KERALA HIGH COURT

Kuttirayin

Vs

State of Kerala

T.R.C. 76 of 1975 and 4 and 20 of 1976

(P. Govindan Nair C.J. and George Vadakkel, J.)

09.07.1976

JUDGMENT

George Vadakkel, J.

1. The tax revision cases raise a common question of law, viz., when timber logs are converted into sizes, planks and scantlings, are the logs consumed in the manufacture of other goods so as to attract tax liability under Section 5A(l)(a) of the Kerala General Sales Tax Act, 1963. Section 5A(l)(a) reads:

> "5A. Levy of purchase tax.-(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Section 5, and either-
> (a) consumes such goods in the manufacture of other goods for sale or otherwise; or....
> (b) xx xx
> (c) xx xx
> shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for that year at the rates mentioned in Section 5."

2. That timber logs purchased by the assessees are subjected to some treatment, labor and manipulation, namely, sawing and, very often, some processing prior to that, and that as a result thereof, some change or transformation occurs to those logs admit of no doubt. But are the timber logs "consumed in the manufacture of other goods". It appears to us that the verb "consume" in the provision read above means: "to use up". In that view it cannot also be denied that by sawing and converting the timber logs into sizes, planks or scantlings these logs are consumed or used up. The further question is : Are they so consumed or used up "in the manufacture of other goods". If the result of the change or transformation of the logs is such that commercially new and different articles emerge, there can be no doubt that the logs have been

consumed or used up in the manufacture of other goods. Shortly stated, the test is : Are the goods the same articles of merchandise or different articles of merchandise as understood in commercial language or in common parlance, before and after the conversion or change. If different, the products obtained on conversion are the result of manufacture, and if same, they are not.

3. The Calcutta High Court in *Shaw Bros, and Co. v. State of West Bengal*[1], took the view that planks sawed out of logs constitute a new kind of commodity different from logs themselves. Though in *State of Orissa v. Rajani Timber Traders*[2], the Orissa High Court held that sized timber is a different commodity from timber logs, in a subsequent decision, *Krupasindhu Sahu & Sons v. State of Orissa*[3], that court said that that will depend upon as to how or in what manner the logs were sized and how they lost the original character. Considering the question as to whether "item 63-Timber" in the First Schedule of the Andhra Pradesh Sales Tax Act is comprehensive enough to include planks, rafters, cut sizes, etc., the Andhra Pradesh High Court in *Ramaswamy v. State of Andhra Pradesh*[4], held that they would fall under that entry and observed that merely because they are sawn or cut from logs of wood their character is not altered and they would continue to be raw materials which by themselves and in the same form cannot be put to construction purposes. But we are afraid that this decision was not concerned with the question raised in these cases. And so far as that question is concerned, we are of the view, that it is of no consequence that timber after sawing or cutting still is raw material for manufacture or construction of something else. One other decision to be noticed is *Sidhu Ram Atam Parkash v. State of Haryana*[5], where it was held that on conversion of a log into planks or rafters no new substance comes into being and, therefore, conversion will not be a manufacturing process. In the decision of the Supreme Court, *Union of India v. Delhi Cloth and General Mills*[6], which was relied on in *Sidhu Ram Atam Parkash v. State of Haryana*[7], that court has approvingly extracted a passage from an American judgment as quoted in Permanent Edition of Words and Phrases, Vol. 26. That passage reads:

> 'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labor and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

From this passage, it is clear that if the resulting produce is commercially a different article, the same is the result of a manufacturing process. The same proposition was stated by that court in the negative form in *Commissioner of Sales Tax v. Harbilas Rai & Sons*[8], when it said:

> "In our view, the word 'manufacture' has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. The decision of the Madhya Pradesh High Court might perhaps be justified on the ground that a printed or dyed cloth is commercially a different article from the cloth which is purchased and printed or dyed."

[1](1963) 14 STC 878
[2]1974 34 STC 374 (Ori)
[3](1975) 35 STC 270 (Ori)
[4](1973) 32 STC 309
[5](1974) 34 STC 344
[6] AIR 1963 SC 791
[7](1974) 34 STC 344

[8](1968) 21 STC 17 (SC)

4. In *Pyare Lal Khushwant Rai v. State of Punjab*[9], on which some reliance was sought to be placed by the learned counsel for the petitioners, it was held that certain trees which could be used only as fuel wood would remain fuel wood even after felling of those trees and cutting them into small pieces and that, therefore, no manufacturing process was involved in chopping off the branches of these trees or in cutting them into smaller pieces. We need only observe that that decision is of no assistance to the assessees. We also notice that on this question a different view was taken by the Calcutta High Court in *Bachha Tewari v. Divisional Forest Officer*[10], In so far as none of the cases before us raises that question, we refrain from expressing any opinion as regards the above matter. So also we are not expressing any view as regards the question of felling of standing timber and their conversion into ballis, discussed in *Mohanlal Vishram v. Commissioner of Sales Tax*[11], also a decision relied on by the learned counsel for the petitioners.

5. We do not think that the decision of this court in *National Timber Co. v. State of Kerala*[12], would advance the assessees' case. No doubt it was held in that case that:

> "In purchasing tree-growth, what is purchased is really the timber and the firewood available from the tree-growth, as, in the case of a purchase of standing crops, the purchase is of the grain and the hay that the crops yield."

We are not prepared to extend the analogy of standing crops to timber logs and hold that when one purchases timber logs, he really purchases planks and scantlings.

6. It was contended on behalf of the assessees that the question to be considered is whether a piece of an article can be considered as different from the whole. We are afraid that that is not the real test, but as pointed out earlier, whether the whole and the pieces obtained out of it by application of labour remain essentially the same commercial article. This, in our view, is supported by the decision of the Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra*[13], again, another decision that reiterated the commercial identity test as explained above, where it was said, no doubt in another context that:

> "The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made."

It was also (once again) stated therein:-

> "As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined

[9](1974) 34 STC 341 [11](1969) 24 STC 101 (SC) [13](1976) 37 STC 319

[10](1963) 14 STC 1067 [12](1973) 31 STC 572 (Ker)

> together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

7. Applying the test as formulated above, we are of the view that planks and scantlings are commercial articles different from the logs from which they are sawn. At any rate, they do not remain the same commercial article, for one who requires planks or scantlings would not go to a timber-yard and ask for timber logs or vice versa.

8. So far as sizes are concerned we are not aware of any such commodity. If timber logs are cut into sizes to facilitate transport, stacking, etc., it cannot be said that commercial articles different from timber logs emerge. On the other hand, logs sized into beams, sleepers, etc., are different commercial articles which are sold and purchased as beams, sleepers, etc., and not as timber logs.

9. T.R.C. Nos. 74 to 76 of 1975 and 20 of 1976 are by the department and the other, two by the assessees. In all these the question of law raised is the same as stated in the beginning of this judgment. In all these cases, the turnover of the respective assessee has to be recomputed in the light of this judgment. We, therefore, set aside the Tribunal's orders in these cases and remit them to the Appellate Tribunal. In the circumstances of the case, we direct the parties to suffer their costs.

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