

(2019) 09 BOM CK 0065

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 956 Of 2019

Gondia Beedi Leaves Contractors
Association

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Sept. 19, 2019

Acts Referred:

- Income Tax Act, 1961 - Section 206, 206C, 206(1), 206(1A), 206C(1A), 271CA
- Maharashtra Forest Produce (Regulation Of Trade) Act, 1969 - Section 3, 4, 4(1), 11
- Central Sales Tax Act, 1956 - Section 8(1)(b), 8(3)(b)
- Central Sales Tax (Registration And Turnover) Rules, 1957 - Rule 9, 13

Hon'ble Judges: R.K. Deshpande, J; Vinay Joshi, J

Bench: Division Bench

Advocate: C.S. Kaptan, R.S. Kalangiware, Anand Parchure, A.M. Deshpande

Final Decision: Dismissed

Judgement

„

R.K. Deshpande, J",,,

1. The question involved in this petition is whether the members of the petitioner-association, who are the contractors of Tendu leaves (a forest",,,

produce), are entitled to claim exemption under sub-section (1A) of Section 206C of the Income Tax Act, 1961 from the collection of tax at source",,,

from them by the seller, namely, the Forest Department of the State of Maharashtra?",,,

2. Notice for final disposal of the matter was issued by this Court on 6-2-2019 and the parties were heard finally by consent. Rule. The petition is,,

being disposed of finally.,,

3. The petitioner-association is registered under the Societies Registration Act, 1860. The members of the petitioner-association are registered Tendu",,,

contractors having separate registrations under the Maharashtra Forest Produce (Regulation of Trade) Act, 1969 (for short, "the Regulation of",,,

Trade Act" and the Maharashtra Forest Produce (Regulation of Trade in Tendu Leaves) Rules, 1969. The Tendu leaf is a "forest produce",,,

within the meaning of the Indian Forest Act, 1927 and it is grown naturally in the forest areas. The Tendu leaves are used for manufacture of bidi.",,,

4. Section 3 of the Regulation of Trade Act empowers the State Government to divide every area into such number of units as it may deem fit in,,

respect of each forest produce. Section 4 thereof empowers the State Government to appoint agents in different units for the purpose of purchase and,,

trade in forest produce on its behalf. It also empowers the State Government to prescribe procedure for appointment of agents and terms and,,

conditions for such appointment. The State Government adopts procedure for public auction to sell or appoint agents for collection of Tendu leaves.,,

The agent or the purchaser has to pay the amount offered by him in the auction as per the terms and conditions contained in the agreement of licence,,

executed, which include the taxes as are leviable from time to time.",,,

5. The contractor appointed as agent or licensee pursuant to the auction conducted is required to process the Tendu leaves. Several steps in the,,

process are stated as under :,,

(a) The first step is of the pruning, which is the process of cutting of small Tendu bushes of medium girth from the ground level to have healthy Tendu",,,

plant, which would provide good quality leaves.",,,

(b) After 50 to 60 days of pruning, the process of plucking of leaves starts and the plucked leaves are bundled into 70 leaves each and are tied with",,,

the strings in the roots of Palash Tree (Butea Monosperma),,,

(c) The next step is of drying of leaves and then sprinkling of water on the bundles.,,

(d) Then the bundles of Tendu leaves are carried to the collection centre where the process of drying and weathering of Tendu leaves takes place in a,,

particular manner.,,

- (e) The bundles are then kept at the distance of 1 to 2 inches for drying and the insecticides are sprinkled on the bundles to save them from insects,,
or termites.,,
- (f) Then the bundles are exposed to sun and kept there as it is for 4 to 5 days in upside down position for drying and weathering from both the sides,,
and this process requires regular supervision.,,
- (g) Thereafter every Tendu bundle is to be rinsed properly and the entire stock is shifted to another dry place where the bundles are arranged,,
vertically so that the water is not retained in the bundles.,,
- (h) Then the bundles are covered by tarpaulin for 4 to 5 days and after opening of tarpaulin, the bundles are put in a jute bag containing 500 to 1000",,,
bundles, depending upon the size of the leaves.",,,
- (i) Thereafter the bundles are stacked tightly in the jute bag and it is packed. The packed bag is exposed to sun from both the sides for three days.,,
- (j) The Tendu leaves then become ready for transportation to main godown approved by the Forest Department.,,
- (k) It is only after completion of this entire process in the prescribed manner the leaves are ready for sale to the manufacturer of bidi.,,

