

(1989) 09 MAD CK 0015
In the Madras High Court
Case No : Writ Appeal No. 923 of 1986

Ram Bhadur Takkur Takkur (P) Ltd.	APPELLANT
Vs	
Coffee Board, Bangalore and Others	RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 5(1), 5(3), 6(1)

Citation : (1989) 09 MAD CK 0015

Hon'ble Judges : S. Mohan, O.C.J.; S. Ramalingam, J

Bench : Division Bench

Advocate : V.P. Raman, for the Appellant; K.J. Chandran and The Additional Government Pleader (Taxes), for the Respondent

Judgement

S. Mohan, Offg. C.J.

1. The short facts leading to this writ appeal are as follows :
2. The appellant is a private limited company. Apart from owning tea estates, it also manages tea estates and is carrying on business in growing as well as manufacturing tea. Besides, it is also a registered exporter of coffee having been registered with the Coffee Board, the first respondent herein. The said Board is a statutory one constituted under the Coffee Act, 1942. It is empowered to control and develop the entire coffee industry in this country.
3. The appellant was able to secure an order for supplying 2,000 tonnes of coffee powder from Romania. In order to effect that supply, the appellant bid at an export coffee auction held by the first respondent. The appellant was the highest bidder and the auction was knocked in its favour. Accordingly, the price was also paid. Even at the time of participating in the auction and the payment of money, the Board knew that the

participation by the appellant was to fulfil the order of the foreign buyer for coffee powder and that the same was exempt under the proviso to

section 6(1) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act") read with section 5(3) thereof as stated in article 286 of the

Constitution of India. Notwithstanding this, the Board demanded sales tax at 6 per cent on the sales of coffee effected to the appellant, as it was of

the view that the appellant was not entitled to exemption u/s 5(3) of the Act. On 3rd February, 1982, the appellant wrote to the Board stating that

what was exported to Romania in the form of powder was nothing but the seeds purchased at the auction conducted by the Board which had been

ground after roasting. Therefore, the levy of sales tax was improper and unauthorised. However, the Board declined to release the coffee without

payment of the price as well as the sales tax. Therefore, the appellant was obliged to pay the amount by way of sales tax but for which payment, it

would not have been possible for the appellant to fulfil the contract with the foreign buyer. The matter was represented to the Board. It sent a reply

on 17th September, 1982, to the effect that the appellant purchased only the coffee seeds but subsequently the seeds had been converted into

coffee powder and, therefore, by reason of such conversion, it would not qualify for exemption u/s 5(3) and the proviso to section 6(1) of the Act.

Up to 30th July, 1982, the appellant paid a sum of Rs. 88,790.33 being the sales tax and surcharge on the sales effected to it in the State of Tamil

Nadu.

4. The appellant wrote another letter on 6th October, 1982, stating that though coffee seeds are roasted and ground into coffee powder, their

identity is not altered. What was purchased and exported still remained only "coffee" and, therefore, the exemption claimed must be made

available. On this basis, the appellant called upon the Board to refund the amount collected from it by way of sales tax. The Board declined to do

so; whereupon, the appellant preferred W.P. No. 1740 of 1983 for certiorarified mandamus to quash the order of the Board dated 17th

September, 1982, and to direct the State of Tamil Nadu to refund the sales tax illegally collected from it amounting to Rs. 88,790.33 and

surcharge thereon.

5. The contention of the appellant before the learned single Judge was that the

word "coffee" ought not to be given a narrow meaning so as to deprive the appellant of the benefit of obtaining exemption. The stand of the Board was that had only the same goods, namely, coffee seeds which were purchased by the appellant at the auction held by the Coffee Board been exported, the benefit of exemption u/s 5(3) of the Act would be available. As a matter of fact, section 5(3) categorically refers to "those goods". In such a case, one cannot, after changing the character of the goods, say that the very goods were exported.

6. The learned Judge (Ratnam, J.) observed that no doubt that the word "coffee" occurring in item 32 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, is wide enough to comprehend all forms of coffee but that cannot apply to the case on hand. The use of the words any goods" and "those goods" in section 5(3) clearly points out that there must be identity of goods. This test of identity has been insisted upon in several decided rulings. Even in common parlance, coffee beans or seeds or coffee powder are often understood as referring to two distinct commodities. Thus, the coffee powder exported by the appellant cannot be regarded as the commodity purchased by it at the pool auction held by the Board.

