

**DY. COMMISSIONER OF AGRICULTURAL INCOME TAX,
AND SALES TAX, CENTRAL ZONE, ERNAKULAM**

v.

M/S. PALAMPADAM PLANTATIONS LTD., KOTTAYAM

February 12, 1969

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Kerala General Sales Tax Act (Kerala 15 of 1963), s. 2(viii)—Dealer—Trees of spontaneous growth in private forest—If 'produced' by owner of forest—'Produced', meaning of.

Where a person owns and maintains a private forest and sells trees of spontaneous growth therein but does not do anything towards the production of the trees or their uprooting, he is not a 'dealer' within the meaning of s. 2(viii) of the Kerala General Sales Tax Act, 1963. In order to fall within the definition, a person must sell goods *produced* by him by manufacture, agriculture, horticulture or otherwise. The intention of the Legislature in using the word 'produced' was to introduce an element of volition and effort involving the employment of some process for bringing into existence the goods. Trees which have grown spontaneously without any plantation by a person cannot be said to have been produced by him by agriculture or horticulture or 'otherwise', since the element of 'production' is not present. [675 H; 676 A-B, C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1058 of 1967.

Appeal by special leave from the order dated September 15, 1966 of the Kerala High Court in Tax Revision Case No. 106 of 1966.

M. R. Krishna Pillai, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Kerala High Court dismissing *in limine* a revision petition directed against the order of the Sales Tax Appellate Tribunal dated April 15, 1966 by which it was held that the respondent company was not a "dealer" within the meaning of s. 2(viii) of the Kerala General Sales Tax Act 1963 (Act 15 of 1963) hereinafter called the "Act".

The respondent sold trees of spontaneous growth in its estate for Rs. 50,000 during the assessment year 1963-64. The assessing authority levied sales tax by treating the aforesaid amount as taxable turnover under the Act. In appeal the Appellate Assistant Commissioner confirmed that order. Before the Appellate Tribunal it was common ground that the trees sold were of spontaneous growth. The Tribunal did not accede to the contention

- A of the State representative that under the contract, by the process of uprooting the trees, the respondent produced timber and would be covered by the definition of a "dealer" contained in s. 2(viii) of the Act. It was held that uprooting of the trees was not being done by the respondent and no process had been employed by which it could be said that timber had been produced by it.
- B The appellant herein filed a petition before the High Court raising the following questions of law :

C " (1) Whether on the facts and in the circumstances of this case, a person owning and maintaining private forest and selling trees of spontaneous growth therein, is a 'dealer' within the meaning of section 2(viii) of the Kerala General Sales Tax Act, 1963 ?

(2) Whether such a person is liable to the levy of sales-tax respect of sales of his timber, under the said Act ?"

- D As mentioned before the High Court rejected the petition for revision at the preliminary hearing.

The sole question is whether on the findings given by the Appellate Tribunal the respondent can be regarded as a "dealer" within the definition given in s. 2(viii). According to that definition "dealer" means any person who carried on the business of buying, selling, supplying or distributing goods directly or otherwise whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes

E (e) a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise.

F It has been contended before us by learned counsel for the appellant that the Appellate Tribunal erred in assuming that any agricultural, horticultural or other process was involved in producing the timber sold. The basic question, it is said, was whether maintenance of a private forest with a view to producing and selling valuable timber with the usual attributes of business present in the said activity, namely, periodicity, continuity and profit motive would amount to such process. The other question was whether the said activity *i.e.*, forestry would not come within the scope of "agriculture, horticulture or otherwise" particularly when the respondent owns substantial area of forest land, and timber from the trees of spontaneous growth is sold year after year with the object of earning profit.

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Now in order to fall within the definition of "dealer" a person must sell goods produced by him by manufacture, agriculture,

horticulture or otherwise. Such trees which have grown spontaneously and without any plantation by that person cannot possibly be regarded as having been produced by him by agriculture or horticulture. The word "otherwise" also cannot cover trees of spontaneous growth since the element of production must be present. The context in which the word "produced" appears in the definition can only mean "to bring forth, bring into being or existence—to bring (a thing) into existence from its raw materials or elements :” (See the meaning of the word “produce” in the Shorter Oxford English Dictionary). According to Websters’ International English Dictionary the verb “produce” means to bring forward, beget etc. The juxtaposition of the word “manufacture” with “agriculture” and “horticulture” is significant and cannot be lost sight of. The intention in employing the word “produced” obviously was to introduce an element of volition and effort involving the employment of some process for bringing into existence the goods. The respondent in the present case has not been found to have done anything towards the production of the trees and even the cutting has been done by the contractor. The respondent therefore cannot possibly be regarded as a person who sells goods produced by him by agriculture, horticulture or otherwise.

On the above view of the matter the appeal fails and is dismissed. As there is no appearance on behalf of the respondent there will be no order as to costs in this Court.

V.P.S.

Appeal dismissed.