

(1971) 09 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No's. 693 to 695 of 1969

The Anglo-American Direct Tea Trading Company Ltd. and
Others

APPELLANT

Vs

The Assistant Commercial Tax Officer, Srirangam Division

RESPONDENT

Date of Decision : 09-09-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 7, 8
Constitution of India, 1950 — Article 366

Citation : (1972) 29 STC 123

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : V.K. Thiruvengkatachari, for Raju K. Lukose, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—In this batch of writ petitions the question involved is whether the petitioner in each of these writ petitions is entitled to claim from the Central sales tax authorities to have certain specified articles being included in its Central sales tax registration certificate issued u/s 7 of the Central Sales Tax Act of 1956. The facts in Writ Petition No. 693 of 1969 may be noted as the facts in the other cases are similar. The petitioner, a company incorporated in Great Britain and having its registered office in Glasgow in Scotland, carries on business of tea planting and manufacturing in the States of Kerala, Madras and Assam. The petitioner-company has a sales office in Tiruchirapalli and owns tea estates in the Anamallais in the Madras State. The petitioner is a registered dealer under the Central Sales Tax Act and liable to pay sales tax thereunder. As such dealer, he made an application for registration under the Act u/s 7 and for the issuance of a certificate u/s 7(4) to enable him to purchase, in the course of inter-State trade, certain materials or goods, which according to the petitioner, were required in the process or in the manufacture of the goods, manufactured by him for sale. It is not in dispute that such a certificate was granted from time

to time. On 27th January, 1967, a registration certificate was issued to the petitioner whereunder certain goods were listed as goods which the petitioner could include in the certificate of registration within the meaning of Section 8(3) of the Act and Rule 13 of the Rules framed thereunder. Soon thereafter the registering authority was of the view that the certificate so issued was comprehensive and therefore a show cause notice was issued to the petitioner calling upon him as to why certain articles or goods should not be deleted from the certificate issued and stating that the certificate should be limited to such of those goods which are essential for the manufacture of tea by the petitioner. Ultimately, in 1968 after hearing the petitioner, it was found that the articles which were necessary for the petitioner in its capacity as an agriculturist growing tea, had to be excluded from its registration certificate. The respondent relying upon *J.K. Cotton S. & W. Mills Co. Ltd. v. Sales Tax Officer* [1965] 16 S.T.C. 563 once again after hearing parties, confirmed the view that such goods as above are not includible in the registration certificate and accordingly decided to amend the certificate issued under the Act by deleting the articles mentioned in exhibit P-11 which is annexed to the affidavit, in support of the writ petition and specified in paragraph 12 of the affidavit. This exclusion from the certificate is common to the three writ petitions. The statement showing the items of goods excluded from the Central sales tax registration certificate by the challenged order is reproduced for ready reference :

1. Cultivation.-Garden implements, irrigation equipment including water supply fittings, pumps, soil testing machines and laboratory stores, polythene bags, sheetings and ropes, seeds (tea and shade trees), mechanical saws, winches, soil fumigants, chemicals.

2. Crop Protection - Fertilisers, manures, insecticides, fungicides, acaricides, weed killers, tree killers, dusting and spraying materials, blowers, chemicals, respirators, eye shields, sprayers, dusters and spares.

3. Crop collection.-Shears, plucking baskets, jute hessian, cumblies, coir leaf bags for transport of tea, mechanical devices, shoot runners for transport of tea on wire, spring balance.

2. Aggrieved by the order of exclusion made by the respondent, the petitioner has come up to this court claiming that he is entitled as of right to the inclusion of such goods in his certificate as according to the petitioner, they are required for use by it in the manufacture or processing of its goods for selling. The revenue on the other hand contends that though the petitioner is carrying on the business of agriculture as also an independent commercial activity of manufacture of tea, yet the two activities are separate and distinct and the goods required for use by the petitioner in the agricultural activity cannot be deemed to be goods used by the petitioner in the manufacture or processing of his finished product, namely, tea.

