A

ZILA PARISHAD KHERI

v.

HINDUSTAN SUGAR MILLS & ANR.

August 26, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

B

U.P. Kshettra Samitis and Zila Parishads, Adhiniyam, 1961 *s.* 121—*U.P. District Boards Act*, 1922, *s.* 114—*Regular purchase of raw material in a rural area whether amounts to carrying on business in that area.*

The appellant Zila Parishad sought to impose circumstances and property tax on the respondent whose factories for manufacturing sugar were
C situated outside the area of appellant's jurisdiction but who regularly made purchases of sugar cane in the said area. On the question whether such purchases amounted to carrying on business in the area within the meaning of s. 121 of the U.P. Kshettra Samitis and the Zila Parishads Adhiniyam, 1961.

HELD : The buying of raw material in the shape of sugarcane may be a process or activity of a continuous character but it cannot be said that
D the respondent company was making any separate profits or income by means of purchasing sugarcane. Nor was the sugarcane so purchased subjected to any process resulting in a product which by itself could earn profits. If a manufacturing concern continuously acquires raw material not only from different parts of India but also from other parts of the world it cannot be said that it was carrying on business in all those places from where the raw materials were acquired or purchased. Such a wide connotation cannot be given to the words 'carrying on business" in s.121
E (a) of the Adhiniyam [426 H—427 F]

Chas J. Webb Sons & Co. Inc. Philadelphia v. *Commissioner of Income-tax, East Punjab*, 18 I.T.R. 33, *Commissioner of Income-tax, Bombay* v. *Ahmedebhai Umarbhai & Co. Bombay*, [1950] S.C.R. 335 and *Zila Parishad, Muzaffarnagar & Anr.* v. *Jugal Kishore Ram Swarup & Anr.*, (1969) All. L.J. 24, referred to.

F

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1893 and 1894 of 1968.

Appeals by special leave from the judgment and order dated August 7, 1967 of the Allahabad High Court, Lucknow Bench in Special Appeals Nos. 60 and 61 of 1966 and Civil Appeal No.
G 172 of 1969.

Appeal from the judgment and decree dated April 23, 1968 of the Allahabad High Court, Lucknow Bench in Special Appeal No. 22 of 1966.

Kripa Shankar Bazela, Naunit Lal and *Swaranjit Sodhi*, for the
H appellant (in all the appeals).

M. C. Chagla, Bishan Singh, N. N. Sharma and C. P. Lal, for the respondent no. 1 (in C.As. Nos. 1893 and 1894 of 1968).

A

The Judgment of the Court was delivered by

Grover, J. These are connected appeals from a judgment of the Allahabad High Court. Civil Appeals Nos. 1893-1894/68 are by special leave and Civil Appeal No. 172/69 is by certificate. The point which has to be decided is common to all of them.

B

It is necessary to refer to the facts in Civil Appeal No. 1893/68 only. The Hindustan Sugar Mills Ltd. is a company manufacturing sugar. Its factory is situate in Gola Gokaran Nath in District Kheri in the State of U.P. For manufacturing sugar the company purchases sugarcane in the District of Kheri. It maintains some staff and also makes certain advances to cultivators within the rural area of the said district. It was assessed to what is known as the circumstances and property tax. The relevant provision under which this tax could be levied was s. 114 of the District Boards Act, 1922 which was repealed by the U.P. Kishettra Samitis and Zila Parishads Adhiniyam, 1961, hereinafter referred to as the "Adhiniyam" but a similar provision, s. 121 was enacted in that statute. The material portion of s. 121 is as follows :—

C

D

> "121. *Conditions and restrictions for tax on Circumstances and Property.*—The power of a Parishad to impose a tax on circumstances and property shall be subject to the following conditions and restrictions, namely—
>
> E
>
> (a) the tax may be imposed on any person residing or carrying on business in the rural area provided that such person has so resided or carried on business for a total period of at least six months in the year under assessment;
>
> F
>
> (b) ....."

The company objected to the levy of the aforesaid tax but the assessing authorities did not accept its objections and made the assessment for the years 1961-1962 and 1962-63. The company filed an appeal to the Commissioner, Lucknow Division, who held that the tax had been wrongly imposed. Thereupon the Zila Parishad, Kheri, filed a petition under Art. 226 of the Constitution challenging the order of the Commissioner. A learned single Judge of the High Court dismissed that petition. The matter was taken by way of special appeal to a Division Bench. That appeal also failed.

G

H

The short question which the High Court was called upon to decide and which has to be determined by us is whether on the admitted and undisputed facts any tax could be levied under

