KERALA HIGH COURT

Deputy Commissioner of Sales Tax

Vs

Pio Food Packers

TRC 2 of 1976

(Gopalan Nambiyar, C.J. and Balagangadharan Nair, J.)

24.01.1978

JUDGMENT

Gopalan Nambiyar, C.J.

1. Section 5A of the General Sales Tax Act, 1963 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) dispases of such good in any manner other than by way of sale in the State; or
> (c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce.
> 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 a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5."

(The rest of the Section is not material and is omitted.) The assessee in this case purchased pineapple, washed, it, removed the inedible portions, namely, the end, the crown, the skin and the core, sliced it, filled the slices in cans with some sugar added as preservative, sealed under temperature and put into boiling water for sterilisation and thus prepared pineapple slices. It prepared pineapple juice by crushing the pineapple and pressing it after removing the inedible portions. The juice thus obtained was sweetened, filled in cans, sealed under temperature and put in boiling water for sterilization. It prepared jam and squash with pineapple by well known processes. In respect of these operations of the assessee, for the year 1973-74, purchases of pineapple amounted to Rs. 3,84,138.89. It was conceded before the appellate tribunal that pineapple jam and pineapple squash would attract liability of tax under Section 5A; so that, in respect of these two things the question of liability no longer survives. Out of the remaining two

items, namely, pineapple slices and pineapple juice, the Tribunal found that juice was also covered by Section 5A of the Act. The controversy no longer survive, as the assessee has not chosen to canvass the matter further. But it held that the pineapple slices did not fell within the ambit of the section and turnover in respect of the same was not taxable. This is the only controversy that survives, and is agitated in this tax revision at the instance of the State.

2. The relevant clause in the section which has application is Section 5A(1)(a) : and the conditions to be established before liability can be attracted are : (1) that the goods purchased have been consumed : (2) that such consumption was in the process of manufacture; and (3) that the manufacture was of other goods for sale. It is necessary to concentrate on the expressions underlined, namely, "consumption", "manufacture" and "other goods" The last of these is to be noticed only to emphasis that the resultant product must be distinct and different from the goods consumed in the process of manufacture. The expression "consume" has been defined in the Readers Digests Great Encyclopedic Dictionary, Volume I, as to "use up", "to make away with" etc. "Use", itself is defined in Volume II, page 965 as "use up" or "exhaust". Other well-known dictionaries also give practically the same meaning for the term. The expression came in for judicial notice in *Anwarkhan Mahboob Co. v. State of Bombay* in connection with the explanation to Article 286(1) of the Constitution. It was observed :

> "Reverting to the instance of the cotton mentioned above, it will be proper to hold that when raw cotton is delivered in State A for being ginned in that State, it is delivered for consumption in Stated A; when ginned cotton is delivered in State B for being spun into yearn, it is delivered for consumption in State B; when yearn is delivered in State C for being woven into cloth in that State, it is delivered for consumption in State C; when woven cloth is delivered in Stated for being made by tailor in that State into wearing apparel there is delivery of cloth for consumption in State E for being sold as dress in that State, it is delivery of wearing apparel for consumption in State E. Except at the final stage of consumption which consists in using the finished commodity as an article of clothing there will be noticed at each stage of production the bringing into existence of a commercial commodity different from what was received by the producers. The conversion of a commodity into a different commercial commodity by subjecting it to some processing, is consumption within the meaning of the Explanation to Article 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up. At one stage of the argument what Mr. Pathak appeared to insist was that there must be destruction of substance of the thing before the thing can be said to be consumed. That takes us nowhere, because we have still to find out what is meant by destruction of the substance. It may well be said that when a commodity is converted its former identity is destroyed and so there is destruction of the substance, to satisfy the test suggested by the learned counsel. We think it unnecessary however to enter into a discussion of what amounts to "destruction" as even without deciding, whether there was destruction or not, we think it proper and reasonable to say that whenever a commodity is so dealt with as to change it into another commercial commodity there is consumption of the first commodity within the meaning of the

Explanation to Art. 286".

