

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2002

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.NO.14934 OF 2000

M/s.Peria Karamalai Tea & Produce
Co.Ltd., 234-A, Race Course Road,
Coimbatore ... Petitioner

-Vs-

1. Tamil Nadu Taxation Special
Tribunal, rep.by Registrar,
Singaravelan Maligai, Rajaji
Salai, Chennai-600 001.

2. State of Tamil Nadu rep.by
Deputy Commissioner (CT)
Coimbatore, Commercial Taxes
Building, Balasundaram Road,
Coimbatore-641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of
India for the relief of issuance of writ of certiorarified mandamus as stated
therein.

For Petitioner : Mr.K.J.Chandran for
Mr.M/s.Chandran

For Respondents: Mr.T.Ayyasami,Spl.Govt.
Pleader (Taxes)

:O R D E R

K.RAVIRAJA PANDIAN,J.

The above writ petition is filed against the judgment of the Taxation
Special Tribunal made in Tax Case (Revision) No.2060 of 1997 dated 28.3.2000,
whereby the claim of exemption of a turnover of Rs.17,55,1 35.20ps being the
sales turnover of "cardamom" on the ground that the "cardamom" as sold by the
petitioner was agricultural produce has been rejected by the Special Tribunal
and thereby confirmed the orders of the authorities below.

2. The facts of the case are as follows:

The petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") and regularly dealing in tea, rice, wheat and sugar. For the assessment year 1 989-90, the petitioner reported a taxable turnover of Rs.11,06,360/- under the Act. The Assessing Officer during the check of accounts had found that the petitioner had sold cardamom grown in their own estate and claimed exemption in respect of the sales turnover of the "cardamom" under Section 2(r) of the TNGST Act, 1959. The Assessing Officer had rejected the claim of exemption on the ground that the agricultural produce produced by the petitioner had undergone the process of curing with much care in the curing house by heat treatment by maintaining a particular degree of centigrade for several hours so as to preserve and also to get good shining and flavour to fetch a good price in the market. The curing process with which agricultural produce was subjected to is not "mere drying, cleaning or sorting" so as to enable the petitioner to claim exemption under Section 2(r). The process of curing undergone by the agricultural produce "cardamom" under the careful supervision of expert curing house in-charge was more than the minimum process as contemplated under Section 2(r) of the TNGST Act and ultimately the Assessing Officer held that the exemption so contemplated under Section 2(r) was not applicable to the "cardamom" so cured by the petitioner and levied the tax at the rate of five percent. That order was taken on appeal to the first appellate authority, Additional Appellate Assistant Commissioner in Appeal No.1111 of 1 991. The Appellate Authority also confirmed the finding of the Assessing Officer that the process of curing with which the agricultural produce were subjected to was more than a process of mere cleaning, grading, sorting or drying and as such by virtue of Explanation (1) to Section 2(r), the exemption claimed by the petitioner could not be granted treating the "cardamom" as sold by the petitioner as "mere agricultural produce". The petitioner not satisfied with that order preferred a further appeal to the Sales Tax Appellate tribunal, Coimbatore and contended that in spite of the agricultural produce subjected to the process of curing, it still remained to be the agricultural produce and as such it is exempted from tax under Explanation (1) to Section 2(r) of TNGST Act. The last fact finding authority, the Appellate Tribunal had also on facts found that the process of curing "cardamom" in a curing house in a particular degree of centigrade of heat was for the purpose of not only mere drying, but also for the purpose of making the product shining and retaining more aroma and flavour to fetch good price in the market. Such process was not a mere drying, cleaning or sorting, but the curing is made in a curing house under a careful supervision of an expert curing house in-charge, which is more than the minimum process of mere cleaning, grading, sorting or drying and thereby confirmed the order of the authorities below. The petitioner herein, as if a question of law was involved in the decision so arrived at by the statutory authorities, carried the matter on revision to this Court under Section 38 of the TNGST Act. The revision was transferred to the Taxation Special Tribunal after its constitution and the Special Tribunal after hearing the parties in an elaborate manner had come to the conclusion that the fresh or green "cardamom" gathered from the plant or sorted out, cleaned and cured in the curing house in a particular degree of centigrade of heat, not only removes the moisture, but also gives shining to the "cardamom" and preserve flavour and aroma. Hence, the produce ceased to be an agricultural produce

and becomes a commercial produce and ultimately confirmed the finding of the statutory authorities. The said concurrent finding has been now put in issue in the present writ petition.

