

(1970) 01 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3688 of 1968

Ganesh Trading Co.

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 09-01-1970

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5(2)

Citation : AIR 1971 P&H 26 : (1971) 27 STC 340

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Anand Swaroop and R.S. Mittal, for the Appellant; D.S. Tewatia, General and C.B. Kaushik, for the Respondent

Judgement

1. This judgment will dispose of 12 writ petitioners relating to the dealers in the State of Haryana and 4 writ petitions relating to the dealers of the State of Punjab. The writ petitioners relating to the dealers of Haryana are C. W. Nos. 3688 of 1968, 3701 of 1968, 3785 of 1968, 16 of 1969, 94 of 1969, 107 of 1969, 137 of 1969, 286 of 1969, 438 of 1969, 442 of 1969, 533 of 1969 and 726 of 1969. The writ petitions concerning the dealers of Punjab are C. W. Nos. 641 of 1969, 643 of 1969, 644 of 1969 and 1682 of 1969. These writ petitions have been heard together because common questions of law have arisen in all of them. On behalf of the dealers of Haryana, Shri Anand Swaroop has addressed the arguments and on behalf of the dealers of Punjab, the arguments have been addressed by Shri H. L. Sibal. On behalf of the respondents Shri. D. S. Tewatia, learned Advocate-General for the State of Haryana, has addressed the arguments which have been adopted by the learned Advocate-General of the State of Punjab.

2. The petitioners in all these petitions carry on the business of burying paddy and after getting it husked, either in their own mills or in the mills of others, sell the rice to the Government and other registered dealers. On the purchase of paddy they pay purchase tax and they claim that while determining their taxable

turn-over, they should be allowed deduction to the extent of the purchase price of paddy u/s 5(2)(a)(vi) of the Punjab General Sales Tax Act as applicable to both the states. The said Act as applicable to the State. The said Act as applicable to the State of Haryana will hereinafter be called as Haryana Act and as applicable to the State of Haryana will hereinafter be called as Haryana Act and as applicable to the State of Punjab. It will be called as Punjab Act. the provisions of the Haryana Act, which are relevant for the decision of the writ petitions, are as under :-

"Section, 2(ff). - Definition of purchase. "Purchase" with all its grammatical variations or cognate expressions, means the acquisition of goods for cash for deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge.

Section, 2(i). Definition of "turnover" - "Turnover" includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof.

Explanation. (1) The proceeds of any sale made outside Haryana by a dealer, who carries on business both inside and outside Haryana shall not be included in the turnover.

Explanation. (2) The turnover of any dealer in respect of transactions of forward contracts in which goods are actually not delivery, shall not be included in the turnover.

Explanation (3) The proceeds of sale of any goods on the purchase of which tax is liveable under this Act, or the purchase value of any goods on the sale of which tax is liveable under this Act, shall not be included in the turnover.

Section 4(2-A). Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

Section 5(2). In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom.

(a) his turnover during that period on -

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(vi) the purchase of goods -

(A) in any year during the period commencing on the 1st of April, 1960, and ending with the commencement of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, which were or are sold not later than six months after the close of that year, to a registered dealer, or in the course of inter-state trade or commerce or in the course of export out of the territory of India ;

(B) at any time after the commencement of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, -

(i) which are specified in Schedule "C" and are sold during the year to a registered dealer, or in the course of inter-state trade or commerce or in the course of export out of the territory of India ;

(ii) which are referred to in Schedule "D" and are sold during the year in the course of inter-state trade or commerce or in the course of export out of the territory of India :

Provided that in the case of a sale referred to in paragraph (A) or in subparagraph (1) of paragraph (B) to a registered dealer, a declaration in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold is furnished by the dealer claiming deduction :

Provided further that purchase of goods referred to in paragraph (A) or in subparagraph (ii) of paragraph (B) remaining unsold within the period specified in those paragraphs shall be deemed to be the purchase of the dealer claiming deduction during the year following."

