

A STATE OF U.P. AND ORS. ETC.  
v.  
SRI LAXMAN RICE MILLS AND ORS. ETC.

JANUARY 17, 1997

B [K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1985 :*

C *Clauses 3,24—Levy effective from the intervening night of September 30, 1995 and October 1, 1995—Exemption—Levy lifted subsequently—But exemption order not withdrawn—Held : Levy order issued not legal for the limited stock on hand, viz. the stock existing with the rice millers as on the intervening night of September 30, 1995 and October 1, 1995—To that extent only the exemption would operate and the levy order would become effective in respect of all purchases made rice produced on and from the day break of October 1, 1995.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 446 of 1997 Etc.

E From the Judgment and Order dated 9.1.96 of the Allahabad High Court in C.M.W.P No. 507 of 1996.

Irshad Ahmad and Arvind Kr. Shukla for the Appellants.

Sudhir Chandra, Sunil Ambwani, Prashant Kumar, Umesh Bhagwat, Alok Singh and V.B. Joshi for the Respondents.

F The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

G These appeals by special leave arise from various orders of the Division Bench of the Allahabad High Court, made on February 27, 1996 etc. in Writ Petition No. 31392/95 etc.

H The only controversy is : whether the existing stock of rice on the intervening night of 30th September and 1st October 1995 was liable to levy

under the U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1985. Exercising the power under Section 3 of the Essential Commodities Act, with the concurrence of the Central Government, the appellant had issued the said Order imposing levy on rice effective from the intervening night of September 30, 1995 and October 1, 1995. This is in furtherance of clause (3) of the Levy Order. It is contended by the learned counsel for the appellant that since the levy was effective from the aforesaid period within the areas specified under the order, all the rice mills covered are subject to the above notification. The High Court was not right in directing that the Order will be effective from October 1, 1995 and that the direction that the existing stock as on the intervening night of the said dates is not liable to levy is vitiated by error of law. We find no force in the contention.

Clause 24 of the Order gives power to exempt as under :

"(1) With the concurrence of the Central Government, the State Government may -

(a) in the public interest increase or reduce the percentage of levy;

(b) in the public interest exempt any area from levy or reduce per cent;

(c) in the public interest reduce the percentage of levy from any type of rice mill in any area;

(d) exempt wholly or partly from levy and variety of paddy and rice."

It is seen that by proceedings dated May 31, 1996 the Principal Secretary to the Government had conveyed to all the authorities concerned the decision of the Government, namely, "I am directed to say that levy is lifted in U.P. from rice for rest of the Kharif 1994-95 till 30.9.1995 with immediate effect."

Thus, it would be seen that the rice stock existing with rice millers as on September 30, 1995, in other words, all purchase made/rice produced by the rice millers upto that date, i.e., September 30, 1995 stood exempted. While issuing the levy order, the exemption order was not withdrawn. Consequently levy order issued in exercise of clause (3) of the Order for the Kharif Season 1995-96 effective from midnight of September 30, 1995

- A including the stock on hand as on that date, is not legal for the limited stock on hand, namely, the stock existing with the rice millers as on the intervening night of September 30, 1995 and October 1, 1995. To that extent only the exemption would operate and the levy order would become effective in respect of all purchases made/rice produced on and from the day break of October 1, 1995.
- B

The appeals are accordingly disposed of. No costs.

G.N.

Appeals are disposed of.