Travancore Tea Estates Co. Ltd.

Vs

State of Kerala

Civil Appeal No. 1698 of 1971

(H.R. Khanna, Jaswant Singh JJ)

11.10.1976

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave against the judgment of the Kerala High Court dismissing revision petition of the petitioner against the order in appeal of Appellate Tribunal whereby the tribunal refused to include certain items in the sales tax registration certificate of the appellant.

2. The appellant, Travancore Tea Estates Co. Ltd., is a company incorporated in England having it registered office in London. The appellant carries on the business of tea planting in India at Vandiperiyar in Peermade taluk in Kerala State. Eight tea estates are owned by the appellant in Peermade taluk. To manufacture tea grown in those estates, the appellant maintains separate tea factories in each of those estates. On an application made by the appellant for registration under the Central Sales Tax Act, 1956 (Act 74 of 1956) (hereinafter referred to as the Act), the sales tax authorities granted registration certificate to the appellant on January 9, 1963. Aggrieved by the non-inclusion of certain items of goods in the registration certificate, the appellant filed writ petition in the Kerala High Court. The High Court directed the Sales Tax Officer to decide the question regarding the inclusion of items in the light of the decisions of this Court in J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer (16 STC 563 : (1965) 1 SCR 900 : AIR 1965 SC 1310) and Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes (16 STC 259 : AIR 1965 SC 891). The Sales Tax Officer thereafter allowed the inclusion of some of the items of goods asked for by the appellant in the registration certificate but refused to include certain other goods in that certificate. The appellant thereupon preferred appeal before the Appellate Assistant Commissioner of Sales Tax, Kottayam, who partly allowed the appeal by directing further inclusion of certain items. The Appellate Assistant Commissioner, however, declined to include the following items in the certificate in respect of which prayer had been made by the appellant :

> (1) Fertilizers, chemicals, weedicides, insecticides, fungicides and pesticides for use in the tea cultivation;
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> (2) Cement and other building materials for installing and housing tea machinery and equipments;
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> (3) Building materials, iron and hosepipes, sanitary fittings for use in estates and estate factories;
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> (4) Weighing and measuring and packing equipments for use in tea estates; and

(5) All other articles and things for use in manufacture and processing of sale of tea.

The appellant then took the matter in further appeal before the Appellate Tribunal and prayed for the inclusion in the certificate of the above mentioned items. The Appellate Tribunal did not accept the prayer of the appellant and dismissed the appeal. Revision petition was thereupon filed by the appellant before the Kerala High Court against the order of the tribunal.

3. In appeal before the High Court it was stated on behalf of the appellant in respect of the first item relating to fertilizers, chemicals, weedicides and insecticides, that they were used for cultivation of tea leaves. The contention of the appellant was that the growing and manufacturing of tea constituted one integrated process and therefore the items of goods required for growing tea should be deemed to be goods intended for use in the manufacture of tea within the meaning of Section 8(3)(b) of the Act. This contention had also been advanced by the appellant earlier before the tribunal but the tribunal rejected this contention as in its view "the legislature has not included production by agriculture as on of the operations for which goods can be purchased under Section 8 of the Central Sales Tax Act." The tribunal further held that merely because the agricultural process of the company is connected with the process of manufacture, production of tea did not form part of the manufacture and processing of tea. The High Court disagreed with this reasoning of the tribunal and observed that the expression "in the manufacture of goods" in Section 8(3)(b) of the Act normally encompasses the entire process carried on by the dealer of converting the raw material into finished goods. In the opinion of the High Court, the growing of tea leaves was so integrally connected with the process of manufacturing tea. This circumstance, however, in the opinion of the High Court, by itself was not sufficient to make the goods eligible for inclusion in the registration certificates. The High Court accordingly observed :

> Under Rule 13 read with Section 8(3)(b) the use of the goods in the manufacture or processing of goods for sale will not be a sufficient ground for inclusion in the certificate. The further requirement is that the goods must be for use as raw materials or processing materials or machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants. The first item, namely, fertilizers, chemicals, insecticides, etc. in our opinion cannot fall within the category of a raw material or processing material for machinery etc. The learned Counsel for the company sought to contend that fertilisers, chemicals, etc. would come within the category of stores mentioned in Section 8(3)(b) and that as such it is eligible for specification in the certificate. We are unable to agree with this submission. The word 'stores' in the context in which it appears in Rule 13 has to be necessarily goods intended for use in the manufacture or processing of goods for sale and it is not possible to hold that fertilizers, chemicals, weedicides, insecticides, etc. can come within this category. They are not in any way directly connected with the manufacturing or processing of tea. As pointed out earlier, the expression 'in the manufacture' can take within its compass only processes which are directly related to the actual production. As such claim for inclusion of this item in the sales tax registration certificate cannot be supported.

