CHOWGULE & CO. PVT. LTD. & ANR. A

v.

UNION OF INDIA & OTHERS
(AND VICE VERSA)

November 25, 1980 B

[P. N. BHAGWATI, V. D. TULZAPURKAR AND R. S. PATHAK, JJ.]

Central Sales Tax Act, 1956, *section* 8(3)(*b*) *and rule* 13—*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 Act and Rule* 13—*Whether the process of mining, conveying the mine ore from the mining site to the river side carrying out by barges to the 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 process of ore for sale, so that that items of goods purchased for use in every phase of these 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. C D

The assessee is a Private Limited Company, carrying on business of mining iron ore and selling it in the export market after dressing, washing, screening and blending it. The extraction of iron ore in some of the mines is carried on by mechanised process and at others by manual labour. The entire activity of the assessee consisted of 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 river side; (v) transport of the ore from the river side to the harbour by means of barges; (vi) stacking of the ore at the harbour in different stock piles according to its physical and chemical composition; and (vii) blending of the ore from different stock piles with a view to producing ore of the required specifications and loading it into the ship by means of the Mechanised Ore Handling Plant. E F

Under Section 8(1)(b) of the Central Sales Tax Act, 1956 the assessee would be liable to pay, in respect of goods purchased for use "in the manufacture or processing of goods for sale in mining", a lower rate of sales tax at 3% of his turnover, if it is granted, under section 7(3), a Certificate of Registration by Sales Tax Officer specifying the class or classes of goods for the purpose of sub-section (1) of section 8 read with Rule 13. G

The assessee, therefore, made an application to the Sales Tax Officer for inclusion of 36 items of goods in the certificate of registration on the ground that these items of goods were being purchased by it for use in mining ore and processing it for sale in the export market, and hence they were goods falling within section 8(3)(b) of the Act and Rule 13. The Sales Tax Officer granted certificate only in respect of 11 items and disallowed 25 items. In revision, the Assistant Commissioner, Sales Tax, took the same view of the Sales Tax H

A Officer, reviewed all the 25 items disallowed and found that six more items to be eligible for certification. The further revision before the Government carried by the assessee failed. Thereupon the assessee filed a writ petition in the court of Judicial Commissioner, Goa. The Judicial Commissioner agreed with the views of the Sales Tax Authorities but on his scrutiny found that 4 more items, out of 19 items rejected, to be eligible for certification. Hence, the appeals by special leave, one by the assessee in respect of all the B 15 items and another by the Union of India regarding the 4 items found to be in order by the Judicial Commissioner.

Allowing the appeal of the assessee, dismissing the appeal of Union of India and remitting the matter to the Tax Authorities for further scrutiny of the 14 items pressed by the assessee, the Court

C HELD : (1) Applying the test laid down in *M/s. Pio Food Packers* [1980] 3 SCR p. 1271, namely, "Does the processing of the original commodity bring into existence a commercially different and distinct commodity?", it is clear that the blending of different qualities of ore possessing different chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commo- D dity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore. [279G, 280B-D]

The Deputy Commissioner of Sales Tax v. *M/s. Pio Food Packers,* [1980] E 3 SCR p. 1271, applied.

(2) Where any commodity is subjected to a process or treatment with a view to its "development of preparation for the market", it would amount to processing of the commodity within the meaning of sec. 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with F each process suffered, the commodity would experience a change. What is necessary in order characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change. In this sense word "processing" in section 8(3) (b) and Rule 13 should be understood as it has not been defined in the Act. [280E, G-H, 281A-B]

Om Prakash Gupta v. *Commissioner of Commercial Taxes,* 16 Sales Tax G Cases 935 (Cal.), approved.

(3) The blending of ore in the course of loading through the Mechanical Ore Handling Plant amounted to "processing" of ore within the meaning of section 8(3)(b) and Rule 13 and the Mechanical Ore Handling Plant fell within the description of "machinery, plant, equipment" used in the processing of ore for sale. Therefore, if any items of goods were purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, H spare-parts, stores, accessories, fuel or lubricants" for the Mechanical Ore Handling Plant, they would be eligible for inclusion in the Certificate of Registration of the assessee. [282H, 283A-B]

Diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical composition demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the Mechanical Ore Handling Plant experience change in their respective chemical and physical compositions, because what is poduced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to "processing" of ore within the meaning of sec. 8(3)(b) and Rule 13. It is no doubt true that the blending of ore of diverse physical and chemical composition is carried out by the simple act of physically mixing different quantities of such ore on the conveyor belt of the Mechanical Ore Handling Plant. But it is immaterial as to how the blending is done and what process is utilised for the purpose of blending. What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the Mechanical Ore Handling Plant undergo any change in their physical and chemical composition as a result of blending. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes "processing". [281B-E, 282G-H]

Nilgiri Ceylon Tea Supplying Co. v. *State of Bombay,* 10 Sales Tax Cases 500 (Bom.) overruled.

