Supreme Court of India
Commissioner Of Sales Tax, ... vs D. S. Bist & Ors on 11 September, 1979
Equivalent citations: 1980 AIR 169, 1980 SCR (1) 593
Author: N Untwalia
Bench: Untwalia, N.L.

PETITIONER:
COMMISSIONER OF SALES TAX, LUCKNOW

Vs.

RESPONDENT:
D. S. BIST & ORS.

DATE OF JUDGMENT11/09/1979

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
PATHAK, R.S.

CITATION:
1980 AIR 169 1980 SCR (1) 593
1979 SCC (4) 741
CITATOR INFO :
D 1988 SC1435 (38)

ACT:
U. P. Sales Tax Act, 1948-S. 2(i) proviso-Tea leaves after drying and processing-Whether remained agricultural produce not exigible to sales tax under the proviso.

HEADNOTE:
The proviso to s. 2(i) of the U.P. Sales Tax Act, 1948 excludes from the term "turnover" proceeds of sale of agricultural or horticultural produce grown by a person on any land in which he has interest.

The assessee, who was an agriculturist, owned tea gardens in the State. After being plucked from tea shrubs tea leaves are withered in shade in rooms, crushed by hand or foot, roasted for 15 minutes, then covered by wet sheets for the purpose of generating fermentation, graded and finally roasted again with charcoal for obtaining flavour and colour. The final product is sold in the market.

Before the Sales Tax Authorities the assessee contended that tea leaves sold by him were agricultural produce grown by him on his own land and that, therefore, the sale of tea effected by him was exempt from sales tax under the proviso to s. 2(i) of the Act. The Sales Tax Authorities rejected

the assessee's contention. The High Court answered the reference in favour of the assessee and against the revenue.

Dismissing the appeal,

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HELD: (per Untwalia J.): The High Court was right in holding that sales of tea leaves were not exigible to sales tax. The commodity which was sold was not different from the commodity which was produced in agriculture and, therefore, the proviso to s. 2(i) is attracted. [600 F, 602 E]

1. Almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself either on the farm or elsewhere in order to make it non-perishable, transportable and marketable. Some minimal process is necessary to be applied to many varieties of agricultural produce. The test in these cases is to see whether in relation to that agricultural produce the process applied was minimal or was so cumbersome and long drawn out that either in common parlance or in the market or even otherwise no one would treat the produce as an agricultural produce. The mere fact that in the case of a particular product the process is a bit longer or even a bit complicated would not rob the produce of its character of being an agricultural produce. [597 B-C; F-G]

2. All the processes enumerated by the Revising Authority were necessary for the purpose of saving the tea leaves from perishing, making them fit for transporting and marketing. The processes applied were all within the region of minimal processes and at no point of time they crossed that limit and robbed the leaves of their character of being and continuing to be agricultural produce. [598 C-E]

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Vol. 21 Encyclopaedia Britannica (1968 edition), referred to.

The State of Madras v. Swasthik Tobacco Factory 17 S.T.C., 316, The State of Madras v. Bell Mark Tobacco Co. 19 S.T.C., 129 referred to.

The State of Madras v. R. Saravana Pillai 7 S.T.C., 541, Deputy Commissioner of Agricultural Income Tax and Sales Tax, Sough Zone v. Sherneilly Rubber & Cardamom Estates Ltd. & others. 12 S.T.C. 519, Commissioner of Income Tax v. Woodland Estates Ltd. 58 I.T.R., 612 Rayavarapu Mrityanjaya Rao v. The State of Andhra Pradesh 20 S.T.C., 417, Commissioner of Sales Tax, U.P., Lucknow v. Harbilas Rai and Sons, 21 S.T.C., 17 approved.

Killing Valley Tea Company Ltd. v. Secretary to State A.I.R. 1921 Calcutta, 40 distinguished.

(Pathak, J. concurring).