3. Before us, the learned counsel Mr.K.J.chandran very strenuously argued that the sales turnover of "cardamom" grown in the estate of the petitioner should not be included in the taxable turnover of the petitioner as per Explanation (1) of Section 2(r) of the TNGST Act. While drying the "cardamom", only the minimum process was done, that too, for the purpose of marketing it, thereby the dried "cardamom" had not ceased to be an agricultural produce and hence the exemption as provided under explanation (1) to Section 2(r) is very much available to the petitioner. The finding of the authorities that after drying the "cardamom", it ceased to be an agricultural produce is not in accordance with law. To sustain his argument, the learned counsel relied on the following decisions:

(1) COMMISSIONER OF SALES TAX, LUCKNOW VS. D.S.BIST AND OTHERS reported in (1979) 44 STC 392

(2) DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX VS. A.P.RAMAN reported in (1960) XI STC 263 and

(3) RAYAVARAPU MRITYANJAYA RAO VS. THE STATE OF ANDHRA PRADESH reported in (1967) XX STC 417.

4. On the other hand, the learned Special Government Pleader Mr. Ayyasamy has resisted the contention by contending that it is the admitted case of the petitioner themselves that the agricultural produce from the estate of the petitioner has been subjected to the process of curing. The explanation (1) to Section 2(r) is very clear that the agricultural produce shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption. Only activity exempted by the provision is "mere cleaning, grading or sorting and drying". He further contended that the expression "mere" employed in the provision must be given its full meaning. The expression should not be excluded from consideration while considering whether the process of "curing" applied by the petitioner for making the product marketable or fit for consumption would come within the meaning of "mere cleaning, grading, sorting or drying". He further contended that the expression employed in the Explanation is cleaning, grading, sorting or drying. The expression "curing" has not been found place in the explanation (1) to Section 2(r). When such process, which is not enumerated, has been applied to the goods so as to have the green and fresh 'cardamom' for not only getting it dried, but also getting shining and also preserving with its aroma and flavour, the process of "curing" cannot at all be said as a mere drying, which process alone is saved by the explanation. For that purpose, he relied on the judgments of MANICKA GOUNDER VS. ARUNACHALA GOUNDER AND OTHERS reported in AIR 1965 MADRAS 1 and DINESH CHANDRA SANGMA VS. STATE OF ASSAM AND OTHERS reported in (1977) 4 SCC 441.

5. We heard the arguments of the learned counsel on either side and perused the materials on record.

6. At this stage, the limit of jurisdiction of the High Court in issuing a writ of certiorari or for that matter, a writ of certiorarified

mandamus under Article 226 of the Constitution of India needs to be kept in mind. It has been held by the Constitution Bench of the Apex Court in the case of SYED YAKOOB VS. K.S.RADHAKRISHNAN AND OTHERS reported in (1964) 5 SCR 64 as follows:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or insufficiency of evidence led on a point and inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

(bold supplied by us)

7. So far as the present case is concerned, as seen from the order of assessment and the appellate orders of the first and second Appellate authorities and also that of the Special Tribunal in its revisional jurisdiction, the only objection that has been raised before the authorities by the petitioner as stated by the Assessing Officer was as follows:

"they had claimed exemption on sale of cardamom U/s.2(r) of the TNGST Act, 1959 and added, that they had sold cardamom which were grown in their own Estate at Valparai and being agricultural produce, the sales were exempted from tax."

That objection has been considered by the Assessing Officer as follows:

"In the case of United Nilgiris Tea Estates Company Ltd. Vs Govt. Of Tamilnadu (1980) 45 STC 10 (Madras), it has been held, that the sale of Shade Trees in Tea Estate after sizing for easy transportation was sale of agricultural produce and not liable to sales tax U/s.2(r) of the TNGST Act 1959. This particular case mainly relied on by the dealers is not applicable to the instant case as the dealers have to cure with much care the Cardamom in the curing house in a particular degree of Centigrade, or otherwise the processed cardamom will not get good shining and flavour so as to fetch a good price in the market. They not only dry, clean and sort out, but cure the grown cardamom in a curing house under the careful supervision of an expert curing house in charge. Thus, the cardamom undergoes processing though not manufacturing, and then only it would attain the stage of marketability. As such it ceased to be an agricultural produce."