[underline ours]

The term "manufacture" is explained in Corpus Juris Secundum Volume 55 at page 685, as follows :

> "In order to constitute manufacturing the original material must undergo a transformation so that a new and different article or product emerges; but what constitutes a new and different article is a question which has caused considerable difficulty in the courts.
> In determining whether an article is or is not a manufacture, or whether a process or operation is or is not manufacturing, one of the important factors is the extent of the change that has been effected of the change that has been effected in the original material, since, while every change in an article is the result of treatment, labour and manipulation, every change is not manufacture; something more is necessary and the application of labour must be carried out to such an extent that the article suffers a species of transformation and a new and different article emerges. This characteristic has been the subject of considerable discussion, and the courts have experienced some difficulty in determining what constitutes a new and different article."

In Strouds Judicial Dictionary (3rd Edition), the meaning of the expression "manufacture" is thus explained :

> "The word manufacture said Abbott, C.J., in R.V. Wheeler, has been generally understood to denote either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article or in some other useful purpose as a stocking frame, or a steam engine for raising water from mines; or it may perhaps extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner or of a better or more useful kind. No mere philosophical or abstract principle can answer to the word "manufacture". Something of a corporeal and substantial nature, something that can be made by man from the matters subjected to his art and skill or at least some new mode of employing practically his art and skill is required to satisfy the word."

It is clear from the explanation of the term manufacture in the two treatises noticed, that philosophy and sophistry must have their due share in determining whether a process of manufacture has resulted in the production of other goods. This should explain the apparently conflicting conclusions from almost identical facts and circumstances noticeable to which we shall refer, and which have been stressed by counsel on either side in support of their respective contentions.

3. We may start with the case strongly pressed by the Government Pleader, viz., the Supreme Courts pronouncement in *Ganesh Trading Co. vs. State of Haryana*[1], where the question for consideration was whether paddy and rice can be regarded identical goods for the purpose of imposition of sales tax. The question arose with respect to an exemption was available if the very paddy in respect of which purchase tax was levied was, sold, and not, if that paddy is converted into rice and sold. The argument was that paddy and rice being identical goods, the dehusking of paddy will not result in a loss of identity and convert the rice into a different commodity. The Supreme Court stated that the essence of the matter was to find out whether in commercial circles paddy is considered as identical with rice. It referred to its decision in *Ramavatar Budhaiprasad vs. Assistant Sales tax Officer, Akola*[2], where the question arose whether betal leaves could be considered as vegetables. Although the dictionary meaning indicated that it was, the Supreme Court ruled that it was not, as the term had to be understood in its popular sense, that is, sense which people conversant with the subject matter with which the statue was dealing, would attribute to it. It was stressed before the Supreme Court that the meaning in commercial circles was not material and that what is of the essence is the identity of the goods. The decision in *State of Madhya Bharat vs. Hiralal*[3], was cited in support, where the question arose whether scrap iron locally purchased, and imported iron plates, were the same as bars, flats and plates into which they were the same as bars, flats and plates into which they were converted in the mills and sold in the market. It was ruled that the products did not cease to be "iron and steel" to which category the scrap iron originally purchased and the imported iron plates belonged, and which was the relevant item for purposes of taxation. Reliance was placed on the decision in *Tungabhadra Industries Ltd. vs. Comml. Tax Officer*[4], There it was ruled that groundnut oil, refined and hardened, and even treated with the addition of hydrogen atoms still continued to be groundnut oil; the essential nature of the goods had not changed, despite this objective technical process. In the light of the decision, as stated in Ganesh Trading Companys case, the identity of the goods is one of the essential elements to be borne in mind in dealing with the nature of the transaction.