A s. 121 of the Adhiniyam on the company whose factory for manufacturing sugar was situate outside the jurisdiction of the Zila Parishad. On behalf of the Zila Parishad it was maintained that the company was purchasing sugarcane in the rural area within its jurisdiction for the purpose of manufacturing sugar in its factory and since the purchases were made within the rural area it was B "carrying on business" in that area and was thus liable to the levy and payment of tax. All that has to be decided, therefore, is whether the company was carrying on business in the rural area within the jurisdiction of the Zila Parishad when the activity attributed to it consisted of regularly buying or purchasing sugarcane for the business of manufacturing sugar in its factory which was C outside the rural area. It was not disputed before the learned single Judge that the business of the company consisted of manufacturing sugar. For that purpose it was essential to purchase the raw material at the mill gate and in the mofussil area including the rural area in the district of Kheri. The reasoning of the learned Judge was that in the same business it may be necessary for the company to purchase some machinery or spare parts from D different places in the country or to purchase fuel wood and lubricating oil from different places. It could hardly be said that the business of manufacturing sugar was being conducted or carried on at all those places from where these commodities or articles were purchased. Merely because the purchase of sugarcane was essential for the carrying on of business of manufacturing sugar it E did not mean that any business was being carried on in the places where the sugarcane was being purchased. The Division Bench distinguished the cases which had been relied upon on behalf of the Zila Parishad arising under the Income tax Act, 1922. It was pointed out that the question had to be looked at from the standpoint of a business man. If a person manufactured sugar in the F district of Kheri but collected sugarcane which was a raw material from half a dozen districts it could hardly be said, from the point of view of business, that it was being carried on in the various districts from where the material was being acquired.

Before us it has been contended on behalf of the Zila Parishad that the continuous and regular activity of buying sugarcane which G extended for the period mentioned in clause (a) of s. 121 of the Adhiniyam constituted carrying on of business in the rural areas from where the sugarcane was purchased. Reliance has been placed on a Bench decision of the East Punjab High Court in *Chas J. Webb Sons & Co. Inc. Philadelphia* v. *Commissioner of Income tax, East Punjab*(1). There the assessee company which was incorporated in the United States of America was carrying on H the business of manufacturing carpets in America. Its only business in British India was to purchase, through its agents in

(1) 18 I.T.R. 33.

British India, wool as raw material for use in the manufacture of carpets. The company was sought to be assessed in respect of its income from such purchases of raw material under s. 42(3) of the Indian Income tax Act, 1922. It was held that the mere purchase of raw material in British India was an operation within the meaning of s. 42(3) of that Act and that the profits which arose out of such purchases were taxable. Section 42 of the Income tax Act was a totally different provision. According to it all income, profits or gains accruing or arising whether directly or indirectly through or from any business connection in British India were to be deemed to be income accruing or arising within British India. It was further provided that in case of a business of which all the operations were not carried out in British India the profits and gains of the business deemed under the section to accrue or arise in British India were only such profits and gains as were reasonably attributable to that part of the operation carried out in British India. The High Court was of the view (which appears to be unexceptionable) that the word "operation" covered the purchase of wool as raw material for use in manufacturing carpets and that such a purchase was an operation carried out in the course of its business by a person or firm which manufactured the carpets. We are unable to see how any assistance can be derived from the above case for the purpose of deciding the meaning of the word "carrying on business" used in s. 121(a) of the Adhiniyam. In *Commissioner of Income tax, Bombay* v. *Ahmedebhai Umarbhai & Co., Bombay*(1), Mukherjea J., (as he then was) observed as follows :—

> "A man may carry on the trade of a seller or purchaser of goods; he may be a manufacturer of goods or an exporter or importer of the same. Each of these would be a business within the meaning of the Act. Suppose for example, that he combines of all these activities and carried on a business which includes manufacturing, selling and also exporting and importing of goods. Can it not be said that each one of these activities is a part of the business which he carries on ? I agree with Mr. Munshi that if a particular process or activity of a continuous character can be distinguished from other processes and if a separate profit can be ascertained and allotted in respect to the same, there is no reason why it should not be regarded as a part of the business which yields income or profits."

These observations can hardly be of any avail to the Zila Parishad. The buying of raw material in the shape of sugarcane may be a process or activity of a continuous character but even according

(1) [1953] S.C.R. 335, 376.

A to the test laid down by Mukherjea J., which related to entirely different statutory provisions and facts it cannot be said that the company was making any separate profits or income by means of purchasing sugarcane. It is futile to refer to all the other cases on which learned counsel for the Zila Parishad has relied as they are totally distinguishable on facts except to notice the decision B in *Zila Parishad, Muzaffarnagar & Anr.* v. *Jugal Kishore Ram Swarup & Anr.*(1) There a firm had set up crushers in certain rural areas from where it purchased sugarcane. The sugarcane was crushed and converted into juice. That juice was sent to the town of Mirzapur for being pressed into sugar. The High Court was of the view that the juice which was called "*Rab*" was a saleable com- C modity in itself and was also a finished product. It was used in home consumption and could also be pressed for producing sugar. The firm was, therefore, working for gain in the places where that activity took place which was for making a profit. It was held that the circumstances and property tax was leviable in these circumstances on the firm because it carried on business in that place where it converted the sugarcane into *Rab*. The facts that have D been stated clearly establish the distinguishing features from the present case. The sugarcane which was being purchased by the company was not subjected to any such process by which any such commodity or finished product came into existence which by itself could earn profits. In our opinion the contention of the Zila Parishad, if accepted, would lead to the astounding and extra- E ordinary result that if a manufacturing concern continuously acquires raw material not only from different parts of India but also from other parts of the world it could be said that it was carrying on business in all those places from where the raw materials were acquired or purchased. We are unable to give any such wide connotation to the words "carrying on business", employed in s. F 121(a) of the Adhiniyam.

The appeals fail and are dismissed with costs. One hearing fee.

G.C. *Appeals dismissed.*

(1) (1969) All. L. J. 24.