Schedule "C", as substituted by the Punjab General Sales Tax (Haryana Amendment & Validation) Act, 1967, enumerates the following goods :-

1. Resin (crude pine-gum),
2. Paddy,
3. Groundnut.

Schedule "B" to the Act enumerates tax-free-goods, i.e., goods on the sale of which no tax is payable. The State Government can amend this Schedule by adding or deleting therefrom entries relating to goods after giving, by notification, not less than 30 days" notice of its intention so to do. In this Schedule "rice when husked from paddy in respect of which a certificate to the effect that purchase tax has been paid is furnished in the prescribed form by the Assessing Authority" was added by Haryana Government. notification No. SO. 111/P.A.46/48/S.6/67, dated the 21st November, 1967 and later on substituted by notification No. S.O. 31/P. A.47/48/S.6/67, dated the 26th December, 1967.

3. It may be noted here that under the Punjab Government notification No. SO. 175/P.A./46/48/S/66, dated the 30th June, 1966, the rate of tax on rice and

paddy was 11/2 Paise in a rupee. This notification was supersede by the Government of Haryana notification No. S.O. 32/P.A. 46/48/S.5/68, dated the 1st April, 1968 wherein paddy was deleted but rice was retained on which the rate of tax prescribed was 2 Paise in a rupee.

4. From the provisions of the Haryana Act, as set out above, it is clear that on the purchase of paddy the purchase tax is payable, while the sale of rice, husked from paddy on which the purchase tax has been paid, is exempt from the payment of sales-tax but rice not husked from paddy on which purchase tax has been paid is subject to sales-tax at the rate of 2 Paisa in a rupee. The dealer is entitled to deduct the purchase price of paddy from his gross turnover if paddy is sold during the year to a registered dealer or in the course of inter-state trade or commerce or in the course of export out of the territory of India.

5. The corresponding provisions of the Punjab Act are as under :-

"S. 2(ff). "Purchase" with all its grammatical variations or cognate expressions, means the acquisition of goods specified in Schedule "C" for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge ;

S. 2(i) "turnover" includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof.

Explanation (1) The proceeds of any sale made outside the Punjab by a dealer, who carries on business both inside and outside Punjab, shall not be included in the turnover.

Explanation (2) The turnover of any dealer in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the turnover.

S. 4(2-A) Notwithstanding anything contained in sub-ss. (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

S. 5(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on

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* * * * * (vi) the purchase of goods which are sold not later six months after the close of the year, to a registered dealer, or in the course of inter-state trade or commerce or in the course of export out of the territory of India :

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by a registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.

Schedule "C" to the Act enumerates the goods on which purchase-tax is payable. This schedule can be amended by adding or deleting therefrom any goods by notification issued by the State Government after giving not less than two months' notice of its intention so as to do, as is provided in Section 31 of the Act. The Punjab Government by notification No. S. O. 7/P.A.46/48/S.31/68, dated the 15th January 1968, amended Schedule "C" by adding paddy and rice as Items 8 and 9 to it. Previous thereto, tax was payable on paddy and rice at the rate of 11/2 Paisa in a rupee under Punjab Government notification No. S. O.175.P.A. 46/48/S.5/66, dated June 30, 1966. With effect from January 15, 1968, the words "rice and paddy" were omitted from the said notification.

6. The effect of the above provisions of the Punjab Act is that purchase tax is payable on both paddy and rice and the deduction from the gross turnover of a dealer like the petitioners during any period is allowable to the extent of his turnover during that period on the purchase of paddy which is sold not later than six months after the close of the year to a registered dealer or in the course of inter-state trade or commerce or in the course of export out of the country, in order to determine his "taxable turnover". As regards the sale of the rice extracted from the paddy purchased, the petitioners are not to pay any sales tax but a registered dealer purchasing the rice from them shall be liable to pay the purchase tax.