The activities involved are of drying, sprinkling of water for maintaining requisite moisture, sorting out and screening of leaves, bundling it, keeping it",,,
the godown, preserving quality and colour of leaves, avoiding breaking and brittleness to maintain softness.",,,

6. After introduction of the provision of Section 206C under the Income Tax Act, the Department of Revenue, Central Board of Director Taxes",,,

communicated its decision in writing on 23-1-1989 to the Maharashtra Tendu Leaves Merchants' Association that the question of collection of tax,,

at source at the time of sale of Tendu leaves was examined and the operation of drying and sprinkling of water, etc., on the Tendu leaves purchased",,,

by the traders is held to constitute "processing". It was the decision that the traders of Tendu leaves conducting the process would not fall within,,

the ambit of Section 206 of the said Act and, therefore, no tax could be collected at source from the purchases made by the traders.",,,

7. The aforesaid decision was changed by the Government of India, Ministry of Finance, Department of Revenue, on 10-1-1996, communicating that",,,

the operations carried out by the Tendu leavesâ€™™ traders do not change the nature and character of the leaves and those are performed only to,,

maintain the leaves in a saleable and marketable condition. Further such operations do not result in any change in the product and, therefore, merely",,,

drying, sprinkling of water, bundling of the Tendu leaves, etc., cannot be equated with processing. As a result, it is clarified that the provisions of",,,

Section 206C of the Income Tax Act shall be applicable to the case of the Tendu leavesâ€™™ traders, as the exception carved out in the proviso to",,,

sub-section (1) of Section 206C is not applicable. The earlier letter dated 23-1-1989 was withdrawn.,,,

8. The petition, therefore, challenges the circular dated 10-1-1996 and further the communications dated 29-11-2018 and 27-12-2018 issued by the",,,

Joint Commissioner of Income Tax and the Deputy Conservators of Forests, Bramhapuri and Gadchiroli Divisions, reiterating the same position. The",,,

petitioner claims that the contractors of the Tendu leaves, who are the members of the petitioner-association, are entitled to exemption under sub-",,,

section (1A) of Section 206C of the said Act while purchasing the Tendu leaves from the Forest Department of the State of Maharashtra.,,,

9. Section 206C of the Income-Tax Act, 1961 is under Part BB of Collection at source under Chapter XVII of the said Act regarding collection and",,,

recovery of tax. The provisions of sub-section (1) and (1A) therein being relevant, are reproduced below :",,,

Sl.No.,Nature of goods,Percentage

(1),(2),(3)

(i),Alcoholic Liquor for human consumption,One percent

(ii),Tendu leaves,Five per cent

(iii),Timber obtained under a forest lease,Two and one-half per cent

(iv),Timber obtained by any mode other than under a forest lease,Two and one-half per cent

(v),Any other forest produce not being timber or tendu leaves,Two and one-half per cent

(vi),Scrap,One per cent

(vii),"Minerals, being coal or lignite or iron ore",One per cent

14. Shri C.S. Kaptan, the learned Senior Advocate, assisted by Advocate Shri R.S. Kalangiware, appearing for the petitioner, makes a distinction",,,

between the unprocessed Tendu leaves and the processed Tendu leave. It is admitted that the re-sale of Tendu leaves, as it is without any process",,,

after purchase from the Forest Department would amount to trading which does not qualify for exemption under sub-section (1A) of Section 206C of,,

the Income Tax Act. It is the submission that the unprocessed Tendu leaves cannot be utilized for the purposes of manufacture or production of bidis,,

and in such a case, the character of Tendu leaves is not changed. According to Shri Kaptan, the processed Tendu leaves sold are actually utilized for",,,

manufacture of bidi, a distinct product, which comes into existence, and hence qualify for exemption under sub-section (1A) of Section 206C of the",,,

said Act.,,,

15. Relying upon the decision of the Apex Court in the case of Chowgule & Co. Pvt. Ltd. and another v. Union of India and others, reported in (1981)",,,