7. Further, the benefit of exemption could be claimed only by the Board and not by the appellant because it was not a party to the assessment proceedings. This is because any claim between the assessee and a third party is totally foreign to the scheme of the provisions of the Sales Tax Act. In this view, he dismissed the writ petition. Thus, the writ appeal.

8. Mr. V. P. Raman, the learned counsel appearing for the appellant contends, first and foremost, that the scope of exemption has not been correctly appreciated by the learned Judge. He would urge that it is true that what was purchased at the auction held by the Board was nothing more than the coffee seeds. While roasting and grinding those coffee seeds, they get powderised. On that score, it cannot be said that their identity is lost. The coffee seeds had assumed only a different form. It is not the case of the Coffee Board that the appellant had mixed the coffee powder with some other material or subjected it to any kind of chemical process so as to make it assume a different character. Only in such an event, it can ever be said that exemption provided u/s 5(3) of the Act is not available. So long

as section 5(3) uses the expression ""those goods"", certainly, the powder does qualify for exemption within the meaning of sub-section (3) of section 5 of the Act.

9. If really the intention of the Parliament was that only the seeds were to be qualified for exemption u/s 5(3) of the Act, the Parliament in its

wisdom would have used the words ""such goods"". Where it was not done so, certainly, the appellant is entitled to the exemption. In support of this

submission, reliance is placed on *The State of Tamil Nadu Vs. Subbaraj and Co., and Deputy Commissioner of Sales Tax (Law), Board of*

Revenue (Taxes) Vs. The United Coffee Supply Co. Ltd., . In these two cases it has been clearly recognised that no universal formula can ever be

applied since the nature of processing would differ from case to case.

10. Proceeding on that basis, the matter will have to be approached. For instance, the Madhya Pradesh High Court in *Commissioner of Sales Tax*

v. Munnulal Basorelal Jain [1988] 69 STC 78 held that where boulders were converted into jelly, it will not amount to manufacture. The identity of

the goods remained the same. Likewise, in *Deputy Commissioner of Sales Tax v. Kunhalavi & Co.* [1987] 66 STC 100 where timber logs were

converted into rafters, the Kerala High Court was of the view that no consumption was involved.

11. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers,* , which case related to the slicing

of pineapples after removing their inedible parts and canning on adding sugar to preserve it, it was held that the pineapple slices retained the same

identity because, the dealer and consumer still would regard it only as pineapple. The case on hand is stronger.

12. Likewise, in *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another,* , the

shrimps even after they were subjected to the process of cutting of heads and tails were held to retain the same identity of raw shrimps. Again, in

Deputy Commissioner of Sales-tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Shiphy International, Alleppey, frozen frog legs and fresh

frog legs were held to be the same commodity. In *Iyanar Coffee and Tea Co* [1962] 13 STC 290. *v. State of Madras* a ruling of this Court held

that the term ""coffee"" will include ""coffee powder"". Shorter Oxford Dictionary

- Volume I, page 203, giving the meaning of the term "coffee" takes within it the powder made by roasting and grinding the seeds. The same kind of meaning is given in the Encyclopaedia Britannica.

13. In so far as, as stated above, the word "such" had not been used in the sub-section, the ratio of all these cases would squarely apply to the case on hand. The word "such" used in a notification relating to textiles had come up for interpretation in *Kailash Nath and Another Vs. State of U.P. and Others*, . From that it would be clear that sub-section (3) of section 5 of the Act cannot be given a meaning as has been given by the learned single Judge.

14. With regard to maintainability, it is submitted that where the appellant was obliged to pay the sales tax under "protest" notwithstanding its clear stand that it would be exempt from payment of tax and thereafter the said amount of sales tax was debited to its account, to say that the appellant would not be entitled to refund is not sustainable in law. As a matter of fact, in identical circumstances, in *Consolidated Coffee Ltd. v. Coffee Board* [1980] 46 STC 164, the Supreme Court directed the refund in favour of the Coffee Board with a further direction that the Coffee Board shall make over the same to the assessee. The appellant would be satisfied if that procedure is adopted in this case also.