3. For an appreciation of the relative contentions, the statutory provisions may

be noticed. I have already referred to Section 7(1) and 7(4) of the Central Sales Tax Act which obligates a dealer under the Act to obtain a certificate of registration which only would enable him to purchase goods at the concessional rate of Central sales tax from out-of-State sellers. But in order to enable such a dealer to get such a certificate of registration, he must be in a position to satisfy the authorities that the goods which he intends purchasing in the course of inter-State trade are goods which come within the purview of Section 8(3) of the Central Sales Tax Act. Section 8(3) explains such goods as "goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale...." We are not concerned with the first portion of this explanation contained in Section 8(3). It is therefore necessary to see what are the rules framed by the Central Government in this behalf. The main rule, which lays down the prescription of goods for the purpose as above, is Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The rule runs as follows :

The goods referred to in Clause (b) of Sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel, or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

4. The goods which are referred to in Section 8(3)(b) are expanded under this rule as goods intended for use by the dealer as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, etc., in the manufacture or processing of goods for sale.... These are the relevant statutory provisions which are to be noticed.

5. We have already seen that the commercial activity of the petitioner consists of growing and manufacturing of tea. . The form prescribed by the rules which specifies the nature and the content of a certificate of registration is set out in Form B of the Central Sales Tax Rules. It refers to the business of the applicant or dealer. The business of such a dealer may be wholly agriculture, horticulture, mining, manufacturing, wholesale distribution, retail distribution, contracting or catering etc., or any combination of two or more of them. Therefore there is every possibility of a dealer whose business is a combination of an agricultural activity as well as a manufacturing activity might apply for a certificate of registration u/s 7 read with Section 8 of the Act; and in those circumstances it has to be judged whether the goods for which the certificate was asked for are intended for the manufacture or the processing of the ultimate finished goods of the dealer for sale.

6. Article 366 of the Constitution of India defines "agricultural income" as meaning agricultural income as defined for the purposes of the enactments

relating to Indian Income Tax. The Indian Income Tax Act defines "agricultural income" as meaning any rent or revenue derived from land which is used for agricultural purposes etc. Rule 8 of the Income Tax Rules, 1962, is a special provision dealing with income from the manufacture of tea. Sub-clause (1) of Rule 8 of the said Rules provides as follows :

Income derived from the sales of tea grown and manufactured by the seller in India shall be computed as if it were income derived for business, and forty per cent, of such income shall be deemed to be income liable to tax.

7. A similar rule is adopted even under the Madras Agricultural Income Tax Act, 1955, and the Rules framed thereunder. Rule 7 of the Madras Agricultural Income Tax Rules, 1955, is practically a replica of the content of Rule 8 of the Income Tax Rules, 1962. I have referred to these provisions only to gain the impression that one other taxing enactment has treated the manufacture of tea as an integrated activity which has a conceivable nexus with the growth of tea or shrubs. The argument- however is that the rearing of the tea shrubs is an independent activity totally dissociated from the ultimate manufacture of the finished product, namely, tea, and therefore such of those goods as are required for the former activity, even though essential for the ultimate manufacture of tea, cannot be considered for being included in the certificate of registration as above.

8. It would be useful at this stage to refer to the manner in which tea is manufactured. The Encyclopaedia Britannica, Volume 21, page 737, deals with the subject of tea. The Encyclopaedia says tea is a beverage made from the dried leaves of the tea plant, an evergreen shrub or small tree of the family Theaceae. Under the caption of "manufacture", the treatise proceeds to say that most stages of processing are generally common to the three types of tea manufactured at the factory. First, the fresh leaves are withered by exposure to the sun or by heating in trays until pliable (usually 18-24 hours). Next the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and enzymes. This rolling process may last up to three hours. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air, usually for 30-40 minutes. From the above excerpt it is clear that the leaves plucked from the evergreen shrub or tea plant is immediately subjected to a process which is unavoidable or indeed impossible to avoid, if tea has to be manufactured or intended to be manufactured from such leaves. It cannot be assumed that the grower of tea is rearing the shrubs for the pleasure of it; the leaves plucked from such shrubs or plants are immediately processed through by exposing them to the sun or by heating them to make them pliable and thereafter rolled in order to break the cells in the leaves and ultimately dried up completely by another independent process. It is clear from the Encyclopaedia Britannica that the total process occupies about 21 hours 30 minutes. But this process is a necessary ingredient in the manufacture of tea, and cannot at all be avoided. If therefore there is that irretrievable nexus

between the agricultural activity and the commercial activity which follows at its heels then it would not be proper to dissociate these two activities on the only ground that the former is an agricultural activity and the latter is not. The point to be remembered is that this process of agricultural activity is directly connected with the actual manufacture and production of tea. The passage quoted by the respondent in support of its order far from helping him is against the conclusion which he had arrived at. The learned Judges of the Supreme Court in *J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. The Sales Tax Officer, Kanpur, and Anr.* [1965] 16 S.T.C. 563 said :

Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods".

