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Rs. 70 per month. We direct, having regard to the circumstances, that there shall be no order as to costs in this appeal.

Appeal allowed.

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October 22

THUNGABHADRA INDUSTRIES LTD.

v.

THE GOVERNMENT OF ANDHRA PRADESH

(A.K. SARKAR, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Civil Procedure Code, 1908 (5 *of* 1908), O. 47, *r.* 1—*Petition for certificate of fitness under Constitution Act*, 131(1)(*c*)—*Order that the cost does not involve any substantial question of law—Whether an "error apparent on the face of the record".*

Practice and Procedure—Notice to respondent before granting special leave—Whether objection to the maintainability of appeal permitted after grant of special leave—Supreme Court Rules, 1950, *O. XIX, r.* 4.

In respect of the assessment year 1949-50, the appellant while submitting his return disclosing his turnover of the sale of oil, included therein the value of the hydrogenated oil that he sold and claimed a deduction under r. 18 of the Turnover and Assessment Rules in respect of the value of the groundnuts which had been utilised for conversion into hydrogenated oil on which he had paid tax at the point of their purchase. The sales tax authorities rejected the claim on the ground that hydrogenated groundnut oil was not groundnut oil within that rule. This view was upheld by the High Court on February 11, 1955, in the Tax Revision Case No. 120 of 1953 filed by the appellant, but, on application, the High Court granted a certificate of fitness under Art. 133(1) of the Constitution of India on the ground that substantial questions of law arose for decision in the case. For the assessment years 1950-51, 1951-52 and 1952-53, the same question as to whether hydrogenated groundnut oil was raised and decided against the appellant by the sales tax authorities and the High Court. The appellant then applied for a certificate of fitness under Art. 133(1) of the Constitution, but the High Court dismissed the petition on September 4, 1959, stating: "The judgment sought to

be appealed against is one of affirmance. We do not think that it involves any substantial question of law.....nor do we regard this as a fit case for appeal to the Supreme Court." On November 23, 1959, applications for review were filed under O. 47, r. 1, of the Code of Civil Procedure but they were dismissed. The appellant then applied for special leave under Art. 136 of the Constitution against the orders dismissing the applications for review and leave was granted after notice to the respondent. When the appeal came on for hearing in the Supreme Court, the respondent raised a preliminary objection that the special leave granted to the appellant should be revoked. The grounds for revoking the special leave were not urged by the respondent at the time of the hearing of the applications under Art. 136, nor were they set out in the statement of case filed by the respondent under O.XVIII of the Supreme Court Rules, 1950.

Held: (i) that where notice is given to the respondent before the hearing of the application for grant of special leave, no objection to the maintainability of the appeal or to the granting of special leave would be permitted to be urged at any stage after the grant of it, except possibly where the ground urged happens to arise subsequent to the grant of leave or where it could not be ascertained by the respondent at that date notwithstanding the exercise of due care.

(ii) that the statement in the order dated September 4, 1959, that the case did not involve any substantial question of law, was an "error apparent on the face of the record" within the meaning of O. 47, r. 1, of the Code of Civil Procedure inasmuch as this was a case where without any elaborate argument one could point to the error and say that here was a substantial point of law which stared in the face.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 781-783 of 1962.

Appeals by special leave from the judgment and order January 6, 1961, of the Andhra Pradesh High Court in Civil Miscellaneous Petition Nos. 4672 to 4674 of 1960.

A.V. Viswanatha Sastri, M.S.K. Sastri and *M.S. Narasimhan*, for the appellant (in all the appeals).

A. Ranganadham Chetty and *R.N. Sachthey*, for the respondent (in all the appeals).

October 22, 1963. The Judgment of the Court was delivered by

AYYANGAR J.—The points raised in these three appeals which come before us by virtue of special leave under Art. 136 of the Constitution are somewhat

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out of the ordinary and raise for consideration whether the common order passed by the High Court of Andhra Pradesh rejecting applications to review an earlier order by that court, is correct on the facts which we shall state presently.