In Killing Valley Tea Co. Ltd. v. Secretary to State A.I.R. 1921 Calcutta, 40 the Calcutta High Court was of opinion that while process of selecting and plucking tea leaves from the tea shrubs could be deemed to be agriculture, the subsequent process which included drying and rolling of the leaf was a manufacturing process. If the

Calcutta High Court could be said to have laid down that as a result of those processes the tea leaf ceased to be agricultural produce, it is not correct. The tea leaf remained what it always was. It was tea leaf when selected and plucked and it continued to be tea leaf when after the process of withering, crushing and roasting, it was sold in the market. The process applied was intended to bring out its potential qualities of flavour and colour. The potential inhered in the tea leaf from the outset when still a leaf on the tea bush. The potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. At no stag, did it change its essential substance. It remained tea leaf throughout. In its basic nature it continued to be agricultural produce. [603 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2361- 2364 of 1972.

Appeals by special leave from the Judgment and Order dated 17-5-72 of the Allahabad High Court in Sales Tax Ref. Nos. 693 to 696/70.

S. C. Manchanda, Shiv Pujan Singh and M. V. Goswami for the Appellant. (In all the appeals) V. S. Desai and Rameshwar Nath for the Respondent. The following Judgments were delivered:

UNTWALIA, J. The Commissioner of Sales Tax, Lucknow has filed these four appeals by special leave against the judgment of the Allahabad High Court given in four sales-tax references under the U.P. Sales Tax Act, 1948, hereinafter referred to as the Act.

The assessee-respondent owns some tea gardens in the State of U.P. The tea-leaves grown by the respondent in his gardens are sold in the market after being processed and packed. The stand taken on his behalf before the taxing authorities was that the tea-leaves sold by the respondent are agricultural produce grown by himself and, therefore, the sales were not exigible to sales-tax. The contention of the assessee was not accepted and the final Revising Authority made four references in respect of the four periods to the High Court on the following question of law:-

> "Whether on the facts and circumstances of this case the article ceased to be an agricultural produce and whether the tea produced by the assessee would be exigible to sales tax?"

The High Court has answered the reference in favour of the assessee and against the revenue. Hence these appeals by the department.

Under section 3, the charging section, of the Act it was the turn-over for each assessment year determined in accordance with the various provisions of the Act and the Rules framed thereunder, which was chargeable to sales-tax. The definition of 'turnover' given in section 2(i) of the Act at the relevant time stood as follows:-

> " "Turnover" means the aggregate amount for which goods are supplied or distributed by way of sale(or are sold), or the aggregate amount for which goods are bought, whichever is greater by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration:
>
> Provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, or poultry or dairy products from fowls or animals kept by him shall be excluded from his turnover."

The above proviso was meant to exempt an agriculturist or a horticulturist from the charge of sales-tax in respect of his agricultural or horticultural produce grown by himself in his land in which he has an interest of the kind mentioned in the proviso. The short question which falls for our determination, therefore, is whether the assessee's transactions of sale came within the ambit of the proviso. Indisputably and undoubtedly the assessee was an agriculturist, the tea-leaves grown by him in his land were agricultural produce, and he had sold them after processing and packing. In other words the assessee made them marketable and fit for consumption by the consumers and then sold them. If the tea- leaves so sold substantially retained the character of being an agricultural produce, it is plain that the assessee's sales will not be exigible to sales-tax. If, on the other hand, the leaves had undergone such vital changes by processing that they lost their character of being an agricultural produce and became a different commodity then the sales made by assessee were exigible to sales-tax.

The High Court has extracted the primary findings of fact recorded by the Revising Authority in its revisional order. As is well-known tea-leaves are plucked from tea- plants as green tea-leaves. The tea-leaves so plucked are not fit for consumption and are not sold in the open market. They are often purchased by big tea concerns from the owners of the gardens and after processing and packing them they (the concerns) sell them in the market. Since in their cases the proviso will not apply the sales will be exigible to sales tax. But when the producer himself does the same or similar kind of job, then the question arises whether it can be justifiably said that he also cannot take advantage of the proviso?

The primary facts as extracted by the High Court from the order of the Revising Authority are the following:-

> (1) "The tea-leaves were first of all subjected to withering in shadow in rooms on a wooden floor for about 14 hours."

