TRAVENCORE COCHIN HIGH COURT

K.V. Varkoy

Vs

Sales Tax Officer

O.P. No. 23 of 1954

(Menon, J.)

02.08.1954

ORDER

Menon, J.

1. The petitioner is the owner of a Tea Estate in this State who having no factory of his own sells his tea leaves as soon as they are plucked. He has been assessed to sales-tax in respect of the green leaves sold by him and the legality of the demand for the period 1-10-1124 to 22-12-1124 is the subject of controversy in this petition.

2. Against the order of assessment made by the Rural Sales-tax Officer, Peermade, the petitioner filed an appeal before the Assistant Commissioner of Agricultural Income Tax and Sales Tax, Kottayam, appeal No. 93 of 1951-52, and the Assistant Commissioner by his order-dated 1-10-1951 accepted the petitioner's contention and held that the sales cannot be considered as liable to Sales Tax. The Deputy Commissioner of Agricultural Income Tax and Sales Tax, Trivandrum, however, took up the matter in revision, set aside the decision of the Assistant Commissioner, and confirmed the order of assessment made by the Rural Sales Tax Officer, Peermade. The order of the Deputy Commissioner, D. Dis. 3493/52, dated 18-11-1952, reads as follows :

> "The learned Advocate who appears on behalf of the petitioner submits that the turnover of green leaf of tea is not liable to Sales Tax. He adds that the green leaf of tea does not attract excise duty either. But Section 2(1)(a) of the Travencore-Cochin General Sales Tax Act clearly lays down that "agricultural and horticultural produce" shall not be deemed to include tea, coffee, etc.

In this view, it is clear that the distinction has to be made between green leaf of tea and' manufactured tea for purposes of Sales Tax. Hence an agriculturist who cultivates tea is a dealer who is liable to the levy of Bales-tax under Section 3(1)(a) of the Act. The Assistant Commissioner, Kottayam, in his order dated 1-10-51, D. Dis. ST No. 23/51-52. admits that unfortunately the General Sales-Tax Act does not contain any definition of tea. Hence he relies upon the definition prescribed under the Central Excises and Salt Act of 1944 and holds the view that green tea leaf is not assessable to Sales Tax.

The Assistant Commissioner here appears to overlook the prime fact that ordinarily agricultural produce is exempt from the levy of Sales Tax and that an exception is made in the case of tea, rubber, etc. as pointed out supra. In the circumstances, the agriculturist who grows tea is a dealer liable to the levy of Sales Tax and there is, therefore, no need to go to the tea factory owner and the tea manufactured by him.
The Central Excise duty applies to manufactured tea only and hence the relevant definition is prescribed under the corresponding Act. In the result the appeal order passed by the Assistant Commissioner, Kottayam, is set aside and the assessment order passed by the Agricultural Income Tax and Rural Sales Tax Officer, Peermade, dated 06-08-1951 assessing the petitioner on a turnover of Rs. 8164-14-0 for the last quarter of 1124 allowed to stand. Ordered accordingly."

3. The Sales Tax Act under which the assessment was made is the Travencore General Sales Tax Act, 18 of 1124. Section 3 of that Act provides that subject to the provisions of the Act.

> "(a) every dealer shall pay for each year a tax on his total turnover for such year; and
> (b) the tax shall be calculated at the rate of three pies for every Indian Rupee in such turnover."

The definition of the term 'turnover' as given in Section 2(j) of the Act is :

> " 'turnover' means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover."

and of the term "agricultural or horticultural produce" as given in Section 2(m) is :

> "agricultural or horticultural produce shall not be deemed to include tea, coffee, rubber, cinchona or cardamom."

The combined effect of the two definitions is to make tea which is certainly an agricultural produce liable to sales-tax as if it did not belong to that category. There is no controversy on this point or on the quantum of the assessment in case it is held that the sales of the green leaves are subject to the tax.

4. The only controversy is that the tea which is liable to taxation is not the green leaf as gathered from the tea bush but the commodity which enters commerce as tea, namely, the black and green teas which are sold at auctions or in shops and are consumed by the public. In other words, the petitioner's contention is that the leaves gathered can be considered as tea for the purpose of the Act only when it has undergone the usual processes of withering, rolling, fermentation and drying in the case of black tea and the processes intended to prevent fermentation and the subsequent rolling and drying in the case of green tea.
Green tea is not manufactured in this State and black tea with its four principal grades based largely on the size of the leaf orange pekoe, pekoe, pekoe souchong and souchong in the

descending order of quality forms by far the greater part of the teas sold in the markets, of the world.

