KERALA HIGH COURT

Deputy Commissioner

Vs

A.P. Raman

(M Ansari, C.J. and T.C. Raghavan, J.)

22.02.1960

JUDGMENT

T.C. Raghavan, J.

1. The Deputy Commissioner of Agricultural Incometax and Sales Tax, Kerala State, North Zone, Kozhikode, has filed this revision petition against the order of the Kerala Sales Tax Appellate Tribunal, Trivandrum. The respondent is a landlord having extensive cocoanut gardens and agricultural lands. He sold cocoanut fibre made out of the husks of the cocoanuts plucked from his own gardens in the year 1954-55 for Rs. 10,784-4-11. The Assistant Commercial Tax Officer proposed to levy sales tax on this amount. The respondent objected to the levy on two grounds, firstly, that he was not a dealer within the meaning of the Madras General Sales Tax Act and secondly, that the cocoanut fibre sold by him constituted agricultural or horticultural produce grown by him on his own land and hence the sales of such produce were not liable to tax under the proviso to Section 2(i) of the Act. The Assistant Commercial Tax Officer negatived both these contentions and assessed the respondent. The respondent appealed to the Commercial Tax Officer, Malabar South, who agreeing with the Assistant Commercial Tax Officer, dismissed the appeal. On further appeal by the respondent before the Appellate Tribunal, the Tribunal reversed the decision of the Commercial Tax Officer and allowed the appeal holding that cocoanut fibre was a horticultural produce falling within the exclusion of the proviso under Section 2(1). The further question, whether the respondent was a dealer coming within the meaning of the Act was not decided by the Tribunal as a decision on that question was not necessary for the disposal of the appeal. Hence the Tribunal left that question open. The Revenue has, as stated already, preferred the present revision petition.

2. It may be stated that the only question before us is whether cocoanut fibre, in the circumstances of the present case, is agricultural or horticultural produce.

3. The learned Government Pleader contends that the test in such cases should be to see whether the article, the sale of which is sought to be taxed, is something different from agricultural or

horticultural produce, that is, whether it has changed its agricultural or horticultural nature at the time of sale and not to see whether the process to which the article is put before such sale is a manufacturing process. According to him the cocoanut husks in the present case have changed their agricultural or horticultural nature and have assumed the character of fibre, a produce different from the original horticultural produce, cocoanut husks. He however urges further that the process undergone by the husks in the present case to reach the state of fibre is really a manufacture and hence the fibre is a manufactured article. He has invited our attention to two decisions of the Madras High Court dealing with the question whether jaggery was an agricultural produce within Section 2(i) of the Act. The first case is K.P. *Vaidyanatha Iyer v. The State of Madras*[1] In that case their Lordships of the Madras High Court held that the conversion of sugarcane into jaggery was a process of manufacture and hence the.exemption contained in the proviso to Section 2(i) did not apply to the sale of jaggery. The second case is The *State of Madras v. V.R.B. Gopalaratnam Gupta*[2] In this case Krishnaswami Nayudu, J., followed the Division Bench ruling in the previous case and held that jaggery was not an agricultural or horticultural produce. On the other hand, the learned counsel for the respondent referred us to a recent decision of the Bombay High Court in *R.B.N.S. Borawake v. The State of Bombay*[3] In this case Shah and S.T. Desai, JJ., held that though gur could not be regarded as an agricultural produce "grown on land", it was still agricultural produce in a form in which it was converted for the purpose of transportation to the market or for preventing deterioration. According to their Lordships if an agriculturist with a view to prevent deterioration and for the purpose of facilitating transportation converts the sugar-cane grown by him into gur, the sugar-cane does not cease to be agricultural produce and become a manufactured article liable to tax. The respondent's learned counsel further invited our attention to two decisions of the Madras High Court where the article involved was arecanut. The first case is The *State of Madras v. R. Saravana Pillai*[4] In that case Rajagopalan and Rajagopala Ayyangar, JJ., held that arecanuts peeled, sliced, boiled and dried and thus made fit to be marketed continued to be horticultural produce within the meaning of the proviso to Section 2(i). Their Lordships applied the test that is laid down in Section 2(1)(b)(ii) of the Indian Income-tax Act, viz., "any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market" to fix the "bounds" of the processes within which the agricultural or horticultural produce retained its original character and applying this test, their Lordships held that arecanut after the aforesaid processes was still a horticultural produce and hence exempted from taxation. The second case is The State of Madras, In re [1956] 7 S.T.C. 546, where the same learned Judges followed their previous decision. Our attention has also been drawn to another old decision of the Patna High Court in J.M. Casey v. Commissioner of Income tax, Bihar and Orissa (1930) 4 I.T.C. 259. Courtney Terrell, C.J., held in that case that the whole of the profits derived from the manufacture of sisal fibre was agricultural income within the meaning of the Income-tax Act and as such was exempt from assessment to income-tax. That was a case under the Income-tax Act and naturally the test applied was that the process ordinarily employed by the cultivator of the aloe plant in order to render it fit to be taken to market did not make the income derived from a sale thereof any the less agricultural income.

4. The word "agricultural" or "horticultural" is not defined in the Madras General Sales Tax Act. So it would be of advantage to consider the definition of agricultural income in the Indian Income-tax Act and the adaptability of the tests applied in that Act to the Sales Tax Act. From a consideration of the aforesaid definition and tests and the above decisions we come to the conclusion that the question whether a particular process alters the character of the agricultural or horticultural produce to that of manufactured article is a question of fact, but as a general guiding principle of law it can be safely laid down that if an agriculturist puts the produce gathered from his lands to certain minimum processes ordinarily employed by an agriculturist to make it really marketable or more marketable or to make it fit to be taken to market, it cannot be said that the produce ceases to be an agricultural or horticultural produce. Regarding the two Madras cases dealing with jaggery in *K.P. Vaidyandtha Iyer v. The State of Madras*[5] *and The State of Madras v. V.R.B. Gopalaratnam Gupta*[6] we express no opinion. In those two cases the learned Judges proceeded on the basis that there was market for sugar-cane in the locality. In the present case the green husks, if they are not sold within a few days of de-husking, will dry up and lose their value. The only use to which the husks could thereafter be put is as fuel or firewood. It may be that there is some market for green husks also in the locality. But it is only a very limited and precarious one. So if an agriculturist, who collects cocoanuts from his own gardens, de-husks them and in order to preserve the value and prevent the deterioration of the husks, converts the husks into fibre by processes ordinarily employed by cultivators, human labour in the present case, only to make the husks a really marketable commodity, fibre and to make it fit to be taken to the market, it cannot be said that the husks have ceased to be horticultural produce. We are also of the view that the husks in being converted into fibre have not really changed their nature so much as to make them any the less horticultural produce. According to us the process that has been applied in this case is only the minimum that is required to make the husks really marketable or more marketable and also the minimum that is required to preserve the husks from deterioration and loss of value. It is also the minimum that is required to make it fit to be taken to the market. In these circumstances it cannot be said that the fibre is not an horticultural produce.

5. In the above view we hold that the decision of the Tribunal is correct and hence we dismiss the revision petition with costs.

Cases Referred.

1[1954] 5 S.T.C. 94
2[1957] 8 S.T.C. 16
3[1960] 11 S.T.C. 8
4[1956] 7 S.T.C. 541
5[1954] 5 S.T.C. 94
6[1957] 8 S.T.C. 16