(2) "then they were crushed-by hand or foot and were then roasted for about 15 minutes." (3) "Later they were roasted on mats for about 15 minutes."

(4) And then they were "covered by wet sheets for generating fermentation. During this process the colour of leaves was changed from green to yellowish."

(5) "the leaves were then subjected to grading with sieves of various sizes. Fanning machines are also used in completing the grading process."

(6) "The produce was then finally roasted with charcoal for obtaining suitable flavour and colour."

(7) "It is this final product which was eventually sold by the assessees."

The question for consideration is whether on the findings aforesaid it can be justifiably held in law that the leaves lost their character of being an agricultural produce and became something different. It should be remembered that almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his farm or elsewhere in order to bring them to a condition of non-perishability and to make them transportable and marketable. Some minimal process is necessary to be applied to many varieties of agricultural produce. As for example, when wheat stalks are cut from the farm, threshing and winnowing have to be done. The product so obtained has to be dried for a few days. The husk and dust have to be separated. Thereafter packing the wheat in bags or other containers it is taken to the markets for sale. One can never suggest that such a wheat product becomes a commodity different from the one which was produced in the process of agriculture. To pursue that example further, if the agriculturist who produces the wheat has a flour mill and crushes the wheat produced by him in that mill and then if the flour so produced is sold by him one can never reasonably suggest that the flour sold by him is an agricultural produce, because in that event, the manufacturing process goes beyond the limit of making the agricultural produce fit for marketing as such and turns it into a different commodity altogether i.e. flour. But there may be some other kinds of agricultural produce which required some more processing to make it marketable. In the case of such a commodity what one has to judge is to find out whether in relation to that agricultural produce the process applied was minimal or was it so cumbersome and long drawn that either in common parlance, or in the market, or even otherwise, any body would not treat the produce as an agricultural produce. The mere fact that in the case of a particular product the process is a bit longer or even a bit complicated will not rob the produce of its character of being an agricultural produce. Largely the inference to be drawn from the primary facts of processing, one may say, will be an inference of fact. But it is not wholly so. In a given case it will be a mixed question of fact and law. If wrong tests are applied in drawing the inference that the agricultural produce has lost its character of being so, then it will be a question of law and the High Court will have jurisdiction in an appropriate reference, as in the present case it had, to decide whether the case came under the proviso to section 2(i) of the Act.

Unlike many agricultural products tea-leaves are not marketable in the market fresh from the tea gardens. No body eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea

liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. Of course, the processing may stop at a particular point in order to produce inferior quality of tea and a bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change the character of the tea-leaves, still they will be known as tea-leaves and sold as such in the market. In my opinion all the six processes enumerated above from the primary findings of fact recorded in the order of the Revising Authority were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal. Withering, crushing and roasting the tea-leaves will be surely necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with seives were all within the region of minimal process and at no point of time it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially. In my opinion, therefore, the view expressed by the High Court is quite justified and sustainable in law.

In Volume 21 of Encyclopaedia Britannica (1968 edition) under the head 'Tea' are dealt with at page 739 the processes of cultivation and manufacture of tea. Under the sub-head 'Cultivation' it is found stated:-

> "Tea leaves are plucked either by hand or with special shears. In the tropical areas of southern India, Ceylon, and Indonesia, harvest continues throughout the year, but in the subtropical regions of northern India and China and in Japan and Formosa, the harvests are seasonal. The flavour and quality of the tea-leaves vary with the climate, soil, age of the leaf, time of harvest (even from season to season), and method of preparation."

Then comes the sub-head 'Manufacture' which enumerates the categories of three classes of teas and then it is mentioned:-

> "Most stages of processing are generally common to the three types, of tea. 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."