7. The first point that has been canvassed in all these petitions is whether paddy and rice are one and the same "goods" or two different "goods" so that deduction from the gross turnover for any period is allowable to the extent of turnover on the purchase of paddy even when paddy as such is not sold but rice, which is extracted after husking it is sold within the time prescribed in S. 5(2)(a) (vi) of the Punjab & Haryana Acts. Shri Anand Swaroop, the learned counsel for the dealers of the State of Haryana, has argued that rice and paddy have not been defined by the Haryana Act and, therefore, their dictionary meaning should be adopted. In Webster's New International Dictionary, the meaning of "paddy" is given as under :-

"In commerce, any unlimited or rough rice, whether growing or cut; also, rice in general; often attributive; as a paddy crop or field."

In the same dictionary, the meaning of "rice" is given as under :-

"An annual cereal grass (*Oryza Sativa*) widely cultivated in warm climates for its seed, used for human food. The hulls and other by-products are fed to livestock; the straw is used in making paper etc. Rice grows chiefly on low, moist land, which can be overflowed."

According to the Oxford English Dictionary, "paddy" means "rice in the straw, or

(in commerce) in the husk". While "rice" is the seed of the plant *Oryza Sativa* forming one of the important foodgrains of the world". According to Chambers' Twentieth Century Dictionary "paddy" is "growing rice". Rice in the husk" while "rice" is a grass (*Oryza Sativa*) much grown in the tropics: its grain, a valuable food". In Encyclopaedia Britannica under the heading "preparation of rice", the following sentences occur :-

"The kernel of rice as it leaves the thresher is enclosed by the hull or husk, and is known as paddy or rough rice. Rough rice is used for seed and feed for livestock, but most if it is milled for human consumption. Rice is a good energy food and is consumed in vast quantities in the orient."

On the basis of these meanings in the dictionaries the learned counsel submits that rice in general is known as paddy and, therefore, paddy means rice whether in husk or without husk. He goes on to submit that paddy had been included in Schedule "C" by the Legislature, while enacting the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, and the Haryana Government could not give a different meaning to it by inserting rice as Item 76 in Schedule "B" to the Act so as to indicate that rice was a different "goods" from paddy. His second argument is that this Court should adopt the principle of substantial identity in this case as has been propounded by the Supreme Court of the United States in *East Texas Motor Freight Lines, Inc., v. Frozen Food Express* (1955) 351 US 49 and followed by the United States District Court, D. New Jersey in *Consolidated Truck Service, Inc. v. United States of America and Inter-State Commerce Commission*, 144 Fed Supp 814.

8. In my opinion both the arguments advanced by the learned counsel are without substance. The dictionary meaning or the substantial identity principle can be resorted to only if the intention of the Legislature cannot be gathered from the provisions of the Act or the rules or notifications made or issued thereunder. It has been ruled by their Lordships of the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, that the words must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. If a word is not defined in the Act, but is a word of every day use, it must be construed in its popular sense which the subject-matter, with which the Statute is dealing, would attribute to it. This principle was laid down by Cameron, J., in *King v. Planters Nut and Chocolate Co. Ltd.* 1951 CLR 122 at pp. 127-8 as under :-

"A perusal of the consumption or sales tax sections of the Act and of the list of exemptions set out in Schedule III is sufficient to indicate that Parliament, in enacting the sections and the schedules, was not using words which were applied to any article science or art, and that, therefore, the words used are to be construed as they are understood in common language. To the words "fruits" and "vegetables", therefore, there must be given the meaning which they would have when used in the popular sense - that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Now the

statute affects nearly everyone, the produce or manufacture, the importer, wholesales and retailer, and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufactures, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Act is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade. In my view therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable", which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such Counsel for the plaintiff suggested a test which I think apposite. Would a householder when asked to bring home fruits or vegetables for the evening meal bring home salted peanuts, cashew-nuts or nuts of any sort? The Answer is obviously "no".

