BOMBAY HIGH COURT

Nilgiri Ceylon Tea Supplying Co

Vs.

The State of Bombay

Sales-tax Reference No. 5 of 1958

(Shah and S.T. Desai, JJ.)

09.07.1959

JUDGMENT

Shah, J.

1. Messrs Nilgiri Ceylon Tea Supplying Co. carry on business as dealers in tea in Bombay. They have been registered dealers under the Bombay Sales Tax Act, 1953. Messrs Nilgiri Ceylon Tea Supplying Co. who will be hereafter referred to as "the assessees" purchased diverse brands of tea and without the application of any mechanical or chemical processes mixed up the brands of tea purchased in bulk by them and sold the tea as tea mixture. The mixing, however, is not haphazard but according to the formula which was evolved by the assessees. In the assessment of sales tax the assessees claimed that the value of the tea purchased by them should be deducted from the turnover under section 8 of the Bombay Sales Tax Act, 1953. The Sales Tax Authorities did not accept the contention of the assessees having regard to the proviso to clause (a) of section 8 and did not allow deduction for the value of the tea purchased out of the turnover. The Sales Tax Tribunal also affirmed the view of the Sales Tax Authorities. The Sales Tax Tribunal has at the instance of the assessees, referred the questions :

> "(1) Whether on the facts and in the circumstances of this case, the petitioners (assessees) are entitled to a deduction from their turnover of sales under clause (a) of section 8 of the Bombay Sales Tax Act, 1953, of the amount of ₹ 1,17,052-6-0, being sales of goods purchased from registered dealers on or after the appointed day ? and
> (2) Whether the Tribunal was justified in not allowing the applicants (assessees) to show that a part of the goods sold by them had not been processed or altered, as the goods in question had been sold as orange pekoe, the original teas purchased also having been called by the same name and only teas of the same variety grown on different plantations had been mixed together ?"

2. Section 8 of the Bombay Sales Tax Act, 1953, so far as is "subject to the provisions of section 7, there shall be levied a sales tax on the turnover of sales of goods specified in column 1 of Schecdule B at the rate, if any, specified against them in column 2 of the said Schedule, after deducting from such turnover –

(a) sales of goods -
(i) which have been purchased from a registered dealer on or after the appointed day, or
(ii) on the purchase of which the dealer has paid or is liable to pay the purchase tax :

Provided that the goods have not been processed or altered in any manner after such purchase."

3. In the present case, there is no dispute that the assessees have purchased from registered dealers tea leaves in bulk after the appointed day and the sole question which falls to be determined is whether the assessees are entitled to deduct from their turnover the value of the goods purchased from registered dealers. The assessees contend that they are entitled to do so. The sales tax department contends that the goods which have been purchased by the assessees have been processed or altered after the purchase, and, therefore, deduction cannot be permitted. We are, therefore, called upon to decide whether on the facts and in the circumstances of the case there has been a processing or alteration in any manner of the different brands or varieties of tea purchased by the assessees. The expression "process" has not been defined in the Act. According to Webster's Dictionary "process" means

> "to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking".

In the present case, there has been nothing but a manual application of energy to the different quantities of tea purchased by the assessees in certain proportions so as to evolve a mixture of tea which was sold as tea mixture of the assessees. In our view, the quantities of tea purchased by the assessees cannot since the date of the purchases be regarded as processed within the meaning of the proviso to clause (a) of section 8 of the Act. There is not even application of mechanical force so as to subject the commodity to a process, manufacture, development, or preparation. The commodity has remained in the same condition. It is true that in the preparation of the tea mixture which is marketed, there may be some skill involved. But that, in our judgment, cannot be regarded as processing within the meaning of the proviso.

4. It is urged on behalf of the sales tax department that in any event there is alteration in the goods and if there be alteration in the goods since the purchase, the value of the goods paid to the registered dealer cannot be deducted from the turnover. It cannot however be said that in the preparation of the tea mixture there is any alteration in the goods. Undoubtedly by mixing up the

different varieties of tea purchased by the assessees there resulted a mixture in which the individuality of the components was obscured, but that in our judgment is not altenation within the meaning of the Act. The alteration contemplated by the legislature is some alteration in the nature or character of the goods. In the present case, in our view, there is neither processing nor alteration in any manner of the goods purchased by the assessees.

5. On that view of the case, the question No. 1 will be answered as follows :- "The assessees are entitled to a deduction from their turnover of sales under clause (a) of section 8 of the Bombay Sales Tax Act, 1953, of the amount of ₹ 1,17,052-6-0."

6. On that view of the case, the second question need not be answered. Assessees will be entitled to their costs from the State of Bombay. No order on the notice of motion.

7. Reference answered accordingly.

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