4. We may next refer to the Division Bench rulings of this Court in *Kuttirayin & Co. vs. State of Kerala & others*[5], and *Pulpally Devaswom vs. State of Kerala*[6], After surveying exhaustively the various decision, this Court stressed what was called the commercial identity test, which according to it was supported by the decision of the Supreme Court in *State of Tamil Nadu vs. Pyare Lal Malhotra*[7], In the Pulpally Devaswoms case, it was ruled that the sale of spontaneously grown trees by the assessee cannot be said to attract sales tax; the assessee cannot be said to have consumed the goods which he produced for the manufacture of other goods; and that from the mere fact that the trees were felled and shaped for convenient carriage, one cannot reach the conclusion that the assessee had "manufactured other goods". In T.R.C. Nos. 22 of 1968 and 26 of 1969 arecanuts dried and scented and packed were held to be a commercially different produce from raw arecanuts. So were rubber soles and straps treated separately from the combination of the two, assembled to form chappals and sold as such in the market. (Vide *Achamma Sebastian vs. State of Kerala*[8], The decisions

[1]32 S.T.C. 623 [3]17 S.T.C. 313 [5](1976 KLT 442)
[2]12 S.T.C. 286 [4]11 STC 827 [6](1977 KLT 549)
[7](37 STC 319) [8](1967 KLT 832)

constitute an interesting commentary on the principle that is stated that in the exposition of the terms manufacture of other goods for sale in Section 5A (1)(a) of the Act, philosophy and sophistry are bound to have free play.

5. We should refer to the instructive decision of the American Supreme Court in East Taxes Lines vs. Frozen Food Express,. The question there for consideration was whether the fresh and frozen dressed poultry are exempt commodities under Article 203(B)(6) of the Interstate Commerce Act. The exemption was in respect of "agricultural ..... commodities (not including manufactured products thereof)". After noticing the history of the changes in legislatives drafting, before the Section merged in its final shape, it was observed :

> "It is plain from this change that the exemption of "agricultural commodities" was considerably broadened by making clear that the exemption was lost not by incidental or preliminary processing but by manufacturing. Killing, dressing, and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk from pasteurizing, homogenizing, adding vitamin concentrates, standardizing, and bottling. Yet the Commission agrees that milk so processed is not a "manufactures product, but falls within the meaning of the "agricultural" exemption. 52 MCC 511, 551. The Commission also agrees that ginned cotton and cottonseed are exempt. Id. 52 MCC 523, 524. But there is hardly less difference between cotton in the filed and cotton at the gin or in the bale or between cottonseed in the field and cottonseed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cottonseed, as well as dressed chicken, have gone through a processing stage. But neither has been "manufactured" in the normal sense of the word. The court in *Anheuser-Bush Brewing Asso. vs. United States*[9], in a case arising under the tariff laws, said,
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> "... Manufacture implies a change but every change is not manufactured and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary, as set forth and illustrated in *Hartanft vs. Wiegmann*[10]. There must be transformation; a new and different article must emerge, having a distinctive name, character or use.
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> In that case imported corks were made ready for use in beer bottled by stamping, by removal of dust, meal, bugs, and worms by washing and steaming to remove tannin and to increase elasticity, and by drying. Plainly, the corks were processed. But the Court held they had not been manufactured within the drawback provision of the tariff laws. And see *Hartanft vs. Wiegmann*[11], *United Stated vs. Dudley*[12],
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> A chicken that has been killed and dressed is still a chicken. Removal of its feathers and entrails has made it ready for market. But we cannot conclude that this processing which merely makes the chicken marketable turns it into a "manufactured" commodity.
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> At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing

[9]207 US 556, 562, 52 L ed 336, 338, 285 S Ct 204

[10]121 US 609

[11]121 US. 609, 615, 30 L ed 1012, 1014, 7 S Ct 1240

[12]174 Us 670, 43 L ed 1129, 19 S Ct 801

stage we cannot say that it has been "manufactured" within the meaning of Art. 203 (b)

(6)." Burton J. joined by Frankfurter J., Minton J. and Harlan J. dissented stating that the commissions finding that dressed poultry was nonexempt was neither arbitrary nor unreasonable, and was within the rule that administrative determinations of fact will not be set aside if there is evidence to support them. To the same category belongs the decision in *Commissioner of Sales Tax vs. Harbilas Rai & Sons*[13], The question there considered was whether pig bristles plucked from pigs, boiled, washed with soap and other chemicals, sorted out according to their colours, tied in separate bundles of different sizes, and despatched to foreign countries were not liable to be taxed as manufactured goods under Explanation II(ii) to Section 2(h) of the U.P. Sales Tax Act, 1948. Section 2(h) defined "sale", and the relevant part of the Explanation enacted that the sale of any goods which are produced or manufactured in Uttar Pradesh by the producer or manufacturer shall, wherever the delivery or contract of sale is made, be deemed to have taken place in Uttar Pradesh. It was held that there was no manufacture of the goods within the meaning of the Explanation. Observed the Supreme Court :