1 SCC 653, it is urged that what is necessary in order to characterize an operation as processing is that the commodity must, as a result of operation",,,

experience a change, which does not necessarily bring into existence a different product like bidi. The nature and extent of change is not material.",,,

From the said decision, a distinction is pointed out between manufacture and processing to urge that it is not necessary that the processing of",,,

commodity or goods should result in bringing into some different product so as to qualify for grant of exemption under sub-section (1A) of Section,,

206C of the Income Tax Act.,,,

16. Now we proceed to deal with the contentions advanced. The first contention being that the Tendu leaves purchased from the Forest Department,,

of the State of Maharashtra are processed so that it can be utilized for manufacture of bidi, it is covered by the word "processing" employed",,,

under sub-section (1A) of Section 206C of the Income Tax Act. Shri Kaptan does not dispute that the identical process carried on the Tendu leaves,,

was considered in decisions of several High Courts deciding the question as to whether the exemption under Section 206C of the said Act can be,,

made available and those decisions are - (i) CIT v. Ashwin Kumar Gordhanbhai and Bros. Pvt. Ltd., reported in [1995] 212 ITR 614 (Gujarat); (ii)",,,

North Koel Kendu Leaves & Mahulam Leaves v. Union of India, reported in [1997] 228 ITR 630 (Patna); (iii) Abdul Sattar v. Union of India",,,

reported in [1998] 230 ITR 163 (Madhya Pradesh); (iv) Natwarlal v. Union of India, reported in [1998] 233 ITR 490 (Madhya Pradesh); and (v)",,,

Sagarmal Agrawal v. Union of India (Uoi) and ors., reported in [1999] 238 ITR 989 (Orissa), taking a view that the Tendu leaves do not undergo any",,,

process, except sprinkling of water to avoid breaking of leaves or brittleness and to preserve its softness, which does not amount to "processing" ,,,

within the meaning of sub-section (1A) of Section 206 of the Income Tax Act. It is held in these decisions that the Tendu leaves, in spite of such",,,

activities, do not lose its character as Tendu leaves and nothing new emerges from such process. We do not find any reason to deviate from such a",,,

view.,,,

17. Even assuming that it is the processing of Tendu leaves, which is involved in terms of sub-section (1A), we are unable to understand the argument",,,

as to how the purchase and sale of processed Tendu leaves would not constitute "trading" within the meaning of sub-section (1A). There is no",,,

restriction that the sale of processed or unprocessed Tendu leaves should only be to the manufacturer or producer of bidis, and Section 206C of the",,,

Income Tax Act does not provide for exemption from the collection of tax at source, if such Tendu leaves are sold to the manufacturer or producer of",,,

bidis therefrom. As a matter of fact, the members of the petitioner-association are collecting such tax at source from such manufacturers of bidi, at",,,

the time of sale of processed leaves and there is no grievance in respect of it. In view of this, even if the members of the petitioner-association are",,,

engaged in the sale of such Tendu leaves to the manufacturer or producer of bidis, it would be the trading, which would not qualify for exemption",,,

under sub-section (1A) of Section 206C of the Income Tax Act.,,,

18. In fact, it is admitted in the petition that the members of the petitioner-association are registered under the Maharashtra Forest Produce",,,

(Regulation of Trade) Act, 1969 (for short, "the Regulation of Trade Act"). They are the agents of the State Government appointed under sub-",,,

section (1) of Section 4 of the Regulation of Trade Act for the purposes of purchase of and trade in the forest produce. The business of trading of",,,

Tendu leaves by the members of the petitioner-association is controlled and regulated by the Regulation of Trade Act and the Rules framed,,

thereunder. The members of the petitioner-association thus enjoy the statutory status as the purchasers and traders in the forest produce, namely",,,