(4). The machinery, vehicles, barges and other items of goods purchased by the assessee for use in carrying the mined ore from the mining site to the river side and from the river side to the Marmagoa harbour fall within the description of goods intended for use in processing of ore for sale within the meaning of sec. 8(3)(b) and Rule 13. If any of these items of goods are purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare-parts, stores, accessories, fuel or lubricants" in carrying the mined ore from the mining site to the river side and from the river side to the Marmagoa harbour, they would qualify for inclusion in the Certificate of Registration. [285D-E]

The process of mining comes to an end when ore is extracted from the mines, washed, screened and dressed in the dressing plant and stacked at the mining site and the goods purchased by the assessee for use in the subsequent operations could not therefore be regarded as goods purchased for use "in mining". The requirement of sec. 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". It is only the items of goods purchased by the assessee for use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operations subsequent to the stacking of the ore at the mining site. [283C-E]

Where a dealer is engaged both in mining operation as also in processing the mined ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should

be carried from the mining site, mined ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation 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 clearly be goods used in processing of ore for sale. In the present case, the mining of ore is done by the assessee with a view to processing the mined ore through the Mechanical Ore Handling Plant at the Marmagoa harbour and the entire operation of mining ore and processing the mined ore is one integrated process of which transportation of the mined ore from the mining site to the Marmagoa harbour is an essential part. [284A-D]

Indian Copper Corporation Ltd. v. *Commissioner of Commercial Taxes,* 15 STC 259 (SC), followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1632 of 1973 and 167 of 1974.

From the Judgment and Order dated 29th April, 1972 of the Judicial Commissioner, Goa, Daman and Diu at Panaji in Special Civil Application No. 60 of 1970.

R. V. Patel and *Mrs. Ali Verma* for the Appellants in CA No. 1632/73 and for the Respondent in CA 107/74.

V. S. Desai, B. B. Ahuja and *M. N. Shroff* for the Appellants in CA 107/74 and for the Respondent in CA. 1632/73.

The Judgment of the Court was delivered by

BHAGWATI, J. These two appeals by special leave are directed against a judgment of the Judicial Commissioner, Goa, Daman and Diu, partly allowing a writ petition filed by Chowgule & Co. Pvt. Ltd. (hereinafter referred to as the assessee) for quashing an order of the Lieutenant Governor, Goa, Daman and Diu dated 22nd August 1970. The question which arises for determination in these two appeals is a short one but in order to appreciate the arguments bearing upon it, it is necessary to state a few facts giving rise to the controversy between the parties.

The assessee is a private limited company carrying on business of mining iron ore and selling it in the export market after dressing, washing, screening and blending it. The assessee owns mines at Sirigao, Pale and various other places in the territory of Goa. The extraction of ore from the mines at Sirigao and Pale is carried on by mechanised process while the extraction of ore from the other mines is done by manual labour. When the ore is extracted from the mines it

is carried to the dressing plant where it is washed, screened and dressed and then it is stacked at the mining site from where it is carried by conveyor belts to the river side for being carried by barges to the Marmagoa harbour. Before the ore is carried from the mining site to the river side, its chemical as well as physical composition is ascertained by taking samples and testing them in the laboratories at each major mine and this process is carried on every day round the clock in order to ascertain the chemical and physical composition of the ore which comes to Marmagoa harbour. Since the chemical and physical composition of the ore varies from mine to mine and even within the same mine itself, intra mine blending of the ore is carried out at the mining site with a view to arriving at a certain specified chemical and physical composition. When the ore carried by barges arrives at the Marmagoa harbour, it is stacked in different stockpiles according to its chemical and physical composition. Since the assessee sells the ore only in the export market, it has to supply ore to the foreign buyers in accordance with the specifications required by them and therefore it is required to carry out blending of the ore mined by it in such a manner as to produce ore of the required chemical and physical composition. This operation of blending is carried out by the assessee, not before the loading of the ore into the ship, but in the process of loading itself through the mechanical ore handling plant. What is done is to draw different quantities of ore from different stock piles and put them together in the mechanical ore handling plant so that they get blended in the process of loading and the blended ore which is actually loaded into the ship is ore of the contractual chemical and physical composition. The mechanical ore handling plant thus performs a dual function, namely, blending of ore from different stock piles containing ore of different chemical and physical composition and loading of the blended ore into the ship for delivery to the foreign buyers. It will thus be seen that the entire activity of the assessee is broadly divisible 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 river side; (v) transport of the ore from the river side to the harbour by means of barges; (vi) stacking of the ore at the harbour in different stock piles according to its physical and chemical composition, and (vii) blending of the ore from different stock piles with a view to producing ore of the required specifications and loading it into the ship by means of the mechanised ore handling plant. The question is whether goods purchased by the assessee for use in the above operations could be said

A to be goods purchased for use "in the manufacture or processing of goods for sale or in mining" so as to attract the lower rate of sales tax under section 8(1)(b) of the Central Sales Tax Act, 1956.