"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 cloth is commercially a different article from the cloth which is purchased and printed or dyed. In a present case, Devi Dass Gopal *Krishnan vs. The State of Punjab*, this Court considered the meaning of "manufacture" in Section 2(ff) of the Punjab General Sales Tax Act, 1948. Subba Rao, C.J. observed :

"On the other hand, the dictionary meaning of manufacture is transform or fashion raw materials into a changed form for use. When oil is prondced out of seeds the process certainly transforms raw material into different article for use. We cannot, therefore, accept this contention.

Now coming to Civil Appeal Nos. 39 to 43 of 1965, the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process manufacture. It is contended that the said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed. That part, it is clear that scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz., rolled steel sections. During the process becomes a new marketable commodity. The process is certainly one of manufacture.""

In Hiralas case it was ruled that manufactured goods consisting of steel rounds, flats, angles, plates, bars or similar goods in other forms and shapes could be taxed again, even if the material our of which they were made had already been subjected to sales tax once as iron and steel scrap. The mere fact, it was ruled, that the substance or raw

[13](21 S.T.C. 17)

material out of which it is made had been taxed in some commercial commodity, would make no

difference for purposes, of law of sales tax. The object is to tax the sale of the substance out of which it is made . Each commercial commodity becomes a separate object or taxation in a series of sales of that commercial commodity so long as it retains its identity as that commodity. Referring to this case in *State of Tamil Nadu vs. Pyare Lal Malhotra*[14], the Supreme Court explained the decision to be justified on the language of the provision giving exemption, which was in respect of sale by an importer or purchaser of "goods prepared from any metal other than gold or silver"; in other words, the Supreme Court pointed out, the question was whether exemption was given to the substance out of which goods were made. It was held that the raw material from which the goods were made was decisive for the purpose of the exemption, and that a mere change of the form of the substance did not matter. But in 37 S.T.C. 319 itself the Supreme Court pointed out that the same principle could not be applied to the interpretation of Section 14 of the Central Sales tax Act.

6. We are taken through the decision of the Supreme Court in *Sri Siddhi Vinayaka Coconut & Co. vs. State of A.P*[15]., where watery coconuts were held to be a different commodity from dried coconuts. But even here, some processing was involved in the conversion, such as putting them in the yard in the open, and drying them; and the resultant commodity is different from raw of watery coconuts. On the same principle can be explained the unreported judgment of this Court in T.R.C. Nos. 22 of 1968 and 26 of 1969 that arecanuts dried and processed and scented and packed and sold is a different produce from raw nuts. The difference in conclusions stems essentially from the approach and the difference in conclusions on the facts, and not on any matter principle. Philosophy and sophistry have played their due roles.

7. On the facts of this case we are of opinion that sliced pineapple, despite the rejection of the inedible portions, the core, and crown and the end of the fruit, and despite the processes involved in packing it into tin containers for being made available in the market, remains the same as pineapple, there is no consumption of the commodity; nor any process of manufacture of other goods.

8. The decision of the Supreme Court in *Tungabhadra Industries Ltd. vs. Comml. Tax Officer*[16], notices the illustration of a raw bananas being pealed, sliced and even sweetened with sugar or honey or the like; of orange being pealed and cleared or sliced for being made suitable for consumption; and of groundnut being pealed and got ready for roasting or consumption. In *Joseph vs. State of Kerala*[17], again, it was held that prawn pulp made out of raw prawns was not a commercially different article and that no manufacture was involved in making prawn pulp.

9. In the result, we hold that there is no warrant to interfere in revision with the decision of the Appellate Tribunal. We dismiss this revision petition but make no order as to costs.
Dismissed.

[14](37 STC 319)
[15](34 STC 103)
[16](11 S.T.C. 827)
[17](1967 KLJ 620)