Tendu leaves from the Forest Department of the State Government. The purchasers and traders of Tendu leaves stand excluded from the exemption,,

under sub-section (1A) of Section 206C of the Income Tax Act.,,

19. It is urged that several decisions of the High Court cited above on the question of exemption under Section 206C of the Income Tax Act follow the,,

decision of the Apex Court in the case of Chowgule & Co. Pvt. Ltd., cited supra. According to him, the ratio of this decision of the Apex Court has",,,

been misconstrued. He submits that the decision of the Apex Court in fact operates in favour of the petitioner, holding that what is necessary in order",,,

to characterize an operation as "processing" is that the commodity must, as a result of the operation, experience some change, which does not",,,

necessarily bring into existence a different product, like bidi. The distinction made by the Apex Court between the "manufacture" and",,,

"processing" has been ignored.,,

20. We have gone through the decision of the Apex Court in Chowgule & Co.'s case, cited supra. The claim in the said decision was for lower",,,

rate of 3% of sales tax on the turnover under Sections 8(1)(b) and 8(3)(b) of the Central Sales Tax Act, 1956. What required under these provisions",,,

was, the class or the classes of the goods specified in the certificate of registration of the registered dealer purchasing the goods as being intended for",,,

re-sale by him or for use by him in the manufacture or processing of goods for sale or in mining. In the absence of such certification, the amount",,,

payable was at much higher rate.,,

21. The claim of the assessee in the aforesaid decision of the Apex Court for certificate of registration, was rejected; however, in appeal, revision and",,,

ultimately in writ petition, out of the claim in respect of 36 items, the claim for 22 items was held admissible, whereas for remaining 14 items, it was",,,

rejected. The assessee as well as the Department both were before the Apex Court by filing separate proceedings challenging the orders passed to,,

the extent operated against them. The Apex Court allowed the appeal filed by the assessee and remanded the matter to the Sales Tax Officer to,,

examine 14 items of goods and determine in the light of the principles laid down in the judgment as to whether these items are liable to be included in,,

the certificate of registration so as to qualify for lesser tax at the rate of 3%. The appeal filed by the Department was, however, dismissed.",,,

22. The assessee in Chowgule & Co. Pvt. Ltd.'s case was a private limited company carrying on the business of mining iron ore and selling it in,,

the export market after dressing, washing, screening and blending it. The ore was to be supplied to the foreign buyers in accordance with the",,,

specifications required by them and, therefore, blending of ore, mined by it was carried out in such manner as to produce ore of the required chemical",,,

and physical composition. The entire activity of the assessee was broadly divided into seven different operations, one following upon the other, namely",,,

(i) extraction of ore from the mine; (ii) conveying the ore to the dressing plant; (iii) washing, screening and dressing the ore; (iv) conveying of the ore",,,

from the mine site to the riverside; (v) transport of the ore from the riverside to the harbour by means of barges; (vi) stacking of the ore at the harbour,,

in different stockpiles according to its physical and chemical composition; and (vii) blending of the ore from different stockpiles with a view to,,

producing ore of the required specifications and loading it into the ship by means of the mechanized ore handling plant.,,

23. In Para 4 of the said decision, the Apex Court primarily considered two questions - (i) whether the blending of ore whilst loading it in the ship by",,,

means of the mechanical ore handling plant constituted manufacture or processing of ore for sale within the meaning of Section 8(3)(b) of the Central,,

Sales Tax Act and Rule 13 of the Rules framed thereunder, and (ii) whether the process of mining, conveying the mined ore from the mining site to",,,

the riverside, carrying it by barges to the Marmagao harbour and then blending and loading it into the ship through the mechanical ore handling plant",,,

constituted one integrated process of mining and manufacture or processing of ore for sale, so that the items of goods purchased for use in every",,,

phase of this integrated operations could be said to be goods purchased for use in mining and manufacturing or processing of ore for sale falling within,,

the scope and ambit of Section 8(3)(b) and Rule 13.,,

24. In Chowgule & Co. Pvt. Ltd.'s case, the eligibility to claim lower rate of sales tax was that the goods of the class or classes purchased by the",,

registered dealer, as being intended for re-sale by him, for use by him in the manufacture or processing of goods for sale or mining. The Court held as",,

under :,,

(a) Blending of ore whilst loading it in the ship by means of mechanical ore handling plant did not constitute the process of manufacture, as it did not",,

bring into existence a commercially different and distinct commodity.,,

(b) When the chemical and physical composition of each kind of ore, which goes into the blending, is changed, such operation in the course of loading",,

through the mechanical ore handling plant amounted to "process of ore for sale" within the meaning of Section 8(3)(b) of the Central Sales Tax.,,

