

A HINDUSTAN VEGETABLE OILS CORPORATION LTD.  
v.  
PROGRESSIVE INDUSTRIES AND OTHERS ETC.

SEPTEMBER 7, 1995

B [B.P. JEEVAN REDDY AND M.K. MUKHERJEE, JJ.]

C *U.P. Sales Tax Act/U.P. Sales Tax Rules—Section 4B/Rule 25B—Declaration Forms agreed to be provided for purchase of raw material for manufacturing notified goods intended to be sold within the State or in the course of inter-State Trade or commerce or in the course of export out of India—Not to be extended to cases other than sale and for raw materials used for storing purposes.*

D *Sections 6 & Section 22—Ganesh Flour Mills Company Ltd. (Acquisition and Transfer of Undertakings Act), 1984—Contract between Ganesh Flour Mills and the Respondent selling dealers—Not liable to be honoured by the appellant buying dealers (in whom the Ganesh Flour Mills have vested) prior to the date of vesting unless the contract is ratified within 30 days from the appointed day.*

E **As per Section 4-B of the U.P. Sales Tax Act, and Rule 25-B of the U.P. Sales Tax Rules, Ganesh Flour Mills which was a manufacturer of notified goods obtained recognition certificate and applied for declaration Form III-B for concession in the rate of Sales Tax. Ganesh Flour Mills was subsequently taken over by the Central Government and came to be vested in the Appellant corporation.**

F **The appellant Corporation had also obtained recognition certificate. Both Ganesh Flour Mills and the Appellant had purchased raw materials viz. tins for packing Vanaspati from the Respondents against Declaration Form III-B. They were not only engaged in manufacturing Vanaspati by themselves but were also undertaking job works and part of the Vanaspati in**  
G **tins was also sent to other States on consignment basis, i.e., without effecting sale within the State of U.P.**

H **The appellant could not issue Declaration Form III-B in respect of those tins which were not sold within U.P. or those tins which were used for storing other Vanaspati. The Assessing Authorities accordingly levied tax at the full rate on the selling dealers and also levied interest on those sales**

for which no declaration forms were produced. Penalty proceedings were also initiated against the selling dealers. A

In a writ petition filed by the selling dealers (Respondents) for directing the appellants to issue Declaration Form III-B for both the periods viz. before vesting and after vesting of Ganesh Flour Mills Company, the High Court directed the appellant to furnish declaration forms for both the periods. B

On Appeal the appellant contended that - (a) no mandamus ought to have been issued by the High Court compelling the appellant to issue declaration Forms, in respect of tins utilised for purposes other than those permitted by law since it would expose them to penalties under the U.P. Sales Tax Act; C

(b) That in such a case, the appellant could have been directed to reimburse the tax levied upon the respondents for the period after 23.4.1984. However they can not be made liable to reimburse the interest and penalty; and D

(c) The appellant cannot be held responsible for any of the acts, defaults or liabilities for the period prior to acquisition i.e. 23.4.1984.

Allowing the appeal in part, this Court E

HELD: 1. That with respect to the period subsequent to 23.4.1984 it was not open to the Appellant to refuse to issue Declaration Forms on the plea that they have used the tins for purposes other than those mentioned in Section 4(B)(2) of U.P. Sales Tax Act. However, the direction given by the High Court could be modified to the extent that, if the appellant could not produce Declaration Form III-B, they ought to reimburse the respondents (selling dealers) the entire amount of tax which the respondents were made to pay as also for the interest and penalties paid by them. [400-E] F

2. With respect to period prior to 23.4.1984 the Appellant Company is not liable since the contract between Ganesh Flour Mills and the respondent had not been ratified by the Central Government within 30 days from the appointed day as required under section 22 of the Act of 1984. [402-F-G] G

3. Since the writ petitions did not challenge the omission of Central H

- A** Government to ratify the contract there is no need for any discussion in regard to proviso to Section 22 of the Act of 1984, viz. the validity of non-ratification in these writ petitions. [402-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8198-8203 of 1995.

**B**

From the Judgment and Order dated 12.11.90 of the Allahabad High Court in W.P. Nos. 32, 33, 140, 924/90, 323 & 503 of 1987.

