason of the said notification dated 6.6.1996. Yet again, while giving a purported new look to C the entry, in the notification dated 15.1.2000, the words 'rice husk' and 'paddy husk' have respectively been mentioned. Even then no attempt was made to issue any clarification. [Para 11] [1040-B-D]

1.3. Two expressions having been used ordinarily D two different meanings should be assigned thereto. If by reason of a notification, taxes are sought to be imposed upon a new commodity applying Heydon's Rules , it must be held that the mischief was sought to be remedied thereby. [Para 11] [1040-E]

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1.4. Schedule was annexed to the notification prescribing rate to the U.P. Value Added Tax Ordinance, 2007 specifying the exempted goods, item No.4 whereof included *"de-oiled paddy husk or outer covering of paddy"* But the same excluded *"oil cake; rice polish; rice bran and* F *rice husk."* It is, therefore, evident that 'rice husk' is still considered by the Government of Uttar Pradesh to be a different commodity. In 'A Class Book of Botany' indicated that on removing the husk, a brownish membranous layer is seen adherent to the grain and that G this layer is made up of the seed coat and the wall of the fruit fused together. If, according to the Government of Uttar Pradesh, 'rice husk' is this cover which further requires husking, no exception thereto can be taken. When a paddy is dehusked, it becomes 'paddy husk' and H when the rice is dehusked, it becomes 'rice husk'.

[Para 12 and 13] [1040-G, H; 1041-A-E]

1.5. If something is included in the Schedule which is non-existent, no tax can be levied thereupon. Furthermore, if there is a doubt or dispute as to whether 'paddy husk' or the 'rice husk' denotes the same commodity or not, the benefit thereof shall be given to the assessee. Furthermore, it is not the case of the appellant that the respondent extracts any oil out of 'paddy husk'. [Para 14] [1041-F]

Ganesh Trading Company, Karnal v. State of Haryana and Anr. **1974 (3) SCC 620;** *Chordia Kavelu Udyog v. State of Madhya Pradesh and Two Ors.* **1988 (69) STC 49 and** *Babu Ram Jagdish Kumar and Co. v. State of Punjab and Ors.* **1979 (3) SCC 616, relied on.**

Commissioner of Sales Tax, U.P. **v.** *Naveen Traders* **36 Sales Tax Cases 440;** *Commissioner of Sales Tax v. Jamuna Prasad* **36 STC 442;** *Chordia Kavelu Udyog v. State of M.P. and Two Ors.* **1988 (69) STC 49;** *Mumbai Agricultural Produce Marked Committee v. Hindustan Lever Ltd.* **2008 (5) SCC 575 and** *Jindal Stainless Ltd. (2) v. State of Haryana* **2006 (7) SCC 241, referred to.**

Case Law Reference:

36 Sales Tax Cases 440	**Referred to.**	**Para 7**
36 STC 442	**Referred to.**	**Para 7**
1974 (3) SCC 620	**Relied on.**	**Para 10**
2008 (5) SCC 575	**Referred to.**	**Para 10**
2006 (7) SCC 241	**Referred to.**	**Para 10**
1988 (69) STC 49	**Relied on.**	**Para 12**
1979 (3) SCC 616	**Relied on.**	**Para 14**

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6938-6939 of 2008.

From the final Judgment and Order dated 30.1.2004 of the High Court of Judicature at Allahabad in Trade Tax Revision
B Nos. 61 and 63 of 1999.

WITH

C.A. Nos. 6940, 6941-46, 6947, 6948-49, 6950-51, 6952, 6953-57, 6958, 6959-63, 6964, 6965, 6966-70, 6971, 6972-
C 6973, 6974-75, 6976, 6977-80, 6981, 6982, 6983, 6984, 6985-86, 6987-88, 6989, 6990, 6991, 6992, 6993-94, 6995, 6996, 6997, 6997, 6998, 6999, 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007 of 2008.

Sunil Gupta, Dhruv Agrawal, Rakesh K. Khanna, Aarohi
D Bhalla, Manoj Dwivedi, Gunnam Venkateswara Rao, Praveen Kumar, Anil Kumar Sangal, Nalin Sengal, Deba Prasad Mohanty, Surya Kant, Yash Pal Dhingra, Rajesh Kumar, K.K. Mohan, Prakash Kumar Singh, Rajeev Sharma, Sarva Mitter (for M/s. Mitter & Mitter Co.), Ajay Majithia, Dr. Kailash Chand,
E Shekhar Kumar, Y.P. Dhingra, K.C. Dua, Aruneshwar Gupta, P.K. Jain, P.K. Goswami, K.K. Mishra and Himanshu Shekhar for the appearing parties.