It would be convenient at this stage to set out the relevant provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as B the Act) which have a bearing on the question before us. Section 6 provides that, subject to the other provisions contained in the Act, every dealer shall be liable to pay tax under the Act on all sales of goods other than electrical energy effected by him in the course of interstate trade or commerce during any year. Section 7 provides for registration of dealers and sub-section (1) of this section states that C every dealer liable to pay tax under the Act shall make an application for registration to such authority in the appropriate State as the Central Government may specify and every such application shall contain such particulars as may be prescribed. Sub-section (3) of section 7 enacts that if the authority to whom an application under sub-section (1) is made is satisfied that the application is in conformity D with the provisions of the Act and the Rules made thereunder, he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of section 8. Section 8 provides *inter alia* as under and we are setting out here the relevant E part of the section as it stood at the material time :

"Sec. 8(1) : Every dealer, who is in the course of inter-State trade or commerce—

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government F goods of the description referred to in sub-section (3),

shall be liable to pay tax under this Act, which shall be 3 per cent of his turn-over.

(3) The goods referred to in clause (b) of sub-sec. G (1)—

(b) x x x are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or H subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of

goods for sale or in mining or in the generation or distribution of electricity or any other form of power.

Section 13 confers rule making authority on the Central Government and by clause (e) of sub-section (1) of that section, the Central Government is authorised to make rules providing for "the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power." Pursuant to the authority conferred by this provision, the Central Government has made Rule 13 which at the material time was in the following terms :

"Rule 13 : The goods referred to in clause (b) of sub-sec.(3) of section 8, which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation of distribution of electricity or any other form of power."

The assessee made an application to the Sales Tax Officer on 14th September 1967 for inclusion of 36 items of goods in the certificate of registration on the ground that these items of goods were being purchased by it for use in mining ore and processing it for sale in the export market, and hence they were goods falling within section 8(3) (b) and Rule 13. It is obvious that if this application were granted and the items of goods mentioned in the application were specified in the certificate of registration, the dealer selling these goods to the assessee in the course of inter-State trade or commerce would be liable to pay sales tax only at the rate of 3 per cent of the turnover of these sales and the assessee in its turn would have to reimburse the selling dealer only at the rate of 3 per cent of the sale price, whereas otherwise the amount payable would be at a much higher rate. The assessee therefore pressed this application before the Sales Tax Officer with a certain amount of vehemence, but the Sales Tax Officer by his order dated 4th March 1968 granted specification only in respect of 11 items and disallowed the remaining 25 items. The view taken by the Sales Tax Officer was that the blending of ore which was done in the course of loading through the Mechanical Ore Handling Plant did not amount to manufacture or processing of ore and. therefore, the only goods in respect of which specification could be claimed by the assessee in the certificate of registration were goods purchased for use in mining and since the process of mining came to an end when ore was extracted from the mines and washed, screened