The principle set out above in the judgment of Cameron, J. was approved and followed by their Lordships of the Supreme Court again in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, . In that case the High Court had held that while construing entries in statutes like the Sales Tax Acts, the court should prefer the popular meaning of the terms used in such entries and not their dictionary meanings and that so construing charcoal would be included in the word coal. After noticing some decisions, their Lordships observed as under :-

"The result emerging from these decisions is that while construing the word "coal" in Entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal", It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

9. In the light of these judgments, I have no doubt in my mind that paddy and rice in commerce and in popular parlance are two different commodities and are not considered to be one by any person dealing with them. Neither producer nor the merchant nor the consumer considers them as one and the same goods. Their use is also different. Paddy is used as seed for growing the crop for which purpose rice cannot be used. Rice is a staple energy-giving food used all over the world by human beings, more frequently in the orient, whereas paddy in its

original raw form cannot be used as such. It is only the rice extracted from the paddy that is used as a human food. If anybody goes to the market, to buy paddy, he will not accept rice for it and vice versa. It is, therefore, not possible to hold that paddy and rice are the same goods and the turnover with regard to the paddy should be deducted from the gross turnover of a dealer in order to determine his taxable turnover as provided in Section 5(2)(a)(vi) of the Punjab and Haryana Acts.

10. The learned counsel has greatly relied upon the judgment of their Lordships of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, in which it was held that raw groundnut oil when converted into refined oil or hydrogenated oil remains groundnut oil and does not become a different "goods" so that the deduction provided in Clause (k) of sub-rule (1) of R. 5 and R. 18 of the Madras General Sales Tax (Turnover and Assessment) Rules (1939) is allowable to a dealer who manufactures groundnut oil from the groundnut and/ or kernel purchased by him. The facts of that case are clearly distinguishable and the learned counsel, in my opinion, cannot derive any help from that judgment.

According to Rules 5(1)(k) and 18(2) of the Madras Rules, the deduction was allowable if groundnut oil was manufactured from groundnut oil or groundnut kernel purchased by the manufacturer. The further refinement did not convert groundnut oil into any other oil. Only the form of the oil was changed by some process in order to make it more suitable for marketing. The observations of their Lordships, as stated in headnote (a), clearly bring out the distinction, between that case and the present cases with regard to paddy and rice. Head-note (a) is as under :-

"When raw groundnut oil is converted into refined oil, there is, no doubt, processing, but this consists merely in removing from raw groundnut oil that constituent part of the raw oil which is not really oil. The matter removed from the raw groundnut oil not being oil cannot be used, after separation, as oil or for any purpose for which oil could be used. In other words, the processing consists in the non-oily content of the raw oil being separated and removed rendering the only content of the oil 100 per cent. For this reason refined oil continues to be groundnut oil within the meaning of Rr. 5(1)(k) and 18 (2) notwithstanding that such oil does not possess the characteristic colour, or taste, odour, etc., of the raw groundnut oil. A liquid state is not an essential characteristic of a vegetable oil and even if the oil is not liquid, it does not cease to be oil. If beyond the process of refinement of the oil, the oil is hardened, again by the use of chemical processes, it is not rendered any the less "groundnut oil". The fact that in the course of hydrogenation the oil observed two atoms of hydrogen and that there was an inter-molecular change in the content of the substance is also not decisive of the matter. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could be put for which the

raw oil could not be used. Hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more usable thus improving its keeping qualities for those who desire to consume groundnut oil. Hence the assessee is entitled to the benefit of the deduction of the purchase price of the kernel - or groundnut, under Rule 18(2), which went into the manufacture of the hydrogenated groundnut oil from the sale turnover of such oil."

The pertinent observation of their Lordships is "there is no use to which the groundnut oil can be put for which the hydrogenated oil could be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used." On this principle, it cannot be held that rice and paddy can be put to same use or that paddy can be put to the use for which rice can be used or that rice can be put to the use for which paddy can be used. This judgment, therefore, does not help the learned counsel for petitioners.