The appellant—M/s Thungabhadra Industries Ltd. are manufacturers of groundnut oil, part of which they convert for sale into hydrogenated oil while the rest is sold as ordinary oil. Under the Madras General Sales Tax Act, hereinafter referred to as the Act, which has application to the State of Andhra Pradesh, while in regard to groundnuts the tax is levied at the point of purchase, groundnut oil is taxed at the point of sale. The result of this feature naturally is that when a person purchases groundnut and converts the same into oil and sells the oil extracted he has to pay tax at both the points. Rules have been framed in order to alleviate what might be considered a hardship by reason of this double levy. Rule 5(k) of the Turnover & Assessment Rules provides:

> "5. (k) in the case of a registered manufacturer of groundnut oil and cake, the amount which he is entitled to deduct from his gross turnover under rule 18 subject to the conditions specified in that rule".

and Rule 18 referred to reads:

> "18. (1) Any dealer who manufactures groundnut oil and cake from groundnut and/or kernel purchased by him may, on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of groundnut oil and cake.
>
> (2) Every such registered manufacturer of groundnut oil will be entitled to a deduction under clause (k) of sub-rule (1) of rule 5 equal to the value of the groundnut and/or kernel, purchased by him and converted into oil and cake if he has paid the tax to the State on such purchases:

Provided that the amount for which the oil is sold is included in his net turnover:

Provided further that the amount of the turn over in respect of which deduction is allowed shall not exceed the amount of the turnover attributable to the groundnut and/or kernel used in the manufacture of oil and included in the net turnover."

The appellant is admittedly a manufacturer who is registered for the purposes of that rule.

In respect of the year 1949-50 the appellant while submitting his return disclosing his turnover of the sale of oil, included therein the value of the hydrogenated oil that he sold and claimed a deduction under the rule in respect of the value of the groundnuts which had been utilised for conversion into hydrogenated oil on which he had paid tax at the point of their purchase. This claim was negatived by the Sales Tax authorities on the ground that "hydrogenated groundnut oil" was not "groundnut oil" within r. 18(2). Having failed before the departmental authorities in getting its claim to deduction allowed, the appellant approached the High Court with a Tax Revision Case numbered 120 of 1953 on its file but the High Court, by its judgment dated February 11, 1955, upheld the view of the department. An application was thereafter made to the High Court to grant a certificate of fitness under Art. 133(1) on the ground that substantial questions of law as to the interpretation of the General Sales Tax Act and the Rules made thereunder, as well as of certain other enactments which were relied upon in support of their claim by the appellants, arose for decision in the case. The learned Judges by their order dated February 21, 1956 granted the certificate. In view of the points arising in this appeal we consider it would be convenient to set out the text of this order:

"This petition raises a question of general importance namely whether hydrogenated groundnut oil popularly known as Vanaspathi is ground-

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nut oil so as to enable the assessee to claim exemption under Rules 18(2) and 5(1) (g) of the Turnover and Assessment Rules framed by the Government in exercise of the powers conferred by Section 3 and sub rules 4 and 5 of the Madras General Sales Tax Act, 1939. The answer to the question arising in this matter turns upon whether the chief characteristics of groundnut oil remain the same in spite of the chemical processes it undergoes. It also involves the interpretation of the notifications issued by the Government of India under the Essential Supplies (Temporary Powers) Act and certain provisions of the Vegetable Oils Products Control Order. In these circumstances we think it a fit case for appeal to the Supreme Court. Leave is therefore granted."

Thereafter the appeal was entertained in this Court and numbered as Civil Appeal 498 of 1958, was finally disposed of on October 18, 1960 and is now reported as *M/s Thungabhadra Industries Ltd.* v. *The Commercial Tax Officer, Kurnool*[1].

Meanwhile in regard to the assessment of the three succeeding years—1950-51, 1951-52 and 1952-53, the same question as to whether "hydrogenated groundnut oil" was "groundnut oil" entitled to the deduction of the purchase turnover under r. 18(2) of the Turnover and Assessment Rules was raised and was decided against the appellant by the Sales Tax Officer. This order was taken up in appeal to the Deputy Commissioner of Commercial Taxes by the appellant and as apparently the identical question was pending in the High Court in regard to the year 1949-50, the appellate authority awaited the decision of the High Court and when T.R.C. 120 of 1953 was decided against the appellant on February 11, 1955, disposed of the appeal against the appellant by its order dated April 5, 1955. Thereafter the appellant approached the Sales Tax Appellate Tribunal but this was obviously a formality

(1) [1961] 2 S.C.R. 14.

