

DY. COMMISSIONER OF SALES TAX (LAW), BOARD OF
REVENUE(TAXES,) ERNAKULAM

v.
COCO FIBRES

DECEMBER 4, 1990

[KULDIP SINGH AND K. RAMASWAMY JJ.]

*Kerala General Sales Tax Act: Section 5A—'Coconut husk'—
Whether coconut fibre a separate identity from 'Coconut husk'.*

The assessee is a registered dealer under the Kerala General Sales Tax Act. In its return of taxable turnover, the assessee excluded the value of coconut husks purchased and converted into coconut fibre on the ground that there was no manufacturing process involved in making fibre from coconut husk.

The Sales Tax Officer as well as the Appellate Authority negatived the assessee's claim. The Sales Tax Appellate Tribunal however, allowed the assessee's revision, and the High Court confirmed the order of the Tribunal.

Allowing the appeal of the Revenue, this Court,

HELD: (1) By the process of manufacture something is produced and brought into the existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. [421D-E]

Ujagar Prints v. Union of India, [1989] 3 SCC 488, referred to.

(2) The test laid down by this Court is that the article which comes into being must be commercially different from the one from which it is made or manufactured. [422D]

State of Bihar v. Chrestien Mica Industries Ltd., [1956] 7 S.T.C. 626 and *Commissioner of Sales Tax v. Harbilas Rai & Sons*, [1968] 21 S.T.C. 17 (S.C.), referred to.

(3) In view of the admitted position that green husk is soaked into saltish sea water for days together and after decomposition, on being subjected to beating either by manual or mechanical process, fibre is produced in the process, which is a distinct commodity known in the

A **commercial parlance. No one in the market would sale or supply husk when fibre is asked for. [422E]**

Dy. Commissioner of Salex Tax (Law) v. Pie Food Packers, [1978] 41 S.T.C. 364, distinguished.

B **(4) The Coconut fibre is commercially a different identifiable commodity known as such in commercial parlance. Therefore, the value of sale or purchase of coconut husk would attract purchase tax under section 5-A of the Sales Tax Act. [422G]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4014 (NT) of 1985.

C From the Judgment and Order dated 17.10.1984 of the Kerala High Court in T.R.C. No. 73 of 1984.

K.R. Nambiar for the appellant.

D The Judgment of the Court was delivered by

K. RAMASWAMY, J. This appeal by special leave is against the judgment of the Division Bench of the Kerala High Court dated October 17, 1984 made in T.R.C. No. 73 of 1984. The respondent is a registered dealer under the Kerala General Sales Tax Act, (for short 'the Act'). For the assessment year 1975-76 the respondent filed a return on taxable turnover of Rs.39,376.32 as against the turnover of Rs.58,130 excluding a sum of Rs.72,787.87, the value of coconut husks purchased by the assessee and converted into the coconut fibre. The respondent claimed that there is no manufacturing process involved in making fibre from conconut husk and therefore, the purchase value is not exigible to tax under the Act. This was negatived by the Sales Tax Officer who assessed the purchased turnover on coconut husk at 4 per cent under s. 5A of the Act, which was confirmed by the appellate authority. On revision, the Sales Tax Appellate Tribunal by Order dated July 26, 1983 relying upon the decision of the Kerala High Court in *Dy. Commissioner of Sales Tax (Law) v. Pie Food Packers*, [1978] 41 S.T.C. 364 allowed the Revision holding that no manufacturing process was involved in converting the husk into the fibre, therefore, the turnover was not includable to assessment. This was confirmed by the High Court. Thus this appeal.

H The short question that arises for decision is whether coconut fibre is a separate entity from the husk in the commercial parlance. Admittedly, the coconut husk was purchased by the respondent. The

process involved in making the coconut fibre from the coconut husk is as follows:

The green husks are soaked in saltish sea water for days together. After decomposition, it is again subjected to beating process either by mechanical or manual device and then the fibre is extracted. The fibre is used for making ropes, matting, etc.

The question, therefore, is whether any manufacturing process is involved in converting the husk into the fibre, and whether the fibre is different from the husk as a commercial commodity. The word 'manufacture' has not been defined under the Act, and therefore, we have to look into the meaning known in the commercial parlance. In Black's Laws Dictionary, Fifth Edition, the word 'manufacture' has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus by process of manufacture something is produced and brought into the existence which is different from that, out of which it is made in the sense that the things produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. The Constitution Bench of this Court in *Ujagar Prints v. Union of India*, [1989] 3 SCC 488, held thus:

"The prevalent and generally, accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application or processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be border-line cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between 'processing' and 'manufacture', we are afraid, results in an over simplification of both and tends to blur their interdependence in cases such as the present one."

In *State of Bihar v. Chrestien Mica Industries Ltd.*, [1956] 7

- A S.T.C. 626 the Patna High Court was to consider the question whether the process of making 'mica' tantamounts to manufacture of goods within the meaning of s. 2(g) of the Bihar Sales Tax Act. It held that to manufacture must mean to bring into being something in a form in which it was capable to being sold or supplied in the course of business. The essential point to remember is that something is brought into
- B existence which is different from that of original, existing in the sense that the thing produced is by itself a commercial commodity and is capable as such of being sold or supplied. It is not necessary that the stuff or the material or the original article must lose its character or entity or it should become transformed in basic and essential properties. In *Commissioner of Sales Tax v. Harbilas Rai & Sons*, [1968] 21
- C S.T.C. 17 (S.C.) this Court held at page 20 that the word 'manufacture' has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. The test laid down by this Court is that the article which comes into being must be a commercially different
- D article from the one from which it is made or manufactured.

- Therefore, the article that emerged, as a result of the process of manufacture, must be a distinct and new article recognised or known as such in the commercial parlance for sale or supply. In view of the admitted position that green husk is soaked into saltish sea water for
- E days together and after decomposition, on being subjected to beating either by manual or mechanical process, fibre is produced in the process, which is a distinct commodity known in the commercial parlance. No one in the market would sell or supply husk when fibre is asked for. The ratio in *Pie Food Packer's* case has no application to the facts of this case for the reason that sliced pine-apple, despite the process
- F involved in packing it in the containers for being made available in the market, remains the same as pine-apple; there is no 'consumption' of commodity, nor any process of 'manufacture' of 'other goods'. Therefore, the preparation of sliced pine-apple would not attract the purchase tax under section 5-A. Accordingly, we hold that the coconut fibre is commercially a different identifiable commodity known as such
- G in the commercial parlance. The value of sale or purchase of coconut husk would attract purchase tax under section 5-A of the Act.

The appeal is accordingly allowed. Since the respondent is not represented, there is no order as to costs.