11. It is not of much importance whether the process by which paddy is husked for the extraction of rice is a manufacturing process or not. Whatever the process, it results in producing a commodity different from paddy as is generally and popularly known to the trade and the consumers. The process is certainly a manufacturing process as has been variously defined and interpreted by their Lordships of the Supreme Court and by the learned Judges of the High Courts. In the State of Punjab v. M/s. Chandu Lal Kishori Lal, Civil Appeals Nos. 2516 to 2519 of 1966, decided by their Lordships of the Supreme Court on February 27 1969 (reported in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others,) it was held that the ginning process is a manufacturing process and that the dealer is not entitled to deduction in regard to the turnover of cotton seeds out of the turnover which regard to raw cotton. It was also held that ginned cotton and cotton seeds are "two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself."

12. A judgment of their Lordships of the Supreme Court in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, , is in my opinion, more to the point. The respondents in that case were dealers in cashew-nuts in the State and their business consisted in importing raw cashewnuts from abroad and the neighbouring districts in the State of Madras in addition to purchases made in the local market, and, after converting them by means of certain processes into edible kernels, exporting the kernels to other countries, mainly America. The oil pressed from the shells removed from the cashew-nuts was also exported. It was found by the High Court that raw cashewnuts and the kernels manufactured out of them by various processes, partly mechanically and partly manually, were not commercially the same commodity. This finding was not seriously disputed before their Lordships of the Supreme Court which led to the observation "this finding which is not seriously disputed before us would be an additional ground for rejecting the claim to

exemption in respect of these purchases, as the language of Clause (1) (b) clearly requires as a condition of the exemption that the export must be of the goods whose sale or purchase took place in the course of export."

On the same parity of reasoning I hold that the petitioners are not entitled to the deduction claimed by them u/s 5(2)(a)(vi) of the Punjab and Haryana Acts as the rice extracted from paddy when sold is not the same "goods" as paddy on which purchase tax has been paid. It is to be noted that in the State of Haryana, sales-tax would have been payable even on the sale of rice husked from paddy on which purchase tax has been paid if Item 76 had not been inserted in Schedule "B" to the Act, on the basis of the Haryana Government notification dated April 1, 1968. It was, therefore, necessary to include rice as item No. 76 in Schedule "B" to the Haryana Act so as to give exemption from sales-tax to the rice extracted from paddy on which purchase-tax had been paid. This item also indicates that the State Government considers paddy and rice extracted therefrom as two commercially distinct commodities. This item was added to the schedule after notifying the intention of the Government so to do which shows that the traders and others concerned also though likewise as no objection was taken thereto. It has not been alleged in any of the petitions that any objection was taken to the said notification by the dealers, merchants, or consumers. This fact also leads to the conclusion that everybody who is concerned with rice and paddy considers them to be two different commodities.

13. Shri. H. L. Sibal, the learned counsel for the Punjab dealers, has submitted that in case of ambiguity in a taxing Statute, the benefit must go to the subject and not to the Revenue. There is no quarrel with this proposition. In order to bring out the ambiguity in the Punjab Act, he has referred to the Punjab Rice Dealers" Licensing Order, 1964. In this order, Section 2(f) defines rice as under :-

"Rice" includes paddy and product of rice and paddy other than husk and rice bran".

From the definition, he infers that rice and paddy are one and the same commodity and, therefore the petitioners who carry on their business in paddy and rice understand both these commodities to be one and same commodity and, therefore, when they cut paddy and sell rice after extracting it from the paddy by husking it, they deal in one and the same commodity and, therefore the turnover with regard to the purchase of paddy has to be deducted u/s 5(2)(a) (vi) of the Punjab Act if the rice is sold to a registered dealer or in the course of inter state trade or commerce or in the course of export out of the country. He further submits that if purchase-tax is to be levied on paddy as well as rice, as is contemplated under the Punjab Act, the price of rice will become higher which is contrary to the object of the Essential Commodities Act, 1955. I am afraid the learned counsel is not correct in his submission. The ambiguity has to be seen on the terms of the provisions of the taxing statute itself and not by reference to any other statute much less a statute which is not *pari materia*.