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**C**

Civil Appeal No. 8205 of 1995.

From the Judgment and Order dated 22.4.91 of the Allahabad High Court in W.P. No. 1877 (T) of 1988.

**D**

R.F. Nariman, D.N. Mishra, Adv. for JBD & Co., M.C. Dhingra, R.A. Mishra and K.S. Rana for the Respondent Nos. 2, 3, 4.

Prashant Kumar Sunil Ambwani and Ashok K. Srivastava for the Respondent No. 5.

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The Judgment of the Court was delivered by

**B.P. JEEVAN REDDY, J.** Leave granted.

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These appeals are preferred against the judgment of the Allahabad High Court allowing the writ petitions filed by the certain dealers under a common order.

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The management of the Ganesh Four Mills was taken over by the Central Government under Section 18AA of the Industries Development and Regulation Act, 1951 under an Order dated November 3, 1972. In the year 1984, the Parliament enacted The Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1984, providing for the acquisition and transfer of the right, title and interest of certain undertakings of the Ganesh Flour Mills Company Limited. The Act came into force on January 28, 1984. By a notification dated April 23, 1984 issued under Section 5 of the Act, the said undertakings were vested in the

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Hindustan Vegetable Oils Corporation Limited, the appellant herein.

Section 4-B(2) of the Uttar Pradesh Sales Tax Act provides that (a) where a dealer requires any goods, referred to in sub-section (1), for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him and (b) such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, (c) he may apply to the assessing authority, in such form and manner and within such period as may be prescribed for the grant of a *recognition certificate* in respect thereof. The sub-section provides that if the applicant satisfies such requirements and conditions as may be prescribed, the assessing authority shall grant him in respect of such goods a recognition certificate in such form and subject to such conditions as may be prescribed. The Explanation to sub-section clarifies that "goods required for use in manufacture" shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub- assemblies, fuels or lubricants. Clause (b) of the Explanation defines the expression "notified goods" to mean such goods as may from time to time be notified by the State Government in that behalf.

Rule 25-B of the Uttar Pradesh Sales Tax Rules provides that "where a dealer holding a recognition certificate purchases any goods referred to in clause (b) of sub-section (1) of Section 4-B for use as raw material for the purpose of manufacture of any notified goods, he shall, if he wishes to avail of the concession referred to therein, furnish to the selling dealer a certificate in Form III-B (hereinafter called a 'Declaration Form')". The rule provides that any dealer holding a recognition certificate and wishing to avail of the concession referred to in Section 4-B (1)(b) shall apply to the appropriate Sales Tax Officer for Declaration Forms and the said officer shall issue the same on being satisfied about the relevant particulars.

Ganesh Flour Mills, while under the management of the Central Government, was granted a recognition certificate under Section 4-B(2). The appellant-corporation has also been granted a recognition certificate under the said provision. The Ganesh Flour Mills, prior to its vesting in the appellant-Corporation (the date of vesting of the undertakings of the Ganesh Flour Mills in the appellant-corporation, as stated above, is April 23, 1984) and the appellant-corporation after such vesting has been placing orders on certain dealers including Respondent Nos. 1 to 5 for supply of



4. ....

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5. ....

11. You will submit separate bill for each challan. Please mention order No. on challan as well as bill.

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12. ....

Please confirm your acceptance of order including the terms and conditions written above by signing the duplicate copy of the letter. Please return signed copy of order for our record.

C

Thanking you,

Yours faithfully,

sd/- MANAGER."

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It is agreed that even after the undertakings of the Ganesh Flour Mills vested in the appellant-corporation, purchase orders were issued in identical terms.