Act read with Rule 13 of the Rules framed thereunder.,,

(c) If any items of goods were purchased, as being intended for use as machinery, plant, equipment, tools, spare parts, stores, accessories, fuel",,

lubricants, etc., for mechanical ore handling plant for use in the process of goods for sale, the same would also be eligible for inclusion.",,

(d) The items of goods purchased by the assessee for use in carrying the ore from the mining site to the riverside and from the riverside to Marmagao,,

harbour could not be regarded as goods purchased for the use in mining. It is held that the requirement of Section 8(3)(b) and Rule 13 is that the goods,,

must be purchased for use "in mining" and not use "in the business of mining".,,

(e) It is held that where a dealer is engaged both in the mining operation as also in the processing the mined ore for sale, the two processes being",,

inter-dependent, it would be essential for carrying on the operation of the processing that the ore should be carried from the mining site where the",,

mining operations comes to an end to the place where the processing is carried on and that would clearly be an integral part of the operation of,,

processing, and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of",,

processing, they would also be goods used in processing of ore for sale.",,

25. In Chowgule & Co. Pvt. Ltd.'s case, the observations that the processing must result in some change which does not necessarily bring into",,

existence a different produce, like bidi, relied upon by Shri Kaptan are made in the background that the Court was considering the eligibility criteria for",,

lower rate of sales tax under Section 8(3)(b) of the Central Sales Tax Act, interpreting the expression "processing of goods for sale", which",,

means making a commodity marketable by experiencing some change, as is distinguished from the process of manufacturing, which actually brings",,

into existence a commercially different and distinct commodity by different name. In our view, such observations of the Apex Court would be of no",,

help to the petitioner on the question of process of manufacturing",,

26. We would also like to deal with the language employed under sub-section (1A) of Section 206C of the Income Tax Act in the light of the intention",,

of the Legislature in granting such exemption. Once the availability of exemption, where the goods are processed for the purposes of trading or selling",,

to the manufacturer or producer of different articles or things therefrom, is ruled out under sub-section (1A), the intention of the Legislature becomes",,

clear to understand the word "processing", as an intermediary process to qualify the produce, namely, Tendu leaves, for being utilized for the",,

purposes of manufacture or production of articles or things therefrom. It is an integrated process of manufacture or producing bidi in this case, from",,

the processed Tendu leaves, which qualifies for exemption. The placement of the word "processing" in between "manufacturing" and",,

"or producing articles or things" under sub-section (1A) is also significantly indicate such intention of the Legislature. The processing of Tendu",,

leaves in this case may qualify for the purposes of trading or sale, but not for the utilization for the purposes of manufacture of bidis.",,

27. Section 11 of the Regulation of Trade Act deals with the registration of the manufacturer of finished goods using the forest produce, who has to",,

get himself registered with the concerned Department of the State Government in a manner provided under Rule 9 of the Rules framed under the",,

Regulation of Trade Act. It is not the claim of the petitioner-association that they are also the manufacturers of bidi and the Tendu leaves purchased",,

by them from the Forest Department of the State Government are processed for utilization in the process of manufacture of bidi. It is not an integral,,
part of the process of manufacture of bidi. It is thus clear that unless the members of the petitioner-association get themselves registered as the,,
manufacturers of bidi under Section 11 of the Regulation of Trade Act, it cannot be said that they are utilizing the processed Tendu leaves for the",,,
purposes of manufacture of bidi. The expression "processing" under sub-section (1A) will have, therefore, to be necessarily understood as an",,,
intermediary process in the manufacture of bidi.,,

28. In view of above, we do not find any substance in the challenge raised in this petition, which is dismissed. Rule stands discharged. No order as to",,,
costs.,,