The purpose of Essential Commodities Act, 1955, is only to regulate the control of the production, supply and distribution of, trade and commerce in certain essential commodities as defined in Section 2(a) of the said Act. According to this definition, foodstuffs are "essential commodities". This act nowhere lays down that no tax shall be imposed on the purchase or sale of any such essential commodities. Merely because the price will become bit higher by the imposition of tax is no ground to hold that two different commodities are one and the same when in fact they are two different commodities commercially. The definition of rice in the Punjab Rice Dealer's Licensing Order clearly shows that rice and paddy are two different commodities although for the purpose of that Order rice will be deemed to include paddy. If rice and paddy are in fact one commercial commodity, as has been submitted by the learned counsel for the petitioners, there was no necessity for the framers of the said Order to define rice as including paddy. The definition itself suggests without any ambiguity that rice and paddy are two different commodities. The learned counsel for the petitioners, therefore, cannot derive any help from the preamble of the Essential Commodities Act, 1955, or the definition of rice in the Punjab Rice Dealers' Licensing Order, 1964.

14. The learned Advocate General for the State of Haryana has emphasised that the husking process is a process of manufacture and by the application of that process a different commercial commodity, viz., rice, is produced from paddy which is another well-known commercial commodity and for this reason as paddy in its original form as purchased is not sold by the petitioners, they are not entitled to the deduction u/s 5(2)(a)(vi) of the Punjab Act or the Haryana Act. By way of illustration, he has placed reliance on various judgments which support his argument. In *Devgun Iron and Steel Rolling Mills Vs. The State of Punjab and Others*, a Division Bench of this Court held that "wheel steel is rolled into rolled steel sections, the outcome is a different and a new commodity and when it is sold, there is a sale of different commodity and not a sale of steel over again. Therefore when sales tax is levied on the sale of rolled steel sections it is not levied a second time or at the second stage on the same commodity in the same condition."

15. In *Puran Chand Gopal Chand Vs. The State of Punjab and Others*, a Division Bench of this Court held that "the word 'manufacture' has various shades of meaning, but as used in S. 2(ff) of the East Punjab General Sales Tax Act, 1948, it involves a process of manual labour by which one object is changed into another for selling it. Even removal of alloy from old gold ornaments so as to convert them into bullion might well involve a process of manufacture and therefore, purchase of old gold ornaments for converting them into bullion for sale may come within the definition of the word 'purchase' in Section 2(ff). A learned Single Judge of the Calcutta High Court held in *Bachha Tewari and Another Vs. Divisional Forest Officer, West Midnapore Division and Others*, that "chopping of timber into firewood is a manufacturing process, and therefore, firewood is a manufactured article. The imposition of a tax on timber and a tax on

firewood manufactured from that timber does not amount to double taxation." The learned Judge observed -

"Manufacturing process means to bring into being a commercial article for sale in the business in which the dealer is engaged, i.e., article which by itself has a commercial value and which can be subject-matter of sale for a price in course of the business of selling or supplying in which the dealer is engaged."

16. A Division Bench of Andhra Pradesh High Court in *State of Andhra Pradesh v. Satyanarayan Kaithan (P) Ltd.* (1967) 20 STC 409 (P&H) (APPELLANT) held that "'manganese" does not include "manganese ore" in the popular sense of the term, though from the scientist's point of view "manganese ore" may contain "manganese". Therefore, "manganese" and ,manganese ore, are two distinct and different commodities."