The prayer of the appellant regarding items (2), (3) and (4) was also disallowed in the light of the observations of this Court in the case of J. K. Cotton Spinning & Weaving Mills Co. Ltd. Item (5), in the opinion of the High Court, was too vague and indefinite to deserve inclusion in the certificate. In the result the revision petition was dismissed.

4. Before dealing with the contentions advanced, it may be useful to refer to the relevant provisions. Section 7 of the Act makes provision for registration of dealers. Section 8 of the Act deals with rates of tax on sales in the course of inter-State trade or commerce. Clause (b) of sub-section (1) of that section provides that every dealer, who in the course of inter-State trade or commerce sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) shall be liable to pay tax under this Act which shall be 3 per cent of his turnover. The percentage before July 1, 1966 was two. Sub-section 3(b) reads as under :

> (3) The goods referred to in clause (b) of sub-section (1) -
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> (b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power :-
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> The Central Sales Tax (Registration and Turnover) Rules, 1957 have been framed by the Central Government. Rule 13 of the rule reads as under :
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> 13. The goods referred to in clause (b) of sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing or goods for sale, or in mining, or in the generation of electricity, or any other form of power.

5. The question with which we are concerned in this appeal is whether the items of goods in respect of which prayer of the appellant for being included in the registration certificate was refuse, answer to the description of goods as given in the above rule. Mr. Desai on behalf of the appellant has not pressed the case of the appellant in respect of item (5) which was found by the High Court to be vague and indefinite. He has also not made any submission in respect of items (2) and (3) relating to cement and building materials. The main contention of Mr. Desai has related to item (1) pertaining to fertilisers, chemicals, weedicides, insecticides, fungicides and pesticides for use in tea cultivation. According to the learned Counsel, cultivation and the growing of tea leaves was so integrally connected with the manufacture of tea that is could be taken to be a part of the process of manufacturing tea. As fertilisers and other goods mentioned in item (1) were needed for tea cultivation, the same should, according to the learned Counsel, be held to be intended for use in the manufacture or processing of tea for sale. Regarding item (4), the case of the appellant is that though weighing equipment used in the factories has been allowed to be included in the certificate, the weighing equipment used for the purpose of cultivation has not been included in the certificate. The weighing equipment to be used for cultivation should also, it is urge, be included in the certificate.

6. The above contentions have been controverted by Mr. Harindar Nath, and he has urged that neither the goods mentioned in item (1) nor the weighing equipment needed for cultivation are directly connected with the process of manufacturing tea.

7. After giving the matter our earnest consideration we are of the view that the contention of Mr. Harindra Nath is well-founded.

8. Rule 13 has been the subject-matter of two decisions of this Court. In the case of Indian Copper Corporation, the assessee was a dealer engaged both in mining operations of copper and iron ore and the manufacturing of finished products from the ore for sale. This Court held that the two processes being interdependent, it would be impossible to exclude vehicles which are used for removing from the place where the mining operations were concluded to the factory where the manufacturing process started, from the registration certificate. The expression "goods intended for use in the manufacturing or processing of goods for sale" was held to include such vehicles as were intended to be used for removal of processed goods from the factory to the place of storage. The mere fact that there is a statutory obligation imposed upon the owner of the factory or the mine to maintain hospital facilities would not, in the opinion of this Court, supply a connection between the goods and the manufacturing or processing of goods or the mining operations so as to make them goods intended for use in those operations. The expression "intended to be used", it was further held, cannot be equated with "likely to facilitate" the conduct of the business of manufacturing or of processing goods or of mining.

9. In J. K. Cotton Spinning & Weaving Mills Co. Ltd. the appellant manufactured for sale cotton textiles, tiles and other commodities. Certain items of goods in the certificate of registration of the appellant were deleted by the sales tax authorities on the ground that they had been earlier erroneously included in the certificate. This Court in that context dealt with the scope and ambit of Section 8(3)(b) of the Act read with Rule 13. It was held that the expression "in the manufacture of goods" in Section 8(3)(b) should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods, required in that process would fall within the expression "in the manufacture of goods." It was further held that the process of designing might be distinct from the actual process turning out finished goods. But there was no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" was held to take in within its compass all processes which are directly related to the actual production. Drawing and photographic materials directly related to the actual production of goods were held to be goods intended for use "in the manufacture of goods." Building material, including lime and cement, not required in the manufacture of tiles for sale was, however, held to be not raw material in the manufacture or processing of goods or even as "plant."