In view of the fact that Ganesh Flour Mills as well as appellant-corporation were recognised dealers and had purchased the raw material required by them (for storing the vanaspati in those tins) against Declaration Forms in Form III-Kha, the selling dealers charged the tax on such sales at the concessional rate of one percent as against the normal rate of four percent, as contemplated by clause (b) of Section 4-B(1). It is stated before us that according to the then obtaining practice, the Declaration Forms (Forms III-Kha) were supplied either at the time of supply of the raw material or at a later point of time. (According to the rules, the selling dealer could produce these declaration Forms before the assessing authority "upto the date on which he is required to furnish his accounts for final assessment in respect of the year to which the claim pertains" *vide sub-rule (5) of Rule 25-B.*)

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Ganesh Flour Mills prior to its vesting in the appellant-corporation and the appellant-corporation after the said date of vesting were engaged not only in manufacturing vanaspati by themselves but were also undertaking job works on behalf of other parties. Even the vanaspati manufactured

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- A by them was not sold entirely within the State or in the course of inter-State trade or commerce or in the course of export out of India, as contemplated by sub-section (2) of section 4-B. Part of it was sent to other States on consignment basis without effecting sale thereof within the State of Uttar Pradesh. According to the provisions of Section 4-B., it may be reiterated, the facility of recognition certificate is confined only to cases
- B where a manufacturer purchases raw material for manufacturing notified goods (or for packing such notified goods manufactured or processed by him) and which are intended to be sold within the State or in the course of inter-state trade or commerce or in the course of export out of India. In other words, the said facility was not available for storing (packing) the vanaspati manufactured on account of third parties (this is the common case of the parties before us) or for storing the vanaspati which was sent to other States on consignment basis otherwise than by effecting the sale within the State or in the course of inter-State trade or commerce or in the course of export out of India. It follows from the above that the recognised dealer (appellant herein) was not entitled to rely upon his recognition certificate or to issue Declaration Forms (Form III-Kha) to such selling dealers in respect of tins purchased it but intended for the above purposes (purposes other than those mentioned in sub-section (2) of Section 4-B). But what happened in this case is this : the Ganesh Flour Mills while under Central Government management and the appellant-corporation, after the date of vesting aforesaid, have been purchasing tins from the respondents undertaking to supply Declaration Forms (Form III-Kha) in that behalf and on the basis of such representation, the selling dealers charged sales tax at the concessional rate of one percent instead of the normal four percent. Having so purchased the tins and having used part thereof in connection with job works and/or for storing vanaspati (which was not sold or exported as contemplated by sub-section (2) of Section 4-B but was sent to other States on consignment basis) Ganesh Flour Mills and the appellant found it not possible to issue Declaration Forms (Form III-Kha) in respect of such purchases. To be precise while they did issue declaration Forms in respect of the tins required for storing (packing) the vanaspati manufactured by them which was sold within the State/sold in the course of inter-State trade or commerce/sold in the course of export out of India, they could not and did not issue such Declaration Forms in respect of tins which were used for storing (packing) the remaining quantity of vanaspati. The result was that the respondents-selling dealers could not produce Declaration Forms (Form III-Kha) before the assessing authority in the course of their assessments. On that account, the assessing authority levied
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tax at the full rate of four percent and also levied interest under the provisions of the Uttar Pradesh Sales Tax Act. The respondents complain that even penalty proceedings were initiated against them for the said failure. It is then that they approached the Allahabad High Court by way of writ petitions from which these appeals arise. The principal relief sought in the writ petitions was for issuance of a writ of mandamus directing the appellant-corporation to furnish to the writ petitioners Declaration Forms (Form III-kha) prescribed under the Uttar Pradesh Sales Tax Rules in respect of that quantity of tin containers which were supplied by the writ petitioners to the appellant-corporation on the strength of recognition certificate and against the undertaking to furnish the Declaration Forms (Form III-Kha). The claim of the writ petitioners pertained both to the period anterior to April 23 1984 (the date of vesting of the undertakings of Ganesh Flour Mills in the appellant-corporation) and also for the period subsequent to the said date. The Union of India was also impleaded as a respondent to the writ petitions.

The appellant-corporation denied any responsibility or liability to issue the Declaration Forms (Form III-Kha) for the period *prior to* April 23, 1984. They disclaimed any responsibility for the said period relying on the provisions of the Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertaking) Act, 1984 [hereinafter referred to as "Acquisition Act"] So far as the period subsequent to April 23, 1984 is concerned, the appellant-corporation submitted that in view of the fact that the said tins were used for purposes other than those specified in Section 4-B(2), they could not have issued Declaration Forms (Form III-Kha) in respect of those purchases inasmuch as issuance of such forms would have exposed them to penalties under sub-section (6) of Section 4-B. They expressed their readiness to pay the difference of sales tax which was levied upon and collected by the State from the selling dealers (writ petitioners). They submitted that no writ can be issued to them compelling them to do an act prohibited by law and which would expose them to penalties under the provisions of the Uttar Pradesh Sales Tax Act.