17. Their Lordships of the Supreme Court ruled in *A. Hajee Abdul Shukoor and Co. v. State of Madras* (1964) 15 STC 719 (P&H) at p. 728 ; (AIR 1964 SC 1729 at p. 1734) that the fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing." In the two Acts under consideration, that is, Haryana Act and the Punjab Act, the commodities paddy and rice have everywhere been used as different commodities and nowhere is there any indication in the provisions of these Acts or the rules or the notifications issued thereunder prescribing the rates of tax and the goods on which tax is payable that rice and paddy are one and the same commodity. I have pointed out above, that in the Punjab Government notification dated the 30th June, 1966, rice and paddy were used in the same notification as two different commodities on which tax was liveable at the rate of one and half Paisa in a rupee. Subsequently, this notification was amended on January 15, 1968, by the Punjab Government whereby rice and paddy were deleted from the said notification and were added to Schedule "C" (Punjab Act) on which purchase tax was liveable. The Government of Haryana, issued another notification dated April 1, 1968 in suppression of the Punjab Government notification dated June 30, 1966, wherein rice was retain on which tax was liveable at two paise in a rupee and paddy was probably for the reason that it had been included in Schedule "C" to the Haryana Act on which purchase tax was liveable.

The Haryana Government inserted Item 76 in Schedule B so as to provide that no sales-tax was to be levied on the rice when husked from paddy in respect of which a certificate to the effect that purchase tax has been paid is furnished in the prescribed form by the assessing authority. If paddy and rice are considered as one and the same commodity, there was no necessity of including Item 76 in the second Schedule by the Haryana Government because of virtue of Section 4(2-A) of the Haryana Act, no salestax would have been leviable on the rice extracted from the paddy on which purchase-tax had been paid. Because rice extracted from paddy was considered to be a different commodity from the

paddy on which purchase tax had been paid, the Government felt the necessity of including Item 76 in Schedule "B" to the Act for exempting the rice extracted from that paddy from the payment of sales-tax. For all these reasons, Paddy and rice are two different commodities in commerce and no deduction can be allowed to dealer u/s 5(2)(a)(vi) of the Punjab Act or the Haryana Act if paddy is not sold as paddy but rice extracted out of it is sold to a registered dealer or in the course of Inter-State trade or commerce or in the course of export out of the country. It is to be noted that, the sale turnover of rice extracted from paddy on which purchase tax has been paid is not to be included in the taxable turnover of a dealer, whether of Punjab or of Haryana.

18. The second point which has been argued in these petitions is that the delivery of rice, extracted from paddy on which purchase tax has been paid, to the Government on account of compulsory levy, is a sale and the Assessing authorities are in error in holding that such transactions are not sales. The argument advanced by the Assessing authorities is that 82 per cent of the rice is purchased by the Government not as a commercial transaction willingly entered into by the dealers with the Government but under a compulsory levy scheme according to which the petitioners and other dealer like them are obliged to sell 82 per cent of their production to the Government. In my opinion, the stand taken by the Assessing authorities is erroneous in law. It has been held by their Lordships of the Supreme Court in *Indian Steel and Wire Products Ltd. Vs. State of Madras*, as under :-

"In order to constitute a valid sale, there must be concurrent of the following elements viz., (1) parties competent to contract, (2) mutual assent, (3) a thing the absolute or general property in which is transferred from the sale to the buyer, and (4) a price in money paid or promised."

In that case, their Lordships were considering the provisions of the Iron and Steel (Control of Production and Distribution) Order, 1941, under which the Controller issued certain orders directing a company to deliver to certain parties the goods viz., the iron and steel products ordered by the respective parties subject to any general or special directions of the Controller. There were, however, no such directions issued except the fixing of the base price by the Controller. The company would supply the goods in question at its convenience and it was open to the company to agree with its customers as to the date on which the goods were to be supplied. From the works order sent by the company to its customers, it was clear that all orders booked were subject to the company's terms of business and general understanding in force at the time of booking the orders and despatch of goods. It was also open to the company to fix the time and mode of payment of the price of the goods supplied.