15. Mr. K. J. Chandran, the learned counsel appearing for the Coffee Board, would draw our attention to the statutory provision as well as article 286(1)(b) of the Constitution and then submit that certainly there is a vast difference between coffee beans and coffee seeds on the one hand and the coffee powder on the other. It cannot be said that even after the coffee seeds are subjected to a process their identity is not lost. The objects and reasons of the amending Act 103 of 1976 which has introduced sub-section (3) of section 5 of the Act will have to be taken note of for grant of exemption. They clearly spell out that only those goods which were purchased at the auction, if exported as such, would be entitled to exemption.

Where, therefore, it is a sale in the course of export, the penultimate sale prior to export alone would be entitled to exemption as laid down in *Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore*, . In the case of *Dinod Cashew Corporation Vs. The Deputy Commercial*

Tax Officer and Another, , cashewnut and cashew kernel were held to be commercially different articles and it is that test which has to be applied in the instant case.

16. Another case that could be cited in this behalf is Packwell Industries (P.) Ltd. Vs. The State of Tamil Nadu, , where packing materials were held to be not entitled to exemption though they were exported as such.

17. The learned Additional Government Pleader (Taxes) submits that with regard to refund, the State is not in any manner liable. If at all, the appellant could proceed only against the Coffee Board.

18. We will first set out the relevant statutory provisions. Section 5(3) of the Act which talks of as to when a sale or purchase of goods is said to take place in the course of import or export, states thus :

5(1)

(2)

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

Yet another provision which may be usefully referred to at this juncture is the proviso to section 6(1) which reads as under :

6(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by

notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on

all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date

so notified :

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3)

of section 5, is a sale in the course of export of those goods out of the territory of India.

The above provisions came to be introduced by the Central Sales Tax

(Amendment) Act, 1976 (Act 103 of 1976) and the basis for this is traceable to article 286(1)(b) of the Constitution which reads as under :

Article 286(1). No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place

(a)

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

The amendment came into force with effect from 1st April, 1976, by reason of the deeming provision though the Act received the assent of the President only on 7th September, 1976.

19. As to what is the scope of this amendment came to be dealt with by the Supreme Court in Consolidated Coffee Ltd. v. Coffee Board [1980]

46 STC 164. As pointed out therein, section 5(3) formulates a principle of general applicability in regard to all penultimate sales provided they

satisfy the specified conditions therein. The object of enacting this section is to extend the exemption from tax liability under the Act not to any kind

of penultimate sale but only to such penultimate sale as satisfied two conditions specified therein, namely,

(i) that such penultimate sale must take place (i.e., become complete) after the agreement or order under which the goods are to be exported; and

(ii) it must be for the purpose of complying with such agreement or order and it is only then that such penultimate sale is deemed to be a sale in the course of export.

At page 181 of the judgment in the decision cited above, it is pointed out as follows :

..... It was at this stage, i.e., when section 5(1) was interpreted by this Court in the aforesaid manner that the Parliament felt the necessity

of enacting section 5(3) for the purpose of giving relief in respect of penultimate sales that immediately precede the final (export) sales provided the

former satisfy the conditions specified therein. The Statement of Objects and Reasons in this behalf runs thus :

"According to section 5(1) of the Central Sales Tax Act, a sale or purchase of goods can qualify as a sale in the course of export of the goods out

of the territory of India only if the sale or purchase has either occasioned such export or is by a transfer of documents of title to the goods after the

goods have crossed the customs frontiers of India. The Supreme Court has held (vide Mohd. Serajuddin v. State of Orissa [1975] 36 STC 136

that the sale by an Indian exporter from India to the foreign importer alone qualifies as a sale which has occasioned the export of the goods.

According to the Export Control Orders exports of certain goods can be made only by specified agencies such as the State Trading Corporation.

In other cases also, manufacturers of goods, particularly in the small-scale and medium sectors, have to depend upon some experienced export

house for exporting the goods because special expertise is needed for carrying on export trade. A sale of goods made to an export canalising

agency such as the State Trading Corporation or to an export house to enable such agency or export house to export those goods in compliance

with an existing contract or order is inextricably connected with the export of the goods. Further, if such sales do not qualify as sales in the course

of export, they would be liable to State sales tax and there would be a corresponding increase in the price of the goods. This would make our

exports uncompetitive in the fiercely competitive international markets. It is, therefore, proposed to amend, with effect from the beginning of the

current financial year, section 5 of the Central Sales Tax Act to provide that the last sale or purchase of any goods preceding the sale or purchase

occasioning export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase

took place after, and was for the purpose of complying with, the agreement or order for, or in relation to, such export."