The Judgment of the Court was delivered by

F **S.B. SINHA, J.** 1. Leave granted.

Question

2. Whether Paddy Husk and Rice Husk connote the same
G commodity or not is the question involved herein.

An overview

3. Respondents, who own and operate their manufacturing units, use Paddy Husk as fuel in their respective factories.

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They were assessed for payment of sales tax in terms of various notifications issued by the State of Uttar Pradesh (for short, 'the State') from time to time under Section 3D of the Uttar Pradesh Trade Tax Act (for short, 'the Act').

4. Before we advert to the rival contentions of the parties, we may notice certain statutory provisions.

Section 3 of the Act is the charging provision. The rate of tax is determined by the State in exercise of its power conferred on it under Section 3A of the Act.

Section 3D of the Act which is material for our purpose, reads as under :

> *"Section 3-D – Levy of trade tax on purchase of sales of certain goods*-(1) Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in the prescribed manner-
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> (a) of first purchases of opium, at such rate not exceeding 'thirty-five percent ;
>
> (b) of first purchases of such other goods at such rate not exceeding--
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> (i) the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956 in respect of goods declared by Section 14 of the Act to be of special importance in inter-State trade or commerce, and
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> (ii) twenty percent, in respect of other goods.
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> and with effect from such date, as the State Government may, by notification in the Gazette, specify in relation to purchases

A made within Uttar Pradesh by a dealer (whether on his own account or on account of any one else), or through a dealer acting as a purchasing agent."

B 5. Indisputably, the State in exercise of its power conferred upon it under clause (b) of sub-section (1) of Section 3D of the Act, had been issuing notifications from time to time specifying the rate of tax and the point thereof. One of such notifications was issued on 7.9.1981, Item No. 18 thereof reads as under:

C "18. Rice polish, rice bran and rice husk."

By reason of a notification dated 5.6.1985, inter alia, the said item was amended to the following effect.

D "18. Rice polish, rice bran and rice husk, but excluding de-oiled rice bran, de-oiled rice polish or de-oiled rice husk."

In supersession of the earlier notifications, however, the State yet again amended the said item with effect from 6.6.1996 by a notification of the said date, which reads as E under:

"(18) Rice polish, rice bran, rice husk and paddy husk but excluding de-oiled rice bran,- de-oiled rice polish, de-oiled rice husk and de-oiled paddy husk. @ 4% at first F purchase."

However, on or about 15.1.2002, the said entry was given a new look and in stead and place of entry No.18, new entry being entry No.15 was inserted, pursuant whereto and in furtherance whereof the rate of interest was increased from four G per cent to eight per cent. The said entry reads as under :

"15. Rice polish, Rice bran, Rice husk and paddy husk but excluding deoiled rice bran, deoiled rice polish, deoiled rice husk and deoiled paddy husk."

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However, an amendment was carried out in the description of goods as also the rate of tax by a notification issued on 30th September, 2000.

Precedents

6. The procedure relating to manufacture of rice from paddy vis-à-vis the exemption clauses contained in the relevant notifications came up for consideration before the High Court from time to time.

7. We would refer to a few of the decisions rendered by the Allahabad High Court and Madhya Pradesh High Court to which our attention has been drawn by the learned counsel for the parties. One of such decisions is *Commissioner of Sales Tax, U.P. v. Naveen Traders* [36 Sales Tax Cases 440] wherein, the High Court of Allahabad, while determining the question in regard to the meaning of the words 'Bhusa' and 'Bhusi' for which exemption was claimed, held as under :

> "The assessee owns a rice mill. It purchased paddy and after processing it obtained rice. Thereafter, the rice so obtained is subjected to polishing process. As a result of this process, the outer surface of the rice is scraped off. The scraping so obtained, which is in powder form is called rice bran and in Etawah district, where this mill is situate, this product is also known as "polish". The bran so obtained is used for either extracting oil or for feeding cattle. By Notification No. ST-911/X dated 31st March, 1956, the State Government in exercise of powers conferred by Section 4 of the U. P. Sales Tax Act exempted with effect from 1st April, 1956, amongst other articles "cattle fodder including green fodder" from payment of tax. This notification was amended by Notification No. ST-3471/X dated 16th July, 1956, and for the entry "cattle fodder and green fodder" the following was substituted:

A Cattle fodder including green fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar and oil-cake.

