

(1982) 04 MAD CK 0009

In the Madras High Court

Case No : Tax Case No. 75 of 1980 (Revision No. 2 of 1980)

Glenrock Rubber Estates

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 21-04-1982

Acts Referred:

Citation : (1982) 51 STC 405

Hon'ble Judges : S. Padmanabhan, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K.J. Chandran, for Subbaraya Iyer, Padmanabhan and Ramamani, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyam, J.—This revision raises a point under the Central Sales Tax Act, 1956. Glenrock Rubber Estates, the petitioners herein,

were the lessees of a rubber estate, engaged in planting and growing rubber trees. The Tribunal accepted the following representation by the

petitioners as to the nature of their activities :

We own 374 acres of lands called Glenrock Rubber Estate in Mango Range area. Out of this, in 200 acres rubber trees are grown. We extract

latex (rubber milk) from those trees. This latex is mixed with water and formic acid at the ratio of 1 gln. of water : 1 gis. of latex : 1/12 oz. of formic

acid. After 24 hours, the mixture will form like a sheet and float like a pillow. This will be introduced in a roller-machine and pressed. The sheets so

obtained will be smoked and kept in the smoke for five days. On the 5th day in will come out as red rubber sheets (13/4" x 1 1/4"). They are sent

for sale in the crude form.

2. The assessing authority treated the assessee as dealers in latex. Since latex was sold across the State borders, the assessing authority brought the turnover to sales tax under the Central Sales Tax Act. The contention of the assessee was that they were not dealers in latex or in latex sheets which they sold, but their operations were purely agricultural in nature, for bringing out latex from the rubber trees. According to them these operations do not amount to a business of dealing in such goods. This contention, however, was rejected by the assessing authority. On appeal, the assessment was confirmed. The Appellate Tribunal observed that what the assessees sold in the market cannot be regarded as agricultural produce, but was a commercial produce, since latex, after it was extracted from the rubber trees, was subjected to certain chemical treatment.

3. In this revision, the conclusion of the taxing authorities and the Tribunal is challenged. The question before us is whether the assessees can be regarded as dealers within the meaning of the Central sales Tax Act whose sales turnover of dealers (sic) can be properly brought to tax under this Act. The expression ""dealer"" is defined under the Act. Shortly stated, a dealer is defined as a person who carries on the business of buying and selling goods. The central argument of Mr. Chandran, the learned counsel for the assessees, is that the assessee in this case are not carrying on any business of selling latex. All that they do is to derive latex from the plantations and convert it into money value. This process, according to the learned counsel, involves the conversion of latex into sheets which represent the ordinary form in which the substance is rendered marketable. The learned counsel submitted that the mere fact that latex is made into sheets for easier marketability cannot render the transactions as a business transaction, nor render the assessees dealers in those goods.

4. The learned Government Pleader sought to sustain the assessment and the Tribunal's order confirming the assessment, by urging that the very facts that the assessees have taken on lease a vast area of 374 acres of lands of which 200 acres were planted with rubber trees, shows the commercial motive with which the whole acquisition had been undertaken and the subsequent activities were being performed in the estate. The learned Government Pleader also submitted that in its very essence, latex, whether converted into sheets or not, cannot be regarded as agricultural

produce simpliciter, but must be regarded as a commercial product. According to the learned Government Pleader, latex in any form cannot be

utilised by the owner of the plantation for his consumption, but must necessarily be exploited by being sold in the market. The fact that the

assessee who are a partnership firm have combined themselves together not only to acquire the plantation, but also to exploit it in this manner

would show that the whole thing is not only organised in a commercial way, but every transaction connected with the rubber trees and their

operations speaks of a regular business.