The said finding has been confirmed by the first and second Appellate Authorities and by the revisional authority, the Special Tribunal also. No evidence, much less, any material evidence had been produced before the statutory authorities below to contend that the processing of curing of "cardamom" is just as that of merely drying the "cardamom". Hence, on the materials made available by the petitioner, the finding of fact has been arrived at by the authorities to the effect that the process involved in curing the "cardamom" is more than mere drying. The petitioner had not taken any pain to produce before the authorities or made available before the authorities what are all the processes which the goods underwent while curing the same. Hence, we are of the opinion that in the absence of any material made available before the authorities to prove that the process of curing and drying are one and the same, the factual finding arrived at by the authorities cannot be disputed in the writ petition as ruled by the Constitution Bench in the case of Syed Yakoob stated supra.

8. Mr.Chandran, learned counsel appearing for the petitioner produced before us a write-up across the bar as to the process of curing, which is extracted as follows:

"We give below our explanation as regards cardamom curing operations and show cardamom is only an agricultural produce for your consideration. The harvested cardamom capsules are washed manually in clean water with washing soda to remove the mud (sand) and other soil particles. Then the water is drained off and the capsules are spread evenly on wire net trays in the curing room. After spreading, the curing room is completely closed and hot air is passed through pipes, thereby room temperature is increased only to remove the moisture from cardamom. This is maintained for about 3 to 4 hours and as such no physical or chemical change takes place on account of the above operation and identity of the product (cardamom) is also retained without any change of whatsoever.

Then the room is opened for sudden cooling and the vapour from the drying fruits is thrown out. The doors are closed after allowing the vapour to escape completely and the temperature is maintained at a reasonable level and kept constant for some hours. By this time the curing will be completed and the whole process of curing takes only about 6 hours.

The dried capsules (cardamom) are rubbed with hands or with rough gunnies to remove the hard ends and any other foreign matter. Then, grading and sorting are done by using different meshes to obtain required quality and

sizes. All the above work is carried out manually and no machinery is used at any point.

It is our submission that in any of the above works neither expertise process is being undertaken to cure the cardamom nor any mechanical/chemical operation is being done. The whole process is done only to make the product marketable and it does not lose the identity of an agricultural product at any stage."

9. In order to appreciate the issue, it is apropos to re-produce Explanation (1) to Section 2(r) of the TNGST Act, which reads thus:

"Explanation (1)- "Agricultural or horticultural produce" shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying."

As per the Explanation, in order to get exemption under Section 2(r) of the TNGST Act for agricultural produce, such produce has not been subjected to any physical, chemical or other process for being made it fit for consumption except mere cleaning, grading, sorting or drying. Now we will have to find out whether curing process to which the goods are subjected to is nothing but mere drying.

10. As seen from the write up as to the process of "curing", hot air is passed through pipes thereby room temperature was maintained at certain degree of temperature. The method of maintaining the temperature has not been elaborated in the write up. It is common knowledge that over heating or giving a temperature less than the required one would result in spoiling the entire agricultural produce. Hence, the finding of fact by the Assessing Authority that the petitioner have cured the "cardamom" with much care in a particular degree of centigrade not only getting the "cardamom" dried, but also getting the " cardamom" shining and keeping the aroma and flavour to a certain standard. In that activity, the "cardamom" undergoes processing, though not manufacturing cannot be found faulty. As per the write up given by Mr.Chandran, the fresh green "cardamom" are spread evenly on the wire net trays in the curing room and thereafter hot air was passed though the pipes. In the "cardamom" curing room, there will be two chambers- upper and lower chambers, separated by iron rods parallel to the floor fixed wall to wall at a particular height and width. The wire net trays would be spread over and above the iron grills and the harvested fresh green "cardamom" would be spread thereon. Slatted angles and racks would also be used for keeping the wire net trays. These activities are done in the upper chamber. Underneath the iron rods in the lower chamber, tin sheet or iron tubes with diameter varying from 3/4 feet to 1 1/2 feet would pass through wall to wall with an outlet. The beginning of the iron pipe would be let out near the chimney like portion of the curing wall with an opening. Hot air would be produced by firing constantly like locomotive engine by firing fire woods in the chimney like opening from outside the wall of the curing room. The hot air would be sent through the pipe. The pipes radiate the heat absorbed by it by the hot air. The maintaining of temperature at particular degree of centigrade throughout