The High Court has allowed the writ petitions on the following findings :

(i) Where the purchasing dealer wishes to avail himself of the concession referred to in Section 4-B(1)(b), as in the present cases, it is not competent for the purchasing dealer to withhold the Declaration Form

A (Form III-Kha) from the selling dealer. If the purchasing dealer wishes to avail of the concession provided by section 4-B, he has no option but to furnish to the selling dealer the Declaration Form (Form III-Kha).

B (ii) where the purchasing dealer represents to the selling dealer that he wishes to avail of the concession admissible to him under Section 4-B and on the basis of such representation avails himself of such concession by accepting the sale and supply from the selling dealer at the concessional rate of tax, it is not open to such purchasing dealer to turn round and refuse to issue the Declaration Form (Form III-Kha) on the specious plea that he now does not wish to avail of the concession and that he is willing to pay to the selling dealer tax at full rate. The matter cannot be left to the whims and fancies of the purchasing dealer.

C (iii) That by virtue of the provisions contained in Section 22 of the Acquisition Act, the appellant corporation is liable, and bound, to issue the Declaration Forms (Form III-Kha) even with respect to the period prior to April 23, 1984. Section 6(1) of the Acquisition Act does not relieve the appellant-corporation of the said obligation and liability.

D (iv) The writ petitioners are not seeking to enforce any contractual obligation by means of the said writ petitions but were only seeking to enforce the statutory obligation placed upon the appellant-corporation. Even otherwise, the corporation being a 'State' within the meaning of Article 12 is bound to act fairly and hence amenable to writ jurisdiction.

E (v) It appears from the record placed before the Court that the appellant-corporation has been picking and choosing dealers in the matter of issuance of Declaration Forms (Form III-Kha). To some they have issued the forms and to others they have refused. The plea of the corporation that such forms were issued to some dealers under a mistake is not acceptable.

F (vi) The plea of the appellant-corporation that issuance of such Declaration Forms (Form III-Kha) would expose it to penalties under the Uttar Pradesh Sales Tax Act is also not acceptable. (The Court, however, declined to express any opinion on the question whether in fact the corporation would become liable for penalties if it issued the Declaration Forms (Form III-Kha) as directed by the Court).

G The correctness of the said findings is called in question in these

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appeals by the appellant-corporation. Sri Rohinton F. Nariman, learned senior advocate for the appellant-corporation submitted that inasmuch as issuance of Declaration Forms in Form III-Kha in respect of tins which were utilised for purposes other than those specified in Section 4-B(2) would expose the corporation to penalties under the provisions of Uttar Pradesh Sales Tax Act, no mandamus ought to have been issued by the High Court compelling the appellant-issued by the High Court compelling the appellant- corporation to issue such Declaration Forms. The proper course would have been to direct the corporation to pay over to the respondents-dealers (writ petitioners) the difference of tax which they were made to pay to the State on account of the appellant-corporation's failure to furnish the Declaration Forms to them. The corporation should not, however, be made liable to reimburse the respondents in respect of the interest amount, if any, levied by the State upon the selling dealers on account of or as a result of their failure to produce the Declaration Forms (Form III-Kha) in their assessments. The learned counsel further contended that so far as the period prior to April 23, 1984 is concerned, the appellant-corporation can in no event be held liable for issuing the said forms. The provisions of the Acquisition Act are clear and emphatic, says the learned counsel. The corporation is not responsible for any of the acts, defaults or liabilities for the period prior to the date of acquisition. On the other hand, Sri M. C. Dhingra, learned counsel for the respondents-writ petitioners supported the reasoning and conclusions arrived at by the High Court. He emphasised in particular the fact that while in case of some dealers, the appellant-corporation has been issuing such Declaration Forms (Form III-Kha) , it has declined to do so in the case of respondents-writ petitioners alone. This, the learned counsel complained, is discriminatory and that the appellant-corporation being a State cannot be permitted to indulge in such discriminatory treatment.