5. If this matter were one of first impression, we should have accepted the argument of the learned Government Pleader as one possessing

considerable force. For, after all, a rubber plantation or other estate run on plantation lines is only a happy blending of the good elements in

agriculture and business. A plantation or an estate may be described either as agriculture run on business lines or as a business carried on in the

raising and selling of agriculture produce. However, the matter cannot be disposed of in this simplistic manner. Nor is the question *res integra*. It

has been the subject of consideration by the Supreme Court in at least three decisions right from 1967 onwards. The first of the decisions is

Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Travancore Rubber and Tea Company, . That was a case where, as

in this case, an assessee in Kerala who ran a rubber plantation derived latex from rubber trees, converted it into sheets and sold the sheets to

customers across the State borders. On the question whether the assessee was a dealer liable to tax under the Central Sales Tax Act on the sales

in question, the Supreme Court observed that the taxing department had not established that the assessee in that case was a "dealer" within the

meaning of the Act. The court observed that apart from the fact that the assessee had converted the latex tapped from the rubber trees into sheets,

an operation which was essential for the transport and had marketed the sheets, nothing else has been found by the department on the basis of

which it could be held that the assessee was carrying on a business in selling latex. The Supreme Court referred to a number of reported decisions

which held that where an agriculturist sells his own product either as gathered from the agricultural fields or after subjecting it to the minimum

processing necessary for transport and marketing, he cannot be considered to be engaged in the "business" of selling. The court regarded the

selling operations as representing only the culmination of his agricultural operations.

6. The decision of the Supreme Court shows that even in cases where agriculture is being carried on in a business-like manner, such as in a

plantation or estate, the operation will not cease to be an agricultural operation and be regarded as a business operation. In order to make an

agriculturist a dealer carrying on a business in selling his produce, something more is necessary to be established than pointing out that he

systematically raises the produce in his lands, converts it into a marketable commodity and then sells the commodity at a profit in the market. The

court no doubt ruled out the idea that an agriculturist selling his produce must in every case be regarded as a non-dealer. They said that under a

given situation he might well be considered to be a regular dealer himself of the produce. They did not, however, indicate what relevant

consideration the taxing department must establish in order to show that an agriculturist selling his produce in the market is a dealer of such

produce for purposes of sales tax. There are indications here and there in that judgment to show that the court considered as relevant such factors

as the existence of a profit-motive, the nature and set-up of the plantation as a business organisation, the establishment of selling agencies, and the

like. In the case before them, however, the Supreme Court did not find any indications of the existence of considerations such as these. They held,

therefore, that the assessee in that case could not be assessed to Central sales tax as a dealer carrying on the business of selling latex in any form.

7. This decision was followed by the Supreme Court in *Deputy Commissioner v. Greenham Estate (P.) Ltd.* [1969] 24 STC 424 (SC), and in a

subsequent decision in *Deputy Commissioner v. Midland Rubber & Produce Co. Ltd.* [1970] 25 STC 57 (SC). The decision in *Deputy*

Commissioner v. Greenham Estate (P.) Ltd. [1969] 24 STC 424 (SC) is notable for the court's observation that in the assessment and collection

of Central sales tax, the liability has to be determined only on the basis of the provisions of the Central Sales Tax Act. The court observed that

what has got to be applied to a given situation is the definition of the expression "dealer" as found in the Central Sales Tax Act and not in any of the

local Acts. It may be observed that this idea had been expressed in the earlier decision as well, i.e. Deputy Commissioner of Agricultural Income

Tax and Sales Tax, Quilon Vs. Travancore Rubber and Tea Company, .

8. As in all these Supreme Court cases, so too in the present case, the taxing department has not established positively that the assesseees are

carrying on an activity for profit which may be properly regarded as a business in selling latex. All that the Tribunal and the other authorities were

able to find is that the assessee own a considerable acreage of lands in which rubber trees are grown from which latex is extracted and sold after it

is processed into sheets. As the Supreme Court pointed out, these facts, by themselves, are not enough to render the assesseees dealers within the

meaning of the Central Sales Tax Act.

9. For the reasons aforesaid, we allow this revision and set aside the orders of the Tribunal and the Appellate Assistant Commissioner. The

assesseees are entitled to their costs. Counsel's fee Rs. 250.

10. Petition allowed.