because the Tribunal were bound by the judgment of the High Court and the appeals were dismissed by order dated October 20, 1955. Against the orders of the Sales Tax Appellate Tribunal the appellant preferred three Tax Revision Cases—T.R.C. 75,76 and 77 of 1956 in regard to the three assessment years. The learned Judges of the High Court dismissed the three Revision Cases on October 7, 1958 following their earlier decision in T.R.C. 120 of 1953 in regard to the assessment for the year 1949-50. At this date, it would be noticed, the correctness of the decision of the High Court in T.R.C. 120 of 1953 was pending adjudication in this Court by virtue of the Certificate of fitness granted by the High Court under Art. 133(1). Desiring to file an appeal to this Court against the judgment of the High Court in these three Tax Revision Cases as well, the appellant filed, on February 16, 1959, three miscellaneous petitions under Art. 133(1) of the Constitution praying for a certificate of fitness that the case involved substantial questions of law as to the interpretation of the Sales Tax Act and the Rules made thereunder etc. The learned Judges, however, by their order dated September 4. 1959 dismissed the petition stating:

> "The judgment sought to be appealed against is one of affirmance. We do not think that it involves any substantial question of law as to the interpretation of the Constitution; nor do we regard this as a fit case for appeal to the Supreme Court."

The question that arises for consideration in these appeals is primarily whether this order dated September 4, 1959, is vitiated by error apparent on the face of the record. How that matter becomes relevant is because the appellant filed three applications for review of this order under O. XLVII r. 1 of the Civil Procedure Code specifying this as the ground for relief. These applications for review were filed on November 23, 1959, and apparently notice was issued to the respondent-State Government and the petition for review came on for hearing on January 6, 1961.

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On that date the learned Judges dismissed the said applications and assigned the following as the reasons for their order:

> "The only ground argued in support of these review petitions is that leave to appeal to the Supreme Court was granted in similar circumstances in regard to previous year and there was no reason why leave should have been refused in these cases. We do not think that that would furnish a sufficient ground for reviewing the order dismissing the petitions for leave to file an appeal to the Supreme Court. That apart, the Supreme Court was moved under Article 136 of the Constitution for special leave and that was dismissed may be on the ground that it was not filed in time. In the circumstances, we think that our order dated 4.9.1959 dismissing S.C.C.M.Ps No. 4823, 4825 and 4827 of 1959 cannot be reviewed."

The appellants thereupon made applications for special leave from this Court to challenge the correctness of this last order and the leave having been granted after notice to the respondent, the appeals are now before us.

Before dealing with the arguments addressed to us on behalf of the appellant it is necessary to advert to an objection raised by learned Counsel for the respondent urging that the special leave granted to the appellant should be revoked. We declined to permit the respondent to urge any such argument in this case primarily for two reasons. In the first place, the special leave was granted after notice to the respondent and therefore after hearing the respondent as to any objection to the maintainability of the appeal or to the granting of special leave. In the circumstances, any ground in relation to these matters should have been urged at that stage and except possibly in some extraordinary cases where the ground urged happens to arise subsequent to the grant of the special leave or where it could not be ascertained by the respondent at that date notwithstanding the exercise of due care; except in such

circumstances this Court will not permit the respondent to urge any argument regarding the correctness of the order of the Court granting special leave. Indeed, the very object of issuing notice to the respondent before the grant of leave is to ensure that the latter is afforded an opportunity to bring to the notice of the Court any grounds upon which leave should be refused and the purpose of the rule would be frustrated if the respondent were permitted to urge at a later stage—at the stage of the hearing of the appeal and long after the appellant has incurred all the costs—that the leave granted after notice to him should be revoked on a ground which was available to him when the appeliation for special leave was heard. This apart, even the statement of the case filed on behalf of the respondent does not disclose any ground upon which the leave granted should be revoked; nor, of course, does it make any prayer seeking such relief. One of the objects which the statement of the case is designed to achieve is manifestly that no party shall be taken by surprise at the hearing and this is ensured by the provision in O. XIX r. 4 of the Supreme Court Rules reading:

> "No party shall, without the leave of the Court, rely at the hearing on any grounds not specified in the Statement of the Case filed by him."