For a proper appreciation of the questions arising herein, it would be appropriate to set out sub-sections (1), (2) and (6) of Section 4 of the Uttar Pradesh Sales Tax Act along with sub-rule (1) of Rule 25-B of the Uttar Pradesh Sales Tax Rules :

"4-B. *Special relief to certain Manufacturers.* - (1) Notwithstanding anything contained in Sections 3, 3-A 3-AAAA and 3-D:--

(a) Where any goods, liable to tax under sub-section (1) of

- A Section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases under that sub-section or where any goods are purchased by any dealer in circumstances in which such dealer is liable to purchase tax in respect thereof under Section 3-AAAA and the dealer holds a recognition certificate issued under sub-section (2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in the behalf, as may be notified in the Gazette by the State Government in that behalf;
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- C (a-1) Where any declared goods liable to tax under sub-section (1) of Section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate issued under sub-section (2) in respect thereof, the dealer who made the first purchase shall in respect of such purchase and subject to such conditions and restrictions as may be specified by notification in that behalf, be exempt from tax or be liable to tax at such concessional rate as may be notified by the State Government :
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- E (Provisos omitted as unnecessary)
- F (b) Where any goods liable to tax under any other provisions of this Act are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer in the prescribed form and manner a certificate to the effect that he holds a recognition certificate issued under sub-section (2) in respect thereof, the selling dealer shall be liable in respect of those goods to tax at such concessional rate, or by wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf.
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- H (2) Where a dealer requires any goods, referred to in sub-section (1), for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold

by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof; and if the applicant satisfies such requirements and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form, and subject to such conditions, as may be prescribed.

(6) Where a dealer, in whose favour a recognition certificate has been granted under sub-section (2), purchases any goods for use in the manufacture or packing of any notified goods without payment of tax or by paying tax at a concessional rate of less than four per cent, and such notified goods are sold or disposed of by such dealer otherwise than by way of sale in the State or in the course of inter-state trade or commerce or in the course of export out of India, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix, which shall not be less than the amount of tax that would have been payable under the provisions of this Act, on the sale or purchase of such goods and not more than double the amount of such tax, less any amount which he may have actually paid as tax on the purchase of such goods.

25-B. Authority from which Declaration Forms may be obtained : use, custody and maintenance of records of such forms and matters incidental thereto-- (1) Where a dealer holding a recognition certificate purchases any goods referred to in clause (b) of sub-section (1) of Section 4-B for use as raw material for the purpose of manufacture of any notified goods, he shall, if he wishes to avail of the concessional referred to therein, furnish to the selling dealer a certificate in Form III-B (hereinafter called a 'Declaration Form').

It would equally be appropriate to set out at this stage the relevant provisions of the Acquisition Act :

The preamble to the Act recites that for sustaining and strengthening the nucleus of public owned or controlled units required for ensuring supply of wholesome vanaspati and refined edible oils, etc. to the public at

A reasonable prices and for giving effect to the State policy specified in clause (b) and (c) of Article 39 of the Constitution, it has been decided to acquire the undertakings of the Ganesh Flour Mills, the management whereof was taken over by the Central Government under the I.D.R. Act, 1951.

B Section 3 provides that "on the appointed day (January 28, 1984), The Ganesh Flour Mills and the right, title and interest of the Company in relation to the Ganesh Flour Mills, shall, by virtue of this Act, stand transferred to, and shall vest in, the central Government". Section 4 sets out the consequences of such vesting. Section 5 provides that notwithstanding anything contained in Sections 3 and 4, if the Central Government is satisfied that a government company is willing to comply with or has complied with such terms and conditions as the Government may think fit to impose, the Ganesh Flour Mills and the right, title and interest of the company in relation thereof which is vested in the Central Government can be vested in turn in such government company under a notification issued by the Central Government. Sub-section (2) of Section 5 says that where such further vesting takes place "the government company shall, on or from the date of such vesting, be deemed to have become the owner of the Ganesh Flour Mills" and all the rights and liabilities of the Central Government in relation to the Ganesh Flour Mills shall become the rights and liabilities of such government company on and from the date of such vesting. It is pursuant to Section 5 that Ganesh Flour Mills was vested by the Central Government in the appellant-corporation under and by virtue of the notification dated April 23, 1984.