The assessee claimed that rice bran was exempt under this notification. This contention was neither accepted by the Sales Tax Officer nor by the Assistant Commissioner, B Sales Tax. The revising authority, however, took the view that rice bran was nothing but bhusi of rice, because it was the inner husk of the rice and as such was exempt from tax. We are unable to agree with the view of the revising authority. Rice with its outer husk is known as paddy. After C the husk is removed, the product is known as "rice". Rice does not have any inner husk, as has been held by the revising authority. Moreover, it is clear from the findings recorded that rice bran in respect of which exemption is claimed is powdered rice, which is obtained in the D polishing process. It is difficult to appreciate how this powdered form of rice can be termed as bhusi of rice. Bhusi is nothing but a fine form of bhusa, which in turn is obtained by thrashing of stems, leaves and the outer husk of grain. The rice bran in question, as has been seen, is E obtained during the polishing process of the grain itself. It is not a product obtained from stalk, leaves or the husk of paddy or rice."

The Court while applying the common parlance test to the F terminologies 'Bhusa' and 'Bhusi' opined that they are commodities obtained from stalk, leaves and husk of grains.

A similar view was taken by another Division Bench of the said High Court in *Commissioner of Sales Tax v. Jamuna Prasad* [36 STC 442] wherein relying on or on the basis of an G earlier decision of the said Court in *Naveen Traders,* N.D. Ojha, J. (as His Lordship then was) speaking for the Bench, opined:

"The notification dated 16th July, 1956, exempts from sales tax cattle fodder, which term is defined to include green H fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar

and oil-cake. In Commissioner of Sales Tax, U. P., Lucknow v. Naveen Traders, Etawah 1973 U.P.T.C. 215, a Division Bench of this Court has held that rice with its outer husk is known as paddy and after the husk is removed the product is known as rice. Rice does not have any inner husk. The rice bran in respect of which exemption was claimed was nothing but powdered rice. "Bhusa" and "bhusi" as understood in common parlance are commodities obtained from stalk, leaves and husk of grains. "Rice bran" cannot be treated as "bhusi of rice". In view of this decision, the question referred to us has to be answered against the assessee."

The contention of the assessee therein that rice bran was cattle fodder, however, was directed to be considered afresh on the premise that the same involves a wider question.

The Madhya Pradesh High Court had also an occasion to consider the said question in *Chordia Kavelu Udyog v. State of M.P. & Two Ors.* [(1988) 69 STC 49]. N.D. Ojha, Chief Justice, relied upon the decision of the Allahabad High Court in Naveen Traders to hold :

"4. "Husk" according to dictionary means, inter alia, "bhusi". The question as to whether rice bran could be called "bhusi" or husk, came up for consideration before a Division Bench of the Allahabad High Court in *Commissioner of Sales Tax, U.P. v. Naveen Traders* [1975] 36 STC 440. It was held that "bhusa" or "bhusi" as are understood in common parlance, are commodities obtained from stalk, leaves and husk of grains. Rice, with its outer husk, is known as paddy. After the husk is removed, the product is known as "rice". Rice does not have any inner husk. Rice bran is powdered rice and is obtained during the polishing process of the grain itself and is not a product obtained from stalk, leaves or the husk of paddy or rice. The same view was taken by another Division Bench of the said Court in *Commissioner of*

A *Sales Tax v. Jamuna Prasad* [1975] 36 STC 442. It was held that bran cannot be included in the category of "bhusi". Again the same view was reiterated in *Commissioner of Sales Tax, U.P. v. Dhannamal Ramgopal* [1975] 36 STC 445. We agree with this view.

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5. Reliance was placed by the learned counsel for the petitioner on an extract from Shri A. C. Datta's book "A Class Book of Botany" attached as annexure D to the writ petition which indicates that on removing the husk,, a brownish membraneous layer is seen adherent to the grain

C and that this layer is made up of the seed coat and the wall of the fruit fused together. The said extract further indicates that rice grain and the husk are together known as the paddy grain.

D 6. It would thus be seen that the seed coat has not been treated as an ingredient separate from rice, otherwise it would have stated that the rice grain, its seed coat and the husk are together known as the paddy grain. The seed coat, even according to the learned author of the book

E aforesaid thus constitutes a part of rice."