9. In the instant case it cannot be denied that the agricultural process is so integrally connected with the ultimate production of tea that, but for that agricultural process, manufacture or processing of tea would be commercially inexpedient and therefore the goods which are required in that agricultural process should automatically fall within the expression "in the manufacture of goods". The Supreme Court in that case had to consider whether drawing and photographic materials for the process of designing were so intimately connected with the process of manufacture of cloth. While confirming that such goods used in the process of designing ought to be included in the certificate of registration, the court said :

If the process of designing is so intimately connected with the process of manufacture of cloth, we see no reason to regard the process of designing as not being a part of the process of manufacture within the meaning of Rule 13 read with Section 8(3)(b). The process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" takes within its compass, all processes which are directly related to the actual production.

10. In this view the Supreme Court held that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

11. In *Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes* [1965] 16 S.T.C. 259 the Supreme Court was considering the propriety of adding in the certificate locomotives and motor-vehicles used by a miner for carrying the finished products from the factory to the store. The Supreme Court answering the poser in the affirmative said that there is no ground for excluding locomotives and motor-vehicles used in carrying finished products from the

factory.

12. It is therefore clear that if on a fair understanding of the nature of business of a dealer one comes to a reasonable conclusion that the intermediate goods, which are required for one of the processes in the composite activity, is essential for the ultimate manufacture or processing of the finished product, then it would follow that such intermediate goods are also goods which would come within the meaning of Rule 13 and Section 8(3)(b) of the Central Sales Tax Act as goods required in the manufacture or processing of goods for sale. I have no hesitation in holding that the agricultural activity or business is virtually telescoped into the latter commercial activity of the petitioner in the manufacture or processing of tea; as such all goods required for the agricultural business should certainly be deemed to be goods required for use in the manufacture or processing of the ultimate finished product, namely, tea. I have also referred to certain passages in the Encyclopaedia Britannica only for the purpose of demonstrating that the green leaves of tea grown by a planter are absolutely useless unless they are processed through and made into tea. Green tea-leaves which is the product of agriculture by itself is not tea. It has to be further processed through to make tea-leaves as is popularly understood. Therefore to obtain tea-leaves there must be green leaves. To grow green leaves certain goods are required in the course of such agricultural activity. Thus logically the goods required to grow tea shrubs for purposes of obtaining tea-leaves, are integrated with the ultimate process of manufacturing of tea at the factory by a dealer in tea. It is in this view that the special rules prescribed in the Income Tax Rules, 1962, as well as the rules framed under the Madras Agricultural Income Tax Act use the consolidated expression growing and manufacture. There is no growing without being furthered by manufacture and there cannot be manufacture without growing. This link between the two processes being inseparable and indivisible, the activity of the petitioner must be deemed one and consolidated. The agricultural and the commercial businesses are not mutually exclusive. The learned counsel fairly placed before me the decision of the Kerala High Court in Travancore Tea Estates Co. Ltd. v. The State of Kerala T.R.C. No. 46 of 1969 wherein the learned Judges were of the view that the goods required for a tea grower in the course of his agricultural activity, which precedes the industrial activity, cannot be normally included in the certificate. With the utmost respect to the learned Judges, I am unable to fall in line with the view expressed, as the Supreme Court has clearly given expression to the real intendment and purport of Rule 13 read with Section 8(3)(b).

13. In the view I hold that the goods enumerated in exhibit P-11 annexed to the affidavit are necessary for every one of the activities in the chain of business of the petitioner, the order of the respondent suffers from an error apparent and the rule nisi has therefore to be made absolute. These three writ petitions are therefore allowed and there will be no order as to costs. The respondent is directed to amend the certificate as expeditiously as possible in the light of the judgment as above.