Section 6 of the Acquisition Act is relevant for our purposes and must be extracted in toto:

F "6. (1) Every liability, other than the liability specified under sub-section (2), of the Company in relation to the Ganesh Flour Mills in respect of any period prior to the appointed day shall be the liability of the Company and shall be enforceable against it and not against the Central Government or, where the Ganesh Flour Mills vest in a Government company, against the Government company.

G (2) Any liability in respect of the amount advanced, after the date of taking over, to the Company in relation to the Ganesh Flour Mills, together with interest due thereon and the wages, salaries

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and other dues of persons employed in the Ganesh Flour Mills in respect of any period after the date of taking over shall, on and from the appointed day, be the liability of the Central Government and shall be discharged by the Central Government or, for and on behalf of that Government, by the Government company as and when repayment of such amount becomes due and as and when such wages, salaries and other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that --

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2) of the company in relation to the Ganesh Flour Mills, in respect of a period prior to the appointed day shall be enforceable against the Central Government or the Government company, as the case may be.

(b) no award, decree or order of any court, tribunal or other authority in relation to the Ganesh Flour Mills, passed after the appointed day, in respect of any matter, claim or dispute in relation to any matter, not being a matter referred to in sub-section (2), which arose before that day shall be enforceable against the Central Government or the government company, as the case may be ;

(c) no liability incurred by the Company before the appointed day, for the contravention, in relation to the Ganesh Flour Mills, of any provision of law for the time being in force, shall be enforceable against the Central Government or the Government company, as the case may be."

In view of the fact that Section 22 has been relied upon by the High Court, it would be appropriate to set out the said section as well :

"22. Every contract, entered into by the Company in relation to the Ganesh Flour Mills which has vested in the Central Government under Section 3, for any service, sale or supply and in force immediately before the appointed day, shall, on or before the expiry of a period of thirty days from the appointed day, cease to have effect unless such contract is, before the expiry of that period,

A ratified, in writing, by the Central Government or the Government company and in ratifying such contract the Central Government or the Government company may make such alteration or modification therein as it may think fit.

B Provided that the Central Government or the Government company shall not omit to ratify a contract and shall not make any alternation or modification in a contract --

C (a) Unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government or the Government company; and

(b) except after giving the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein."

D We shall first take up the issue relating to the *period subsequent to April 23, 1984*. We are of the opinion that having placed orders for purchase of tins undertaking to supply Declaration Forms in Form III-Kha and having received the supplies on that basis, it is not open to the appellant- corporation to refuse to issue the said declaration forms on the plea that they have used the tins for purposes other than those mentioned in Section 4-B(2). The user for purposes other than those mentioned in Section 4-B(2) was a voluntary act on the part of the corporation. Therefore, it alone should take the blame for it and be responsible for consequences flowing therefrom. The corporation ought not to have made such a representation while purchasing that quantity of tins which it did not intend to use for purposes specified in Section 4-B(2). The High Court cannot, therefore, be held to be in error in issuing the direction which it did. We, however, wish to provide a modification to the direction issued by the High Court in view of the provisions of sub-section (6) of Section 4-B of the Uttar Pradesh Act and particularly in view of the time-lapse since the controversy has arisen. In all likelihood, the assessments of the respondents under the Uttar Pradesh Act must have been completed long ago and the question of filing the Declaration Forms now, by the respondents, appears to be an impracticable thing. The modification is this : if the appellant is not in a position to issue the Declaration Forms, it may not issue them but in such a case it shall reimburse the respondents-selling

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dealers in full for the difference amount of tax which the respondents were made to pay on account of the appellant's failure to furnish the said Declaration Forms and also in respect of interest or the penalties, if any, imposed in that behalf and paid by them. We cannot appreciate the argument of Sri Nariman that the appellant- corporation should be made liable only for reimbursing the difference of tax amount but not the interest. We see no justification behind such a plea. Indeed, if the selling dealers have been made liable to any penalties on account of their failure to produce in their assessments the Declaration Forms (which ought to have been furnished by the appellant-corporation to such selling dealers) then the appellant-corporation shall equally be liable to reimburse the selling dealers in that behalf as well.