the period of curing, which last long for nearly ten to twelve hours, depending upon the quantity of the cardamom, is more important. In that process only, the fresh green fruits would be dried evenly and the colour of the capsule i.e., skin of the cardamom would get shining. The heat treatment could be given only by expert curing house keeper. The whole process is a process more than ordinary process of "mere drying".

11. In the 15th Edition of Volume II of the New Encyclopaedia Britannica, Micropaedia Ready Reference and Index, the word "cardamom" is defined as follows:

"cardamom, spice consisting of whole or ground dried fruit, or seeds, of *Elettaria cardamomum*, a herbaceous perennial of the ginger family (Zingiberaceae). The seeds have a characteristic warm, slightly pungent, and highly aromatic flavour faintly reminiscent of camphor. They are a popular seasoning in Near and Far Eastern dishes, particularly curries, and in Scandinavian pastries.

Native to the moist forests of southern India, cardamoms may be collected from wild plants; but most are cultivated in India, Sri Lanka, and Guatemala. Leafy shoots arise 5 to 20 feet (1 1/2 to 6 metres) from the branching rootstock. Flowering shoots, about three feet (one metre) long, may be upright or sprawling; each bears numerous flowers about two inches (five centimetres) in diameter with greenish petals and a purple-veined white lip. The whole fruit, 0.3 to 0.6 inch (8 to 16 millimetres) is a green, three-sided oval capsule containing 15 to 20 dark, reddish-brown to brownish-black, hard, angular seeds. They are picked or clipped from the stems just before maturity, cleansed, and dried in the sun or in a heated curing chamber. Cardamom may be bleached to a creamy white colour in the fumes of burning sulfur. After curing and drying, the small stems of the capsules are removed by winnowing. Decorticated cardamom consists of husked dried seeds....."

From the above, it is clear that cardamom is generally considered as a ground dried fruit. In order to make it consumable, cardamom, which are picked or clipped from the stems just before maturity are cleansed, and dried in the sun or in a heated curing chamber. Cardamom may be bleached to a creamy white colour in the fumes of burning sulfur. By the method of curing, not only cardamom is dried, but also as factually found by the authorities below, it also obtained shining in the curing process. Hence, the finding as arrived at by the authorities cannot be found faulted that the curing is much more process than the "mere" cleaning, grading, sorting or mere drying.

12. The meaning of the word "mere" has been given in the Concise Oxford Dictionary of Tenth Edition, edited by Judy Pearsall as follows:

"adj. that is solely or no more or better than what is specified"

The meaning of the word "merely" as an adverb in the said Dictionary is given as "just, only". The meaning of the word "merely" in Black's Law Dictionary of Fifth Edition is given as follows:

"without including anything else; purely; only; solely; absolute; wholly."

In P.Ramanatha Aiyar's The Law Lexicon, Reprint Edition 1987, the expression "mere" has been given as "Only; only this; nothing else; simple;

bare." The word "cure" in the above referred Oxford Dictionary has been meant as "relieve of the symptoms of a disease or condition, by treatment or remedial action, preserve by salting, drying, or smoking, harden (rubber, plastic, concrete, etc.,) after manufacture by a chemical process such as vulcanization, a substance, treatment, or remedy that cures a disease, condition or problem." Hence, the process of curing is not only for getting the fresh green "cardamom" dried alone, but also preserving the cardamom with flavour and aroma and also giving shining because of the heat treatment given to it by the process of curing.