The said question also came up for consideration before a Three Judge Bench of the Trade Tax Tribunal. Shri R.N. Singh and Shri Dau Dayal, Members, Trade Tax Tribunal, Moradabad held in favour of the assessee stating that paddy hust and rice

F husk are different commodities. But Shri Y.C. Gupta, Member of the Tribunal held in favour of the Revenuestating that they are the same commodity. The High Court, while exercising the revisional jurisdiction at the instance of the Revenue, affirmed the majority decision of the Tribunal. These appeals are against

G the judgments of the High Court.

Submissions

8. Mr. Sunil Gupta, learned senior counsel appearing on behalf of appellant, would contend whether factually or

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conceptually and/or legally decided or judicially determined, Paddy Husk and Rice Husk denote the same commodity and in that view of the matter, the word 'Paddy Husk' must be held to have been notified by the State of Uttar Pradesh from the very beginning for the purpose of levy of sales tax,

Dehusking of paddy, Mr. Gupta would contend, is a crushing process which when undertaken, the grain is left which is rice and the second process thereof is the sheathing of the rice (grain) whereby the brown coating on the rice is eliminated which is commonly known as Rice Bran, Rice Husk or Rice polish. The decisions of Allahabad High Court and the Madhya Pradesh High Court, it was argued, having categocially noticed the process of husking and having laid down that rice does not have any other husk, the impugned judgment cannot be sustained.

Mr. Gupta urged this Court to agree with the minority opinion of the Tribunal contending that rice bran or rice polish being not husk and their being no other inner husk of rice, the view taken by the majority Members of the Tribunal and consequently by the High Court suffers from a legal infirmity.

9. Mr. Dhruv Agrawal, and Mr. Rakesh K. Khanna, senior counsel appearing on behalf of the respondents, on the other hand, would contend that for the purpose of levy of sales tax, rice husk and paddy husk had all along been treated to be different commodities, as would appear from Section 14(1) of the Central Sales Tax Act, 1956. Relying on or on the basis of the said distinction, the learned counsel would contend, that as paddy husk was included for the first time to be an item in respect whereof sales tax became leviable by reason of the notification dated 6.6.1996, any assessment or demand of tax prior thereto must be held to be wholly illegal and without jurisdiction. The said notification of 1996 as also the subsequent notifications, it was urged, were not clarificatory in nature as tax has been levied thereby which, therefore, must be held to be a substantive provision.

A **Application of Statute/Precedents**

10. At the threshold, we must notice the definition of 'husk'; the dictionary meaning whereof is 'the dry outer covering of certain fruits or seeds of plants; the outer or worthless part of anything'.

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The Act is a taxing statute. The notifications have been issued thereunder. Concededly, tax becomes payable at such rate and at such point as may be directed by reason of the notifications issued by the State Government from time to time.

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It may not be correct to contend that a notification imposing any fiscal liability can be imposed upon a dealer by way of clarification or otherwise. A tax must be levied having regard to the provisions contained in Article 265 of the Constitution of India, i.e., by authority of law. The power to impose tax must

D be express and no equity can be claimed in the matter of levy of tax. One has to look merely at what is clearly stated in the statute.

Imposition of tax is permissible only in terms of the

E provisions of statute. Reasonable taxation is a part of the doctrine of good governance. In *Mumbai Agricultural Produce Marked Committee v. Hindustan Lever Ltd.* [(2008) 5 SCC 575], this Court referring to this Court's decision in *Jindal Stainless Ltd. (2) v. State of Haryana* [(2006) 7 SCC 241],

F stated the law, thus :

"A finding of fact has been arrived at by the High Court that no service was being rendered by the State. If no service is being rendered, even no fee could have been levied. It has been so held by a Constitution Bench of this

G Court in *Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.* [(2006) 7 SCC 241] in the following terms :

'40. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the tax payer to pay. The principle behind the levy of a tax

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is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden."

If an entry contained in a notification imposing tax is ambiguous, the assessee cannot suffer therefor.

In their decisions, the Allahabad and Madhya Pradesh High Courts to which we have adverted to heretobefore, while stating that nothing is known as rice husk, however, opined that rice polish and rice brown are the same thing.