In making black tea, the leaves, after being rolled, are fermented in baskets or on glass shelves or cement floors under damp cloths. "The process of fermentation, or oxidation, reduces the astringency of the leaf and changes its colour and flavour." About green-leaves it is mentioned- "Green tea is made by steaming without fermentation in a perforated cylinder or boiler, thus retaining some of the green colour. The leaves are lightly rolled before drying." It would thus be seen that the tea-leaves as plucked have got to pass through stages of processing of one kind or the other in order to make them fit for human consumption, as in the case of paddy and many other commodities dehusking in the case of former and some other kind of process in regard to the latter

has got to be done in order to make them marketable and fit for consumption.

There are two decisions of the Madras High Court in The State of Madras v. R. Saravana Pillai(1) and N. Deviah Gowder v. Commercial Tax Officer, Coimbatore(2) where a similar question arose with respect to arecanuts. At page 544 of the first case which was followed in the second occurs a passage which may be usefully quoted here:-

> "As we have pointed out, it was common ground that there is no market in Coimbatore or elsewhere for arecanuts as they are when plucked from the trees, and it should be remembered they are gathered when they are still unripe. The proviso to section 2(i) of the Act is obviously conceived in the interests of agriculturists. It excludes from any tax liability under the Act sale of agricultural and horticultural produce, the primary condition to be satisfied being that it must be produce of the land which either belongs to the seller or of the land in which he has an interest as specified by section 2(i). To restrict that concession to sale of arecanuts, for instance, only if those arecanuts are sold in the state in which they are immediately on being gathered from the trees, would render the statutory exclusion meaningless."

I approve of this decision.

There are two decisions of the Bombay High Court given in relation to the question of sugarcane being converted into jaggery. They are:-R. B. N. S. Borawake v. The State of Bombay(1) and Commissioner of Income-Tax, Poona v. H.G. Date.(2) In the former case it was observed at page 11:-

> "It is true that gur cannot be regarded as an agricultural produce grown on land. But if gur is prepared out of the agricultural produce which is grown on land, in the absence of any indication to the contrary suggesting that the agricultural produce must be sold in the form in which it is grown, we will be justified in holding that an agriculturist who is exclusively selling agricultural produce grown on the land either in the form in which it is grown or in the form in which it is converted for the purpose of transportation or preventing deterioration is within the exception provided by section 2(6). In the present case, with a view to prevent deterioration and for the purpose of facilitating transportation the assessee converted the sugar-cane grown by him into gur and sold it."

It appears to me that this case has gone a bit too far and on an appropriate occasion it may require further consideration. Nonetheless, in the instant case one can safely conclude, as I have done, that with a view to prevent deterioration and for the purpose of facilitating transport and making it marketable the assessee himself did some processing to the plucked tea-leaves and hence the High Court was right in holding that such sales were not exigible to sales-tax. Similar or identical principles have been applied by other High Courts also in respect of different commodities such as rubber, sole crepe, casuarina, pig bristles etc. The cases are-Deputy Commissioner of Agricultural Income-Tax and Sales-Tax, South Zone v. Sherneilly Rubber & Cardamom Estates Ltd. & Others(3). Deputy Commissioner of Agricultural Income-Tax and Sales- Tax, Quilon v. Travancore Rubber and

Tea Co., Ltd.;(4) Commissioner of Income-Tax v. Woodland Estates Ltd.;(5) Rayavarapu Mrityanjaya Rao v.

The State of Andhra Pradesh(1) and Commissioner of Sales Tax, U.P., Lucknow v. Harbilas Rai and Sons. (2) Broadly speaking these cases have been decided on application of the correct principles of law.

Reliance on behalf of the Revenue was placed upon a few cases. None of them supports the department's contention. I may notice only two or three of them. In Killing Valley Tea Company, Ltd. v. Secretary to State(3) the question for consideration related to the tax liability of the Killing Valley Tea Company under the Income Tax Act, 1918. If the whole of its income was derived from agriculture, the assessee was not liable to pay income-tax. If, however, the activities of the Company, which produced income were attributable partly to agriculture and partly to its manufacturing activities, then the whole of the amount could not have been taxed under the Income-Tax Act. The stand of the Company was-"the actual leaf of the tea plant, without the addition thereto of the processes above described, is of no value as a market commodity." On behalf of the Revenue it was contended "that the manufacturing processes carried out in a modern tea factory, with scientific appliances and up- to-date machinery, are different from those ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market." The High Court held-"that the process in its entirety cannot be appropriately described as agriculture. The earlier part of the operation when the tea bush is planted and the young green leaf is selected and plucked may well be deemed to be agriculture. But the latter part of the process is really manufacture of tea, and cannot, without violence to language, be described as agriculture.