13. The Supreme Court in the case of M/S.ASPINWALL & CO. LTD VS. THE COMMISSIONER OF INCOME-TAX, ERNAKULAM reported in JT 2001 (7) SC 555 has held that the activity of the assessee therein of curing coffee, taking into consideration of the nine processes, is a manufacturing activity on the ground that in the curing process, there was conversion of raw berry into coffee beans. Taking the same analogy, in the case on hand, the process of curing of the fresh green cardamom into a marketable cardamom would definitely amount to a process more than a process of mere drying.

14. Now, let us consider the decisions cited on behalf of the petitioner. The first of the case referred by Mr.Chandran is COMMISSIONER OF SALES TAX, LUCKNOW VS. D.S.BIST AND OTHERS reported in (1979) 44 STC 392. The question involved in that case was, whether the tealeaves sold by the assessee were agricultural produce grown by himself and the sale were therefore not liable to tax under the proviso to Section 2(i) of the U.P.Sales Tax Act. The question involved in the present case is totally different, in the sense, that whether the process of curing to which the agricultural produce are subjected to would take away the exemption granted to the agricultural produce under Explanation (1) to Section 2(r).

15. The other decision relied by the learned counsel for the petitioner is DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX VS. A.P.RAMAN reported in (1960) XI STC 263. The question involved in that case was, whether a particular process alters the character of agricultural or horticultural produce to that of manufactured article, wherein the general principle which could be safely laid down to the effect that the minimum process ordinarily employed by an agriculturist to make the produce marketable cannot be said that the produce ceased to be an agricultural or horticultural produce. But in the present case, the Explanation (1) to Section 2(r) clearly states that agricultural or horticultural produce shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, but however mere cleaning, grading, sorting and drying have been saved.

16. The other decision cited on behalf of the petitioner is RAYAVARAPU MRITYANJAYA RAO VS. THE STATE OF ANDHRA PRADESH reported in (1967) XX STC 417. That was a case in which the question was whether the trees cut into short pieces for purpose of transporting them to places where they could be sold ceased from exemption though the process of cutting trees into pieces does not make any difference so long as there is no alteration in its original form or character.

17. Hence, on the facts and in the circumstances of the case, we are of the considered view that the above said cases are not applicable to the facts of the present case and thereby would not in anyway advance the case of the petitioner.

18. The learned Government Pleader relied on the Full Bench decision of this Court in the case of MANICKA GOUNDER VS. ARUNACHALA GOUNDER AND OTHERS reported in AIR 1965 MADRAS 1 and DINESH CHANDRA SANGMA VS. STATE OF ASSAM AND OTHERS reported in (1977) 4 SCC 441 to contend that the word "mere" cannot at all be considered as surplusage and the due meaning of the word has to be given while construing the word "mere cleaning, grading, sorting or drying" as employed in the Section. There cannot be any second opinion about it.

19. It is well settled that no words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation, one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the Legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the Legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions. Wherever the language is clear, the intention of the Legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support, addition or substitution of words or which results in rejection of words has to be avoided (vide JT 2002 (3) SC 55 1).

20. The meaning of the word "drying" has to take its colour from the other words with which it keeps company. The process of mere cleaning, grading and sorting doesn't require any specialised or skilful process as that of 'curing'.

21. In view of the above discussion, we are of the view that there is absolutely no material so as to interfere with the concurrent finding of fact that the activity of "curing" of agricultural produce "cardamom" cannot be considered as mere drying, but it could be considered as "not only drying, but also preserving the aroma and flavour and also giving shining". In such circumstances, the saving clause of mere cleaning, grading, sorting and drying in explanation (i) to Section 2(r) of the TNGST Act would not come to the rescue of the petitioner so as to conclude that the fresh green "cardamom", which has been subjected to the process of "curing", is saved under Explanation (1) to Section 2(r) of the TNGST Act. Hence, the writ petition is dismissed. However, there shall be no order as to costs.

Website: Yes

Index: Yes

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To:

1. Registrar,
Tamil Nadu Taxation Special
Tribunal,
Singaravelan Maligai, Rajaji
Salai, Chennai-600 001.

2. The Deputy Commissioner (CT)
Coimbatore, State of Tamil
Nadu, Commercial Taxes
Building, Balasundaram Road,
Coimbatore-641 018.

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