Although the said decisions were rendered long time back, no attempt was made by the State to clearly state that rice husk is synonym to paddy husk. It was necessary in view of the fact that admittedly paddy and rice are different commodities. It has been held to be so in a decision of this Court in *Ganesh Trading Company, Kamal v. State of Haryana & Anr.* [(1974) 3 SCC 620] in the following words

"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

A rice produced, there has been a change in the identity of the goods."

Our View

11. As paddy and rice are considered to be the separate B commodities, paddy husk cannot be treated to be rice husk.

Not only in the notification dated 7.9.1981 but also in the notification dated 5.6.1985 paddy husk is not mentioned. By reason of notification dated 6.6.1996 'paddy husk' was C inserted. Even then, the rice husk was not deleted. No explanation was offered therefor. Both rice husk and paddy husk, thus, found place in the notification. Indisputably, therefore, paddy husk was subjected to for the first time by reason of the said notification dated 6.6.1996. Yet again, while giving a D purported new look to the entry in the notification dated 15.1.2000, the words 'rice husk' and 'paddy husk' have respectively been mentioned. Even then no attempt was made to issue any clarification.

Two expressions having been used ordinarily two different E meanings should be assigned thereto. If by reason of a notification, taxes are sought to be imposed upon a new commodity applying Heydon's Rules (3 Co. Rep. 7a; 76 E.R. 637), it must be held that the mischief was sought to be remidied thereby.

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It is, therefore, difficult to agree with Mr. Gupta that rice husk and paddy husk denote the same commodity.

12. We may place on record that schedule was annexed to the notification prescribing rate to the U.P. Value Added Tax G Ordinance, 2007 specifying the exempted goods, item No.4 whereof is as under :

"Acquatic feed; poultry feed including balanced poultry feed; cattle feed including balanced cattle feed; and cattle H fodder including green fodder, chuni, bhusi, Chhilka,

choker, javi, gower, de-oiled rice polish, *de-oiled paddy husk or outer covering of paddy;* acquatic, poultry and cattle feed supplement, concentrate and additives thereof; wheat bran and deoiled cake *but excluding oil cake; rice polish; rice bran and rice husk."*

(Emphasis supplied)

It is, therefore, evident that rice husk is still considered by the Government of Uttar Pradesh to be a different commodity. Even from the perusal of the Decision of the *Chordia Kavelu Udyog v. State of Madhya Pradesh & Two Ors.* [1988 (69) STC 49], it would appear that 'A Class Book of Botany' was referred to therein which indicated that on removing the husk, a brownish membranous layer is seen adherent to the grain and that this layer is made up of the seed coat and the wall of the fruit fused together.

13. If, according to the Government of Uttar Pradesh, rice husk is this cover which further requires husking, no exception thereto can be taken. When a paddy is dehusked, it becomes paddy husk and when the rice is dehusked, it becomes rice husk.

14. There are two other aspects of the matter which cannot be lost sight of. If something is included in the Schedule which is non-existent, no tax can be levied thereupon. Furthermore, if there is a doubt or dispute as to whether paddy husk or the rice husk denotes the same commodity or not, the benefit thereof shall be given to the assessee. Furthermore, it is not the case of the appellant that the respondent extracts any oil out of 'paddy husk'.

There are many other fruits which have two layers; for example Pista, Cashew Nut and Ground Nut etc. One may only remove the outer cover and take the fruit or grain with the inner cover but one may like to take out the inner cover also which will depend upon the taste of the person concerned. Some

A persons may like to take 'brown rice' but some other may like to take 'white rice'.

In *Babu Ram Jagdish Kumar & Co. v. State of Punjab & Ors.* [(1979) 3 SCC 616], this Court, following the decision of
B *Ganesh Trading Co.* (supra), opined :

"We may at this stage refer to one other subsidiary argument urged on behalf of the appellants. It is argued that because paddy and rice are not different kinds of goods but one and the same, inclusion of both paddy and
C rice in Schedule 'C' to the Act would amount to imposition of double taxation under the Act. There is no merit in this contention also because the assumption that paddy and rice are one and the same is erroneous. In *Ganesh Trading Co., Karnal v. State of Haryana,* arising under the
D Act, this Court has held that although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking; that rice and paddy are two different things in ordinary parlance and, therefore, when paddy is dehusked and rice produced, there is a change
E in the identity of the goods."

15. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly with costs. Counsel's fee assessed at Rs.25,000/- in each matter.

F K.K.T. Appeals dismissed.