10. We may now turn to the present case. The question which essentially arises for determination is whether fertilisers and other goods mentioned in item (1) are intended for use by the appellant as equipment or stores in the manufacture or processing of tea meant for sale, as urged on behalf of the appellant. The controversy between the parties has centered round the point as to whether fertilisers and other goods mentioned in item (1) can be said to be goods intended for use in the manufacture or processing of tea meant for sale. So far as this question is concerned, we find that the growing and plucking of tea leaves from the plants and the processing of those leaves in the factories are parts of a continued activity. The assertion of Mr. Desai that the tea leaves would lose their value unless they are processed in the factory soon after they are plucked is not being questioned. It does not, however, follow from that the cultivation of tea plants and the growth of tea leaves is not something distinct from the manufacturing process to which tea leaves are subjected in the factories. The fact that the timelag between the plucking of tea leaves and their being subjected to manufacturing process in the factories is very little would not detract from the conclusion that the cultivation and growth of tea plants and leaves is something distinct and separate from the manufacturing process to which those leaves are subjected in the factories for turning them into tea

meant for sale. Income which is realised by sale of tea by a tea company which grows tea on its land and thereafter subjects it to manufacturing process in its factory is an integrated income. Such income consists of two elements or components. One element or component consists of the agricultural income which is yielded in the form of green leaves purely by the land over which tea plants are grown. The second element or component consists of non-agricultural income which is the result of subjecting green leaves which are plucked from the tea plants grown on the land to the particular manufacturing process in the factory of the tea company. Rule 24 of the Income-tax Rules, 1922 and Rule 8 of the Income-tax Rules, 1962 prescribe the formula which should be adopted for apportioning the income realised as a result of the sale of tea after it is grown and subjected to the manufacturing process in the factory. Sixty per cent is taken to be agricultural income and the same consists of the first element or component, while 40 per cent represents non-agricultural income and the same comprises the second element or component [see Tea Estate India (P) Ltd. v. C. I. T.((1976) 4 SCC 446)].

11. Fertilisers and the other goods mentioned in item (1) are intended for use not in the manufacturing process in respect of tea meant for sale; they are essentially needed for the cultivation and growth of tea plants and leaves. There is no direct relationship between use of fertilisers and other goods mentioned in item (1) and the manufacturing process in respect of tea meant for sale. What is meant by manufacture of tea is clear from pages 863-4 of Vol. 21 of Encyclopedia Britannica (1965 Edition) wherein it is observed :

> Black and green teas result from different manufacturing processes applied to the same king of leaf. After plucking, the leaf is withered by being spread on bamboo trays in the sun, or on withering tats within doors. The object of rolling 18 to 24 hours. Next it is rolled by hand or by machines. The object of rolling is to break the leaf cells and liberate the juices and enzymes sealed within. The roll may last as long as three hours. Then it is taken to the roll breaker and green leaf shifting machine and after that fermented in baskets, on glass shelves or on cool cement floors under damp cloths for 1/2 or 41/2 hours. The firing process (drying) follows, in pans or baskets or in firing machines, It takes 30 to 40 min. The difference between black tea and green tea is the result of manipulation Green tea is manufactured by steaming without fermentation in a perforated cylinder or boiler, thus retaining some of the green colour. Black tea is allowed to ferment after being rolled and before firing. In the case of black tea the process of fermentation, or oxidation, reduces the astringency of the leaf and, it is claimed, develops the colour and aroma of the liquor. In making green tea, the fermentation process is arrested by steaming the leaf while it is green and by light rolling before drying.

12. The cultivation and growth of tea plants and leaves cannot, in our opinion, be comprehended in the expression "in the manufacture or processing of goods for sale." Cultivation and growth of tea plants no doubt results in the production of raw material in the form of green tea leaves which are ultimately processed into tea meant for sale, such cultivation and growth are in the very nature of things prior to the manufacturing process and do not answer to the description of manufacture and processing of tea meant for sale. There is a vital difference between an agricultural operation and a manufacturing process, and the same should not be lost sight of. What is needed for being used purely in an agricultural operation cannot be held to be goods required for use in a manufacturing process. We are, therefore, of the opinion that the appellant was not entitled to get fertilisers and other goods mentioned in item (1) included in the registration certificate. The same reasoning would also hold good in respect of weighing machines used not in the factories but in the tea fields.

13. The appeal consequently fails and is dismissed with costs.

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