On these facts, it was held that "it could be contended that the transactions were completely regulated and controlled by the Controller leaving no room for mutual assent. In view of the orders of the Controller the area within which there could be bargaining between the prospective buyer and intending seller of steel

products was greatly reduced and both of them had to conform to the requirements of the order and to comply with the terms and conditions contained therein. They could negotiate only in respect of matters not controlled by the order or prescribed by the Controller. But although the doctrine of laissez faire could have only a limited application it would be incorrect to contend that because law imposed certain restrictions on freedom to contract, there was no contract at all. Due to change in political outlook and as a result of economic compulsion, the freedom to contract was being confined gradually to narrower and narrower limits. So long as mutual assent has not been completely excluded in any dealing, in law it is a contract. The transactions amounted to sales. The State could, therefore, impose Sales Tax under entry 54, List II, Schedule VII of the Constitution."

In *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, the same Bench of the Supreme Court considered Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act No. 45 of 1961 and the rules framed thereunder and held as per the head-note -

"Under Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act No. 45 of 1961 and the rules framed under it, the canegrower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in Section 14 of the Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in Section 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provision of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in Section 4 of the Sale of Goods Act. The purchases of sugarcane under the agreement can be taxed by the State legislature under Entry 54, List II."

Their Lordships noticed the decision of their own Court in *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, and distinguished it on facts. In my opinion, the sale of rice to the Government by the petitioners in these cases is covered by the judgments of their Lordships of the Supreme Court in *Indian Steel and Wire Products Ltd. Vs. State of Madras*, and *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, and not by the judgment in *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*. It has however been alleged by the petitioners that they were not willing parties to the sales of their rice to the Government or that their consent was obtained by coercion, fraud, undue influence or mistake. The fact that they are bound to sell 82 percent of their production to the Government can only be termed as the

compulsion of law which, according to their Lordships, does not vitiate the contract nor takes away the element of consent and does not make such a transaction void or not amounting to sale. I hold, therefore, that the Assessing authorities committed an error of law in holding that the transactions with regard to the sale of rice to the government by the petitioners were not transactions of sale. But in order to claim deduction, u/s 5(2)(a)(vi) of the Punjab Act and the Haryana Act, it has to be shown that the buyer is a registered dealer. It has been alleged in some of the petitions that the Government is a registered dealer. This fact is neither admitted nor denied in the returns. Whenever such a question arises before an Assessing authority, it will have to be determined whether the Government which purchases the rice is a registered dealer or not. If it is a registered dealer, deduction is allowable. If not, the deduction cannot be allowed.

19. In Civil Writ No. 286 of 1969 (Punj) M/s. Ashoka Industries, Tohana v. State of Haryana the imposition of tax on gramchhilka at the rate of 6 per cent by the Assessing Authority has been challenged in addition to the two points relating to paddy and rice which have been dealt with above. It is submitted that the gramchhilka is covered by the Entry at No. 15 in Schedule "B" to the Haryana Act reading as "husk of all foodgrains". Entry No. 54, "fodder of every type, dry or green" in Schedule "B" also leads to the conclusion that gram-chhilka is exempt from the payment of sales-tax as gramchhilka is sued as dry fodder for the cattle. I, therefore, hold that the Assessing Authority committed an error of law in imposing sales-tax on the sale of gramchhilka at the rate of 6 per cent when it is a tax-free goods. This writ petition is accordingly accepted in part and the order of the Assessing Authority imposing sales-tax at the rate of 6 per cent on gram-chhilka is quashed. The order of the Assessing Authority in all other respects is maintained. There is no order as to costs.

20. For the reasons given above, all the writ petitions except Civil Writ No. 286 of 1969 are dismissed but without any order as to costs as the points canvassed therein were not free from difficulty. Civil Writ No. 286 of 1969 is decided as stated above.

21. Order accordingly.