The green leaf is not marketable commodity for immediate use as an article of food, but it is a marketable commodity to be manufactured by people who possess the requisite machinery into tea fit for human consumption." After referring to some authoritative books on Tea, the view expressed by the High Court was "that the entire process is a combination of agriculture and manufacture." Hence only a part of the income was held to be taxable. In the instant case the problem is quite distinct and different. Here we are concerned with the question whether the commodity which the assessee sold as tea was his agricultural produce or not. He had not sold his tea-leaves from his gardens to any manufacturing tea company. He had himself applied some indigenous and crude manufacturing process in order to enable him to sell his tea in the market. In such a situation I have no difficulty in holding that the sale was of his agricultural produce.

In The State of Madras v. Swasthik Tobacco Factory(1) the question before this Court was whether the respondent- firm which purchased raw tobacco and converted it by a manufacturing process into chewing tobacco and sold it in small paper packets was entitled to deduction of excise duty paid by it on the raw tobacco from the gross turnover of sales of chewing tobacco under rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. It would be found mentioned at page 318:-"Both the advocates argued, on the basis of the factual position, that the packets of chewing tobacco were goods different from tobacco from which the said goods were manufactured." On that footing, by interpretation of the rule it was held that only excise duty paid on the goods sold by the assessee is deductible from the gross turnover, and not the excise duty paid on raw tobacco.

This case was followed by the Supreme Court in The State of Madras v. Bell Mark Tobacco Co.(2) In the instant case I have held that the commodity which was sold was not different from the commodity which was produced in agriculture.

The view expressed by the Allahabad High Court in the judgment under appeal which is reported in D. S. Bist & Sons, Nainital v. Commissioner of Sales Tax, U.P.(3) is on the lines of the preponderance of views expressed by different High Courts in relation to different commodities. I approve of the case and dismiss these appeals with costs- hearing fee-one set only.

PATHAK, J. I agree that the appeals should be dismissed.

But I should like to say a few words in regard to Killing Valley Tea Company, Ltd. v. Secretary to State.(4) That was a case where the Killing Valley Tea Company, Ltd. had a tea plantation and after selecting and plucking the young green leaf from the tea bush by hand it was put through a process of drying and rolling. The Income Tax Department alleged that the process actually applied to the dry leaf was a manufacturing process carried out in a modern tea factory with scientific appliances and the latest machinery. The Calcutta High Court, on a consideration of the respective cases of the parties, observed that the entire process could not be described as agriculture, and that the process applied to the tea leaf after it had been plucked was a manufacturing process. It observed that the green tea leaf was a marketable commodity to be manufactured by people who possessed the requisite machinery into tea fit for human consumption. It was of the opinion that while the process of selecting and plucking the tea leaf from the tea shrubs could be deemed to be agriculture, the subsequent process which included drying and rolling of the leaf was a manufacturing process. The High Court drew a distinction between the two processes for the purpose of apportioning the income between agricultural income and non agricultural income. The question before us is whether after the tea leaf had been put through the process of withering, crushing, roasting and fermentation it continued to be agricultural produce. If the Calcutta High Court can be said to have laid down that as a result of those processes the tea leaf ceased to be agricultural produce, I am unable to agree with it. To my mind, the tea leaf remained what it always was. It was tea leaf when selected and plucked. and it continued to be tea leaf when after the process of withering, crushing and roasting it was sold in the market. The process applied was intended to bring out its potential qualities of flavour and colour. The potential inhered in the tea leaf from the outset when still a leaf on the tea bush. The potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage. did it change its essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be agricultural produce.

The appeals fail and are dismissed with costs. Costs are awarded as one set only.

P.B.R. Appeals dismissed.