Nor, of course, was there any contention that the ground that he proposed to submit came into existence after the filing of the statement of case. It was in these circumstances that we declined to permit the respondent to develop an argument to persuade us to hold that the leave granted by this Court should be revoked, though we might add that the matter mentioned by learned Counsel for the respondent in this respect would not, even if urged at the hearing of the special leave petition, have materially assisted him in resisting the grant of special leave. The point he desired to urge was that in the petition for special leave the appellant had averred that the decision of this Court reversing the judgment of the High Court in T.R.C. 120 of 1953 had been

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brought to the notice of the High Court, but that this statement must be erroneous or untrue for two reasons: (1) This is not referred to in the order now under appeal, and (2) the decision of this Court was not reported in any of the law reports—official or unofficial — till long after January 1961 when the petition for review was heard. It is manifest that neither of the two circumstances would by itself prove the untruth of the averment in the special leave petition. The learned Judges might well have thought that the decision had no material bearing on the only point that arose for consideration before them, *viz.*, whether their order of September 1959 was or was not vitiated by error of the sort which brought it within O. XLVII. r. 1 of Civil Procedure Code. It is obvious that so viewed, it would not have any relevance. As regards the other point, the appellant did not have need to wait for a report of the case in the law reports but might very well have produced a copy of the judgment of this Court—and being a party to the proceeding here it is improbable that it had not a copy, so, that its statement that it drew the attention of the Court to the decision is not proved to be false by the decision not being reported till long after January, 1961. The oral application for revoking the leave granted is therefore rejected as entirely devoid of substance.

We shall next proceed to deal with the merits of the appeals. Before doing so however, it is necessary to advert to a circumstance which the learned Judges considered a proper reason for rejecting the petition for review. This arises out of the second of the grounds assigned by the learned Judges in their order dated January 6, 1961, refusing to grant the review. This may be quoted in their own words:

> "That apart, the Supreme Court was moved under Art. 136 of the Constitution for special leave and that was dismissed, may be on the ground that it was not filed in time."

The facts in relation to this matter might now be stated. As already seen, the applications for reviewing the order dated September 4, 1959, refusing the certificates were filed on November 23, 1959. During the pendency of those review applications the appellant filed, on November 30, 1959, petitions seeking special leave of this Court under Art. 136 of the Constitution but those petitions were filed beyond the period of limitation prescribed by the Rules. An application was therefore filed along with the special leave petitions seeking condonation of delay in the filing of the petitions. The petitions and the applications for condonation of delay came on together for hearing and this Court refused to condone the delay, so that the petitions for special leave never legally came on the file of this Court.

O. XLVII r. 1(1) of the Civil Procedure Code permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been preferred." In the present case, it would be seen, on the date when the application for review was filed the appellant had not filed an appeal to this Court and therefore the terms of O. XLVII r. 1(1) did not stand in the way of the petition for review being entertained. Learned Counsel for the respondent did not contest this position. Nor could we read the judgment of the High Court as rejecting the petition for review on that ground. The crucial date for determining whether or not the terms of O. XLVII. r.1 (1) are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the Court hearing the review petition would come to an end.

The next question is as regards the effect of the refusal of this court to condone the delay in filing the petition for special leave. Here again, it

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was not contended that the refusal of this Court to entertain the petition for special leave on the grounds just now stated was a bar to the jurisdiction or powers of the Court hearing the review petition. This position was not contested by the learned Advocate for the respondent either. In these circumstances, we are unable to agree with the learned Judges of the High Court that the refusal by this Court to condone the delay in filing the petition for special leave was a circumstance which could either bar the jurisdiction of the High Court to decide the petition for review or even could be a relevant matter to be taken into account in deciding it. If therefore their original order dated September 4, 1959, was vitiated by an error apparent on the face of the record, the failure of the special leave petition to be entertained in this Court in the circumstances in which it occurred, could not be any ground either of itself or taken along with others to reject the application for review.

We consider it would be convenient to consider the first part of the order of the High Court now under appeal after examining the principal question whether the order of September, 1959, rejecting the appellant's petition for a certificate is vitiated by error apparent on the record. If one analysed that order only one reason was given for the rejection of the certificate of fitness. No doubt, in the first sentence of their order they stated that the judgment was one of affirmance, but that was merely preliminary to what followed where they recorded that the certificate was refused for the reason that the case did not involve any substantial question of law regarding the interpretation of the Constitution. The preliminary statement that their judgment was one of affirmance would, however, seem to show that what the learned Judges had in mind were the terms of Art. 133 of the Constitution where alone—as distinct from Art. 132—there is reference to a judgment of affirmance, though *per incuriam* they reproduced the terms of Art. 132(1). As it was the case of no