20. It is in this background, we have to analyse the facts in this case. Certainly it cannot be disputed and, in fact, it is not so disputed that the

aforesaid two conditions are satisfied in this case. However, the question is : What exactly is the meaning of the words "any goods" and "those

goods" ?

21. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. The United Coffee Supply Co. Ltd., , in paragraph 9 of the

judgment, it is observed as follows :

We find that there is force in the first point urged by the Government Pleader

that what was sold by the assessee as French coffee cannot be regarded as "coffee" covered by entry No. 37 of the First Schedule. While "coffee" is included in the First Schedule as entry No. 37, "chicory" is given a totally separate treatment by including it as item No. 38 of the same Schedule. Assuming that the assessee's case that the product received back by the company from Coimbatore had been actually made out of the raw coffee seeds purchased by the assessee in Kerala, it cannot be said that the identity of the goods had not undergone a material and substantial change. Raw coffee seed no doubt falls within entry No. 37. If it is merely roasted and ground into pure coffee, the identity of the article is not altered. But such is not the position in relation to "French coffee" which contains only 55 per cent of pure coffee and the rest (45 per cent) being chicory powder, the two having been mixed together in the process of manufacture.

It was this decision which was cited before the learned Judge; but he was of the following view :

In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. The United Coffee Supply Co. Ltd., the question that arose was

whether a certain disputed turnover relating to sales of "French coffee" was liable to be taxed as referable to first sales within the State. According

to the assessee, "French coffee" and "coffee" were the same and "coffee" having already suffered tax, the turnover relating to sales of "French

coffee" could not be subjected to tax. It was in this context, the court stated that when raw coffee seeds are roasted and ground into powder

coffee, the identity of the article is not altered, but that such is not the position in relation to French coffee which is the mixture of coffee and chicory

and therefore, it cannot be regarded as "coffee". It was also further pointed out that a person asking for coffee in the market will ordinarily expect

to be supplied with coffee powder and not "French coffee" which is quite different from coffee powder. Adopting the same approach to the instant

case, it is obvious that a person asking for coffee will be further asked whether he required beans or powder, for, they are not the same. This

decision also does not in any manner advance the case of the petitioner.

22. On the contrary, we find that the above extracted observations in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs.

The United Coffee Supply Co. Ltd., fully support the appellant's case. We are not, however, resting our ruling on this alone.

23. In Commissioner of Sales Tax Vs. Munnulal Basorelal Jain, , while dealing with the question as to what amounts to ""manufacture"" it was held

as follows : (Headnote)

Where the Tribunal held that the activity of extraction of boulders carried on by the respondent, only involved digging of earth in order to loosen

the boulders so as to facilitate their collection and transport, and that since there was no transformation of any sort and no new and different article

came into existence, the activity was not "manufacture" within the meaning of section 2(j) of the Madhya Pradesh General Sales Tax Act, 1958, on

a reference :

Held, that the view of the Tribunal was correct.

Again, dealing with the question whether breaking of boulders into jelly amounts to manufacture, in Reliable Rocks Builders and Suppliers Vs. The

State of Karnataka and Another, , the headnote reads as follows :

The process of breaking boulders into jelly cannot be described as a manufacturing process.

An assessee, who purchases boulders under circumstances in which no tax is leviable at the purchase point and who converts them into jelly in a

process which is not a manufacturing process is not liable to tax u/s 6 of the Karnataka Sales Tax Act, 1957.

If, therefore, there is no new or a different article coming into existence after conversion, we should hold that the coffee seeds which were roasted

and ground and made into powder do not become a new or a different article after their conversion.

24. In Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63, the Supreme Court, in dealing with the scope of section

5A(1)(a) of the Kerala General Sales Tax Act, 1963, held as follows :

In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard

both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being

canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative.

On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit.

While on the point, we may refer to *East Texas Motor Freight Lines v. Frozen Food Express* 100 L Ed 917, where the U.S. Supreme Court held

that dressed and frozen chicken was not a commercially distinct article from the original chicken. It was pointed out :

"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, standardising and bottling."

It was also observed :

"..... there is hardly less difference between cotton in the field and cotton at the gin or in the bale or between cotton seed in the field and

cotton seed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cotton seed, as well as the

dressed chicken, have gone through a processing stage. But neither has been ""manufactured"" in the normal sense of the word."