5. I do not think that there is any substance in the contention urged by the petitioner. The word 'tea' like so many other words, has to be understood with reference to the context in which it is used. When Pepys recorded in an oft quoted passage in 1660 "I did send for a cup of tea, a China drink of which I never had drunk before" he must have certainly meant the infusion and not the leaf; and when Wickam wrote from Japan to Eaton in Macao some 45 years earlier in a communication which contains perhaps the earliest mention of tea in English for "a pot of the best sort of chaw" it is equally certain that he was not asking for the beverage but for the leaf itself, prepared and packed according to the practice of those days. In the words of Blackburn, J. over 200 years later :

> "It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collocation, and the object of such words relating to such a matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances". *Rein v. Lane*[1]*,*

As stated before all that the relevant provisions of the Act indicate is that agricultural and horticultural produce grown by the owner in the circumstances specified is exempt from tax but tea though an agricultural produce shall not have the benefit of that exemption.

> "Tea" in the context in which it occurs cannot but mean the leaf gathered from the tea bush whether it has or has not been subjected to the processes which prepare it for the market.

6. The way in which the word 'tea' has been dealt with in the Central Excises and Salt Act, 1944 (Central Act 1 of 1944) was relied on by the counsel for the petitioner. Section 3 of that Act provide for the levy of duties specified in the First Schedule and item 14 of the First Schedule is 'tea' which is therein defined as follows. :

> " 'Tea' means the commodity known as tea made from the leaves of the plant Carmellia (Lim) and includes green tea".

7. As pointed out by the Privy Council In *Governor General in Council v. Province of Mad*[2]*.,* (endorsing the reasoning and conclusion of the Federal Court in Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938. In the matter of AIR 1939 FC 1 a duty of excise is primarily a duty levied upon a
manufacturer or producer in respect of the commodity manufactured or produced, a tax upon goods and not, as in the case of a sales tax, a tax upon sales or the proceeds of such sales and forms a distinct and separate impost in law with the characteristic
features of uniformity of incidence and discrimination in subject matter. It will not be correct to treat such an Act as an enactment in parimateria for the purpose of invoking its definition of 'tea' for the construction of the Travencore General Sales Tax Act, 1124.

8. It is also clear that what the Central Excises and Salt Act, 1944, has intended to do, as pointed out by the Deputy Commissioner, is to impose an excise duty only on manufactured tea and the definition that it has used for that purpose cannot possibly affect the interpretation of the term 'tea' when it occurs in the Travencore General Sales Tax Act, 1124. If the Central Act was intended to affect tea leaves before they are processed for the market, apt words would certainly have been used and the definition would have been different. In the case of tobacco, the idea of the Act was to levy a duty on the article whether it has been subjected to a manufacturing process or not and so the definition given in the schedule is
:

> "Tobacco' means any form of tobacco, whether cured or uncured, and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth, (item 9).

9. If the word 'tea' has been used in the - Travencore General Sales-tax Act, 1124, not in the context in which it appears but, for example, in a list of items sold in the wholesale or retail markets, different considerations might have applied. The rule of interpretation in such cases will be the well recognized rule that the particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used, and not in their scientific or technical sense, "for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists". (200 Chests of Tea, (1924) 9 Wheaton U.S. 435 (D). In 1951 CLR Ex 122(E) the question as to whether salted peanuts and cashewnuts fell within the category of "fruit" or "vegetable" for the purpose of the Excise Act, Ch 179, RSC 1927, came up for consideration and the question was answered in the negative in spite of the evidence of the botanists that both the peanut and the cashewnut are vegetables in the wider meaning of that word, that each is a "fruit" and that neither is a 'nut'. The Court said :

> "Counsel for the plaintiff suggested a test which I think apposite. Would a house-holder when asked to bring home fruit or vegetables for the evening meal bring home salted peanuts, cashewnuts or nuts of any sort.? The answer is obviously 'No'."

10. A perusal of the Travencore General Sales Tax Act, 1124, makes it quite clear that the word 'tea' is not used therein in the sense it is used in commerce, in Mincing Lane or a grocer's shop, but in the sense of a product of plant life, the resultant crop of man's labour in the culture of land.

11. It follows that the green leaves, just like those leaves after they are processed, are liable to sales-tax under the provisions of the Act and that the contention of the petitioner should be overruled.

12. The petition fails and is hereby dismissed with costs, advocate's fee Rs. 100/-
Petition dismissed.

Cases Referred.

[1](1867) 36 LJQB 81
[2] AIR 1945 PC 98