party that any question of interpretation of the Constitution was involved, the reference to "the substantial question of law relating to the interpretation of the Constitution" must obviously have been a mistake for a substantial question of law arising in the appeal. Though learned Counsel for the appellant stressed this ground in the order of September, 1959 as itself disclosing an error apparent on the face of the record or was at least, indicative that the learned Judges did not apply their minds to the consideration of the question arising in the application for a certificate of fitness, we shall proceed on the basis that this was merely a clerical error in their order and that the learned Judges had really in mind the terms of Art. 133(1) which had been invoked by the appellants in their application for the certificate. On the basis that the words in the order of September, 1959 referring to a substantial question of law as to the interpretation of the Constitution were really meant to say that no substantial question of law was involved in the appeal sought to be filed in this Court how does the matter stand? There was practically no question of fact that fell to be decided in T.R.Cs. 75 to 77 of 1956 and the sole question related to the claim to deduct the value of the groundnut on which purchase tax had been paid and which had been converted into hydrogenated oil which had been sold and which had been included in the appellant's turnover. In fact, these T.R.Cs. were decided by the High Court not independently on a consideration of any particular facts which arose in them, but by following the decision of the High Court in T.R.C. 120 of 1953 which had accepted the construction which the departmental authorities had placed on r. 18(2) of the Turnover & Assessment Rules. The substantial points of law which were claimed to arise in the appeal had been set out *in extenso* in the petition seeking the certificate and, in fact, they were practically a reproduction of the contents of the earlier petition seeking a certificate against the decision in T.R.C. 120 of 1953. The learned Judges—and the learned C.J. was a party

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to the earlier decision and to the grant of the certificate of fitness on that occasion—considered these points and had stated as their opinion that substantial questions of law of general importance were involved in the case and they had given expression to these views in a judgment which we have reproduced earlier.

What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not *per se* be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T.R.Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of r. 18(1) of the Turnover & Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956; nor could it be doubted or disputed that these were substantial questions of law. In the circumstances therefore, the submission of the appellant that the

order of September 1959 was vitiated by "error apparent" of the kind envisaged by O. XLVII r. 1, Civil Procedure Code when it stated that "no substantial question of law arose" appears to us to be clearly well-founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error.

He, however, submitted that this Court should have regard not to whether the earlier order was so vitiated or not but to the grounds which were urged by the appellant at the hearing of the application for review and that if at that stage the point in the form in which we have just now expressed was not urged, this Court would not interfere with the order rejecting the application for review. He pointed out that at the stage of the arguments on the application for review the only ground which was urged before the Court, as shown by the judgment of the Court, was that the order of September, 1959 was erroneous for the reason that a certificate had been granted on a previous occasion. We have extracted the text of this order of January, 1961 in which this argument is noticed and it is stated that it was the only point urged before the Court. The question then arises as to what is meant by "in similar circumstances in regard to a previous year". Learned Counsel for the respondent submits that we should understand these words to mean that the appellant relied on the order dated February 21, 1956, granting the certificate of fitness in regard to the decision of the High Court in T.R.C. 120 of 1953 solely as some sort of precedent and no more. On that basis learned Counsel strenuously contended that the mere fact that in regard to an earlier year a certificate was granted would not by itself render an order refusing a certificate in a later year erroneous on the ground of patent error. We have already dealt with this aspect of the matter. We do not, however, agree that this is the proper construction of the argument that they rejected. The order dated February 21, 1956, in relation to the previous year