We may now take up the main question urged before us, viz, the liability, if any, of the appellant-corporation to issue Declaration Forms or to reimburse the selling dealers (as directed hereinabove) in respect of *the period prior to April 23, 1984*. This calls for an examination of the relevant provisions of the Acquisition Act, which we have set out hereinabove. Section 5(2), the relevant portion whereof has already been extracted hereinabove, says that with effect from the date of vesting of the Ganesh Flour Mills in the Corporation, the Corporation shall take over the rights and liabilities of the said government company (Ganesh Flour Mills, which had become the Government company on its statutory vesting in the Central Government on January 28, 1984). Sub-section (1) of Section 6 clearly states that "every liability other than the liabilities specified under sub-section (2) of the company in relation to the Ganesh Flour Mills in respect of any period prior to the appointed day shall be the liability of the company and shall be enforceable against it and not against Central Government or where the Ganesh Flour Mills vest in a government company, against the government company". The sub-section is clear and emphatic. ["Company" in the above provision means the Ganesh Flour Mills Company limited prior to its vesting in the Central Government-Section 2(c) - and the expression "government company" means the appellant-corporation - Section 2(i).] It is agreed before us that the obligation in question is not one of the matters specified in sub-section (2) of Section 6. Sub-section (3) makes the matter further clear and beyond any doubt. It declares, in the interest of removal of doubts, that "(a) save as otherwise expressly provided in this section or any other section of this Act, no liability, other than the liability specified in sub-section (2) of the company

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- A in relation to the Ganesh Flour Mills in respect of a period prior to the appointed day shall be enforceable against the Central Government or the government company, as the case may be". Clause (b) of sub-section (3) says that no award, decree or order of any Court, Tribunal or other authority in relation to Ganesh Flour Mills with respect to any matter, claim or dispute not being a matter referred to in sub-section (2) and
- B which arose before the date of vesting shall be enforceable either against the Central Government or against the government company, as the case may be. Similarly, clause (c) of sub-section (3) states that "no liability incurred by the company before the appointed day, for the contravention, in relation to the Ganesh Flour Mills of any provision of law for the time
- C being in force shall be enforceable against the Central Government or the government company, as the case may be". ("Company" is defined in clause (c) of Section 2, as stated above, to mean the Ganesh Flour Mills Company Limited, Delhi, a company within the meaning of Companies Act, 1956 and having its registered office at Subzi Mandi, Delhi.) The provisions in
- D Section 6 thus make it clear beyond any doubt that any liability of Ganesh Flour Mills prior to the date of vesting in the Central Government (January 28, 1984) shall not be enforceable against the Central Government and that similarly no such liability shall be enforceable against the government company/appellant-corporation. Sub-section (3) also puts the matter beyond any doubt.

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Now, let us see whether Section 22 qualifies Section 6 in any manner or whether it makes the appellant-corporation liable to issue Declaration Forms for purchasers made prior to April 23 1984. The first thing be noticed is that Section 22 and Section 6 being provisions of the same enactment have to be construed harmonically; the effort should be to give effect to both. Be that as it may, let us see what does Section 22 say. It says that a contract entered into the Ganesh Flour Mills Company Limited, with respect to the said mills, for any service, sale or supply and which was in force immediately before the appointed day (January 28, 1984) shall on and from the expiry of a period of thirty days from the appointed day cease to have effect unless such contract is, before the expiry of the said period, ratified in writing by the Central Government or the government company (appellant-corporation), as the case may be. Even where the Central Government or the appellant-corporation ratifies such contract, it is open to them to make such alternations or modifications therein as they may