Referring to *Anheuser-Busch Brewing Association v. United States* 52 L Ed 336 the court said :

"Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and

manipulation. But something more is necessary There must be transformation; a new and different article must emerge, ""having a distinctive name, character, or use""."

And further :

"At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing

stage we cannot say that it has been ""manufactured"""

The comment applies fully in the case before us. Although a degree of processing is involved in preparing pineapple slices from the original fruit, the

commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding

sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies

that the slices constitute a different commercial commodity. The higher price, it

seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a different commercial commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired.

25. Tested in the light of the above observation, we feel that the case on hand is stronger. It should be carefully noted in this case that it is not the stand of the Coffee Board that after converting the coffee seeds into powder it is subjected to some chemical or other process or some other element is added to it so as to make it a different product. What we mean by this is, for instance, adding chicory or flavour so that it could be called either as "French coffee" or by some other name. It retains its original character but changes only its form. It still retains its identity - what was in the form of seeds had merely become powder. Only those coffee seeds that were purchased at the auction held by the Coffee Board were converted into powder for which alone, the appellant had entered into a contract with Romania. This fact was known to the Coffee Board also.

These essential features cannot be lost sight of.

26. While on this, we may advert to the decision in *Sterling Foods v. State of Karnataka* [1986] 63 STC 239 which dealt with the case of frozen shrimps. Therein at page 243, the Supreme Court observed as follows :

It is in the context of these provisions of the Karnataka Act that we have to consider whether shrimps, prawns and lobsters, when subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, retain their original character and identity or become another distinct commodity. The test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade, the same as the original commodity. It is necessary to point out that it is not

every processing that brings about change in the character and identity of a commodity. The nature and extent of processing may vary from one

case to another and indeed there may be several stages of processing and perhaps different kinds of processing at each stage. With each process

suffered, the original commodity experiences change. But it is only when the change or a series of changes take the commodity to the point where

commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct commodity that it can be said

that a new commodity, distinct from the original, has come into being. The test is whether in the eyes of those dealing in the commodity or in

commercial parlance the processed commodity is regarded as distinct in character and identity from the original commodity : vide Deputy

Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, .

27. Relying on this ruling, in Deputy Commissioner of Sales-tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Shiphy International, Alleppey,

, it was observed as follows :

The aforesaid view also finds ample support from the decision of the Supreme Court of the United States in East Texas Motor Freight Lines v.

Frozen Food Express 100 L Ed 917 , where the question was whether dressed and frozen chicken was a commercially distinct article from the

original chicken. The United States Supreme Court held that it was not a commercially distinct article but was commercially and in common

parlance the same article as chicken. The United States Supreme Court held that 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, standardising and bottling.

Applying the aforesaid tests to the facts of this case, we are clearly of the opinion that the High Court was right on the facts found by the Tribunal

in this case that frozen frog legs is same as fresh frog legs, the process was only to prevent decomposition.

If really in spite of the change that takes place in the milk from pasteurizing, homogenizing, adding vitamin concentrates, standardising and bottling,

the milk does not lose its identity and if the said test is applied to the present

case, we find that the term "coffee powder" answers fully the description of the expression "those goods" occurring in section 5(3) of the Act though it has taken a different shape of "any goods" namely, the coffee seeds purchased by the appellant at the auction held by the Coffee Board. Incidentally, we may refer to the decision in *Iyanar Coffee and Tea Co. Vs. The State of Madras*, , where the question whether "coffee powder" is included in the term "coffee" was answered thus :

Learned counsel for the petitioner contended that coffee powder is something different from coffee seeds and relied upon the decision in *Cotton v. Vegan and Co.* [1896] AC 457 where the term "grain" used in a particular enactment was held not to include the powdered form of the grain.

Section 2 of *Metage on Grain (Port of London) Act, 1872*, defined grain as meaning "corn, pulse and seeds". It was quite clear under the terms of

that enactment that powder or flour from the grain could not be grain as defined by that statute. We are of opinion that that decision cannot help

the petitioner to substantiate his contention that the term "coffee" under the *Madras General Sales Tax Act* will not include coffee powder.

Our attention was drawn to the definition of coffee under the 1959 Act, which is as follows :

"Coffee, that is to say, any one of the forms of coffee, such as coffee beans, coffee seeds (raw or roasted) coffee powder, but not including coffee

drink."