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was placed before the court and was relied on not as a binding precedent to be followed but as setting out the particular substantial questions of law that arose for decision in the appeals, and the attention of the Court was drawn to the terms of the previous order with a view to point out the failure to appreciate the existence of these questions and to make out that the statement in the order of September, 1959 that no substantial question of law was involved in the appeals was erroneous on the face of it. This is made perfectly clear by the contents of the petition for review where the aspect we have just now set out is enunciated. The earlier order being of the same Court and of a Bench composed in part of the same Judges, the earlier order was referred to as a convenient summary of the various points of law that arose for the purpose of bringing to the notice of the Court the error which it committed in stating that no substantial question of law arose in the appeals. If by the first sentence the learned Judges meant that the contention which they were called upon to consider was directed to claim the previous order of 1956 as a binding precedent, they failed to appreciate the substance of the appellant's argument. If, however, they meant that the matters set out by them in their order granting a certificate in relation to their decision in T.R.C. 120 of 1953 were not also involved in their judgment in T.R.Cs. 75 to 77 they were in error, for it is the case of no one that the questions of law involved were not identical. If, besides, they meant to say that these were not substantial questions of law within Art. 133(1), they were again guilty of error. The reasoning, therefore, of the learned Judges in the order now under appeal, is no ground for rejecting the applications to review their orders of September, 1959. We therefore consider that the learned Judges were in error in rejecting the application for review and we hold that the petitions for review should have been allowed. We only desire to add that in so holding we have not in any manner taken into account or been influenced by the view expressed by this Court in *Tungabhadra*

Industries Ltd. v. *The Commercial Tax Officer, Kurnool*[1] regarding the construction of Rule 18(2) of the Turnover & Assessment Rules, since that decision is wholly irrelevant for considering the correctness of the order rejecting the applications for review which is the only question for decision in these appeals.

Before concluding we desire to make an observation arising out of an appeal made to us by learned Counsel for the respondent that even if the appeal were allowed we should make no direction as regards costs against his client. The right of the appellant to the benefit of the exemption which he claimed and which was disallowed to him by the judgment of the High Court in T.R.Cs 75, 76 and 77 really depended on the correct construction of r. 18(2) of the Turnover & Assessment Rules and in particular on the meaning of the expression "groundnut oil" occurring there—whether it included "hydrogenated oil". This Court in its judgment in *M/s Tungabhadra Industries Ltd.* v. *The Commercial Tax Officer, Kurnool*[1] pronounced on the proper construction of the word 'groundnut oil' occurring in r. 18 of the Turnover & Assessment Rules as they then stood. The assessment proceedings for 1950-51, 1951-52 and 1952-53 had not attained finality against the assessee by the termination of all proceedings, because there were still applications for review pending before the High Court. In the circumstances, it would have been reasonable to expect that the Sales Tax authorities should have afforded the appellant the benefit of the decision of this Court in regard to these later years also unless there was some insuperable difficulty or other circumstance in the way of their doing so, and learned Counsel for the respondent has brought none to our notice. That is so far as regards the merits of the controversy in the tax revision cases in which certificates were sought. Of course, if on any technical or similar points the State is entitled to succeed indisputably they would not be prevented from doing so and they would be entitled

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to collect the tax as assessed and as decided in its favour by the High Court. But when the respondent fails in the objections raised to prevent the matter coming to this Court, we do not see any justification for the plea that costs should not follow the event but that the appellant should be deprived of it sright to costs.

In the result the appeal is allowed and the common judgment of the High Court in the three appeals is reversed and the petitions for review—C.M.Ps 4672, 4673 and 4674 of 1959 on the file of the High Court are allowed with costs here and in the High Court—one set of hearing fees.

Appeal allowed.

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October 23

CHAMPAKLAL CHIMANLAL SHAH

v.

THE UNION OF INDIA

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J.R. MUDHOLKAR JJ.)

Government Servant—Central Civil Service—When is he quasi-permanent—Permanent and Temporary servants—Termination of service—Difference in mode not discriminatory—Action by way of punishment—Even temporary servant entitled to benefit of Art. 311*—Preliminary enquiry and departmental enquiry—Latter does not attract Art.* 311(2)*—Constitution of India, Art.* 311*—Central Civil Service (Temporary Service) Rules,* 1949, *rr.* 3 *and* 5.

The appellant was in the service of Union of India, his appointment being temporary liable to be terminated on one month's notice on either side. He was appointed in June 1949. On August 1954 he was informed that his services would be terminated from September 1954. No cause was assigned for the termination of his services and no opportunity was given to him of showing cause against the action taken against him. Before such termination the appellant was called upon to explain certain irregularities and was also asked to submit his explanation and to state why disciplinary action should not be taken against him. Certain preliminary enquiries were held against him but he was not heard therein. No regular departmental enquiry however followed and the proceedings were dropped. Claiming that he is a quasi-permanent servant he brought a suit against the Union of India alleging that the termination of his service was not justified. He prayed in the suit for a declaration that the termination of his service was illegal. He also claimed arrears of salary. The trial Court dismissed the suit and he appealed to the High Court