F think fit. The proviso to Section 22 says that the Central Government or

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the appellant corporation shall not omit to ratify a contract and shall not make any alteration or modification in the contract while ratifying it, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government or the government company.\* The proviso further says that before refusing to ratify or before effecting any alteration or modification in the contract, the central Government/appellant-corporation shall give the parties to the contract reasonable opportunity of being heard and shall record its reasons for refusal to ratify or for effecting alteration/modification, as the case may be. The High Court has understood Section 22 to mean that unless the existence of circumstances mentioned in proviso (a) are made out *in these proceedings*, the appellant-corporation would be bound by any contract made by Ganesh Flour Mills for supply of any goods prior to its vesting in the Central Government. With respect, we are unable to agree. A reading of sections 22 shows that unless ratified in writing within thirty days of the appointed day, no contract entered into by Ganesh Flour Mills prior to January 28, 1994 (appointed day) shall be binding upon the Central Government/government company. The proviso, no doubt, states that the Central Government/appellant-corporation shall not omit to ratify a contract and shall not effect any alteration or modification therein unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to their interest which satisfaction has to be arrived at after hearing the parties to the contract; the reasons for such action are also required to be recorded in writing. But this only means that if a particular contract is refused to be ratified or is altered or modified in any particular manner, the affected party (i.e., party to such contract) shall be entitled to question the same in accordance with law. But the writ petitions-from which these appeals arise were not such proceedings. These were not the writ petitions questioning the omission of the central Government/appellant-corporation to ratify a particular contract or contracts. The writ petitions - all of them - were filed for a different purpose, viz., for a direction to the appellant-corporation to issue Declaration Forms III-kha) pursuant to the supply orders issued by the Ganesh Flour Mills (prior to its vesting under Section 3 of the Acquisition Act).\*\*

\* "Government company" is defined in clause (i) of Section 2 to mean "the government company in which the Ganesh Flour Mills are directed to vest under sub-section (1) of Section 5" - in short, the appellant-corporation.

\*\* The period subsequent to vesting in appellant corporation was not in dispute explained above.

- A Whereas the vesting in Central Government-as also in the appellant-corporation - was in the year 1984, the present writ petitions were filed in 1987 (one writ petition) and in 1990 (the rest). If the petitioners wanted to question the non-ratification of any particular contract within thirty days of the date of vesting, they should have come to Court soon after the expiry of the said thirty days from the date of vesting. If they had done so, question would then have arisen whether Section 22 is attracted to such a contract, whether the contract which they were seeking to enforce was "a contract..... for any service, sale or supply and *in force immediately before the appointed day*". and so on. Such a writ petition would also have given an opportunity to the central Government and the appellant corporation to explain and put forward their reasons for not ratifying the contract. We are of the opinion that having regard to the pleadings in the present writ petitions and the prayers asked for therein, the enquiry contemplated by Section 22 could not have been done or entertained in these writ petitions. The position, therefore, is that on account of non ratification, the contract - assuming that it was contract in force before the appointed day - ceased to have effect on expiry of thirty days from the appointed day, i.e., even before the appellant-corporation came into the picture. The remedy of the respondents-writ petitioners in relations to the period prior to April 23, 1984 is not against appellant-corporation. Any claim of theirs in respect of the period to the date of vesting (January 28, 1984) can only be against the Central Government which was in management of the said company by virtue of the notification issued under the I.D.R. Act. In this context, there may be a distinction between Central Government which has become the owner of the Ganesh Flour Mills by virtue of the vesting provided by Section 3 of the Acquisition act *and* the Central Government which was in management of the said company by virtue of the notification under section 18AA of the I.D.R. Act. Be that as it may, we need not pursue this line of thought inasmuch as these appeals are filed only by the appellant-corporation and not by the Central Government. Accordingly, we confine ourselves to the liability of the appellant-corporation alone.
- G The appeals are accordingly allowed in part. It is declared that in respect of the contracts entered into and supplies received by the appellant-corporation on or after April 23, 1984, the appellant-corporation shall either furnish Form III-kha or if it cannot do so, it shall reimburse the respondents-writ petitioners in full for the difference amount of tax which the respondents were made to pay to the State on account of the
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appellant's failure to furnish Declaration Forms to the respondents, as also for the interest and penalties, if any, imposed upon the respondents in that behalf. But so, far as the orders placed or supplies made prior to April 23, 1984 is concerned, the appellant-corporation is not liable either to furnish the Declaration Forms to the respondents-writ petitioners or to reimburse them in any manner. A

No costs. B

V.M.

Appeal allowed.