The comprehensive definition of coffee contained in the 1959 Act is no indication that the term "coffee" used in the previous enactment should have

a restricted meaning. It may be that by way of abundant caution, the Legislature thought fit to define the term "coffee" expressively so as to obviate

any contention that coffee powder is not coffee within the meaning of the Act. We are of opinion that the petitioner's turnover in respect of coffee

powder in the sum of Rs. 7,56,861.59 was properly included.

28. The learned counsel for the Coffee Board draws our attention to the decision in *Dinod Cashew Corporation v. Deputy Commercial Tax*

Officer [1986] 61 STC 1. That case related to cashewnut and cashew kernel. A Division Bench of this Court, after referring to the processing of

cashew kernel from cashewnuts, held as follows :

That the very fact that the petitioner itself ordered and purchased cashewnuts

and later on sold cashew kernels would show that the cashewnut was commercially an article in its own right. When the cashew-nut was subjected to the required process whether manually or mechanically, the product which came out was by itself a different commercially recognised article which could be sold and exported in that form. It was also commercially recognised as being different from the cashewnut. Therefore, applying the test of identity of the article being commercially different after being subjected to a certain process it was obvious that the cashewnut and kernel were commercially different articles.

Where, therefore, they are commercially different articles, we do not think that case can be pressed into service here.

29. Yet another case cited on behalf of the Coffee Board is Packwell Industries (P.) Ltd. v. State of Tamil Nadu [1982] 51 STC 329. Therein, a

Division Bench of this Court observed as follows :

In these cases the Tribunal records the following findings :

"The packing cases were not the subject-matters of the contracts for export. The commodity mentioned in the order placed by the foreign

importers and in the import purchase confirmation given by them and in the invoices raised by the exporters is "Indian frozen shrimps". The goods

referred to in section 5(3) are the goods contracted for export and cannot include the packing materials."

In view of this finding, the sale of packing materials effected by the petitioners herein cannot be said to have been made after and for the purpose

of complying with the agreement or order for or in relation to such export of Indian frozen shrimps.

On the very facts stated above, the case is very clearly distinguishable and hence, the reference is out of context.

Now we will refer to Shorter Oxford Dictionary - Volume I - page 205, where ""coffee"" is given the following meaning :

Coffee : Powder made by roasting and grinding the seeds.

If this is one of the meanings and it is so commonly and commercially understood, certainly, section 5(3) would be applicable to the case on hand.

30. Again, on referring to Encyclopaedia Britannica, we find the following :

Until coffee is roasted it has none of the flavour or taste generally associated with coffee. Roasting creates the brown colour and transforms the

natural chemical constituents into others that give coffee its splendid aromatic qualities and pleasing taste.

31. Thus, we hold that the very seeds purchased by the appellant for the purposes of fulfilling its obligations arising out of a contract with a buyer in

Romania, were converted into powder and exported. As we have stated above, the very purpose of purchasing the seeds was for the purpose of

export by the appellant, the appellant being a registered coffee exporter having been registered with the Coffee Board.

32. If the contention of the Board that the very seeds which were purchased ought to have been exported to claim exemption is accepted, then,

certainly, the Parliament would not have failed to use the words goods "'as such'". However the words used are "'those goods'". In other words, so

long as the identity of the goods is not lost, it would remain "'those goods'". To highlight this aspect of the matter, we would refer to the case

reported in *Kailash Nath v. State of U.P.* [1957] 8 STC 358 where, in interpreting the word "'such'" used in a notification, the Supreme Court laid

down as follows :

The Uttar Pradesh Government issued a notification which provided that with effect from 1st December, 1949, the provisions of section 3 of the

U.P. Sales Tax Act, 1948 (relating to the levy of sales tax) did not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made

on or after 1st December, 1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn was

actually exported and proof of such actual export was furnished. The petitioners, a textile mill in U.P., sold cotton cloth manufactured by them to

their constituents who thereafter dyed and printed such cloth with hand-made apparatus and exported them overseas as hand-printed cloth. The

question was whether the petitioners were entitled to exemption under the notification :

Held, (1) that it is not necessary for the exemption that there should be an initial manufacture with a view to make a sale for export but that the

exemption will be satisfied even if already existing manufactured cloth is sold with a view to export. The essential prerequisite is that the sale must

be made with a view to export as the emphasis is on the word "sale" and its time and purpose and not the manufacture of the cloth at a particular

time for a particular purpose;

(2) that by using the word "such" in the notification what the Legislature has laid down is not that the identical thing should be exported in bulk and

quantity or that any change in appearance would be crucial to alter it. The words "such cloth or yarn" would mean the cloth or yarn manufactured

in U.P. and sold and they have nothing to do with the transformation by printing and designs on the cloth;

(3) that although the colour of the cloth had changed by printing and processing, the cloth exported was the same as the cloth sold by the

petitioners and they were, therefore, entitled to the exemption under the notification.

If, even after printing and processing, the cloth exported could be held to be the same and is entitled to exemption, a fortiori is the case of coffee

seeds being converted into powder. Therefore, we hold that section 5(3) would apply to the sale in question. On this conclusion, the next question

that would arise for consideration is : Whether the appellant is entitled to refund ?

33. The plea of the appellant for refund was turned down by the learned single Judge on the ground that the levy of sales tax was not on the

appellant but only on the Board. In this case, no doubt, the appellant was taking a categorical stand, as seen from its letter dated 3rd February,

1982 addressed to the Coffee Board that the view taken by the Board that section 5(3) was not applicable to the appellant as by roasting the

coffee seeds and grinding them into powder, the identity of the article was altered, is not sustainable in law. To this, the Coffee Board wrote the

following reply on 17th September, 1982 :

This is reference to your letter No. COFE : 1937 : 82-83; GNR dated 20th July, 1982, addressed to the Chairman. The sale of coffee seeds is

made by the Board and the same is converted by you as coffee powder and the same is exported by you. Hence it does not qualify for exemption

u/s 5(3) of the Central Sales Tax Act of 1956.

In the light of the above we are unable to recommend your case to the concerned authorities.

To this, the appellant sent a rejoinder on 6th October, 1982, stating as follows :

..... the collection of sales tax from this company by the Board on purchases of coffee pursuant to export auctions conducted by the Board is

not correct. The Board ought to have found that we have exported the very same coffee in the form of coffee powder and, therefore, we are

entitled to the exemption u/s 5(3). The Board, it is submitted, is not entitled to withhold any amounts collected from this company in the guise of

sales tax, which this company is not, in the circumstances explained above, liable to pay.

Therefore, the Board was called upon to refund the tax collected from the appellant.

34. Where, admittedly, the appellant had paid the tax under protest but for which payment it would not have been possible for the appellant to

secure the coffee seeds and fulfil its obligations arising out of the contract with a foreign buyer and that tax had been debited to its account,

certainly, the appellant would be entitled to refund if, in law, this sale transaction which occasioned the export is not liable to tax or, to put it

positively, is exempt u/s 5(3) of the Act. We have already held that it is so exempt. No doubt, the levy of sales tax was against the Coffee Board

but, yet, the liability has come to be imposed on the appellant. Therefore, the writ would be maintainable. We may also add that the State cannot

contend that notwithstanding the transaction being exempt, there is no liability on the part of the State to make refund.

35. In view of the above, how to afford relief to the appellant is the next question. In this connection we would only adopt what was done in

Consolidated Coffee Ltd. v. Coffee Board [1980] 46 STC 164. Therein, at page 198, the following direction of the Supreme Court is found :

As regards past dealings and transactions, final assessment, if any, made by the taxing authorities as well as recoveries if made thereunder contrary

to the view expressed by us above deserve to be set aside and reassessments made and the concerned State Governments will direct their taxing

authorities to do the needful and further direct the refund of recoveries made to the Coffee Board which in its turn will refund the same to the

concerned registered exporters. Assessments or recoveries if made in conformity with our judgment need not be disturbed. Similarly contingency

deposits or bank guarantees already obtained by the Coffee Board from the registered exporters, if they are contrary to our judgment, these will

be refunded or released forthwith, as the case may be, by the Coffee Board.

Where, therefore, as we have found, the sale transaction itself is not liable to tax, similar direction, as given by the Supreme Court which is

extracted above, ought to follow since the collection of tax from the appellant is contrary to law. Therefore, the State will refund the tax to the

Coffee Board which, in turn, will pass on the same in favour of the appellant.

36. In the result, the writ appeal will stand allowed with costs. Counsel's fee Rs. 1,000.

37. Writ appeal allowed.