A and dressed in the dressing plant and stacked at the mining site, the goods purchased by the assessee for use only in these operations were eligible for being specified in the Certificate of Registration and not the goods purchased for use in any of the subsequent operations including blending and loading through the Mechanical Ore Handling B Plant. The Sales Tax Officer held that only 11 items of goods could be regarded as goods purchased for use in mining and the remaining 25 items of goods did not fall within this description and hence were not includible in the Certificate of Registration. The assessee preferred a revision application, but the Assistant Commissioner of Sales Tax who heard the revision application, took the same view as the Sales C Tax Officer in regard to the nature of the operations carried on by the assessee and holding that the assessee was entitled to inclusion in the Certificate of Registration of only those items of goods which were purchased for use in the process of mining (which ended with the stacking of the ore at the mining site after extraction, washing, screening and dressing), he examined the 25 items disallowed by the Sales D Tax Officer with reference to this criterion and came to the conclusion that 6 out of these 25 items were eligible for inclusion in the Certificate of Registration and he accordingly allowed the revision application in respect of these 6 items and rejected it in respect of the remaining 19 items. The assessee thereupon carried the matter further in revision to the Government of Goa, Daman and Diu, but E the Lieutenant Governor on behalf of the Government agreed with the view taken by the Assistant Commissioner of Sales Tax and rejected the revision application by an order dated 22nd August 1970. This led to the filing of a writ petition by the assessee in the Court of the Judicial Commissioner for quashing the Order of the Government and F directing inclusion of the remaining 19 items in the Certificate of Registration. The Judicial Commissioner took the same view as the Sales Tax Authorities in regard to the nature of the operations carried on by the assessee, but gave relief to the assessee in respect of 4 items of goods on the ground that they were goods purchased for use in the process of mining and were therefore liable to be included in G the Certificate of Registration. The result was that 15 items of goods ultimately remained unincluded in the Certificate of Registration. It is not necessary to reproduce here these 15 items of good in respect of which the application of the assessee was disallowed, but it is sufficient to state that they were items Nos. 1, 2, 3, 5, 6, 8, 9, 10, 12, 14, 15, 16, 17, 19 and 20 in the list Ex. No. 6. The assessee being H aggrieved by the disallowance of these 15 items preferred Appeal No. 1632 of 1973 after obtaining certificate from the Court of the Judicial Commissioner. Item 9 which consisted of "Safety Boards and

Posters" was not pressed at the hearing of the appeal and hence the controversy between the parties before us centred round the remaining 14 items of goods only and the question is whether these 14 items of goods were eligible for inclusion in the Certificate of Registration. The Union of India also felt aggrieved by the Order of the Judicial Commissioner allowing 4 items of goods to be included in the Certificate of Registration and hence it preferred Appeal No. 107 of 1974 against the Order of the Judicial Commissioner to the extent to which it was adverse against it.

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There are two questions which primarily arise for consideration in these appeals. One is 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 sec.8(3)(b) and Rule 13 and the other is whether the process of mining, conveying the mined ore from the mining site to the river side, carrying it by barges to the Marmagoa 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. We shall begin with the consideration of the first question, not because it has been formulated as a first question by us, but because on the answer to it depends to a large extent the decision of the second question.

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The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the Mechanical Ore Handling Plant constituted manufacture or processing of ore. Now it is well settled as a result of several decisions of this Court, the latest being the decision given on 9th May, 1980 in Civil Appeal No. 2398 of 1978-*The Deputy Commissioner of Sales Tax* v. *M/s Pio Food Packers*(1) that the test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. This Court speaking through one of us (Pathak, J.) pointed out: "Commonly manufacture is the end result of one or more processes through which the original com-

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(1) [1980] 3 S.C.R. 1271

A modity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be B regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place." The test that is required to be applied is; does the processing of the original commodity bring into existence a commercially different and distinct commodity? On an application of this test, it is clear that the blending of different qualities of ore possessing differing chemical C and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially D the same article, namely, ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore.

It still remains to consider whether the ore blended in the course of loading through the Mechanical Ore Handling Plant can be said E to undergo processing when it is blended. The answer to this question depends upon what is the true meaning and connotation of the word "processing" in sec.8(3)(b) and Rule 13. The word has not been defined in the Act and it must therefore be interpreted according to its plain natural meaning. Websters' Dictionary gives the following meaning of the word "process", "to subject to some special process or F treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market etc., to convert into marketable form as live stock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing fruits and vegetables by sorting and repacking." Where therefore any commodity is subjected to a process or treatment with a view to its "development or prepara- G tion for the market", as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of sec. 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a H commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not mate-

rial. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation may amount to processing of camphor powder as held by the Calcutta High Court in *Om Parkash Gupta* v. *Commissioner of Commercial Taxes*,(1) What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical composition demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the Mechanical Ore Handling Plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to 'processing' of ore within the meaning of sec. 8(3)(b) and Rule 13. It is no doubt true that the blending of ore of diverse physical and chemical compositions is carried out by the simple act of physically mixing different quantities of such ore on the conveyor belt of the Mechanical Ore Handling Plant. But to our mind it is immaterial as to how the blending is done and what process is utilised for the purpose of blending. What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the Mechanical Ore Handling Plant undergo any change in their physical and chemical composition as a result of blending and so far as this aspect of the question is concerned, it is impossible to argue that they do not suffer any change in their respective chemical and physical compositions.

The Revenue however relied on the decision of the Bombay High Court in *Nilgiri Ceylon Tea Supplying Co.* v. *State of Bombay*(2). The assessees in this case were registered dealers in tea under the Bombay Sales Tax Act, 1953 and they purchased in bulk diverse brands of tea and without the application of any mechanical or chemical process, blended these brands of different qualities according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the Sales Tax Authorities whether the different brands of tea purchased and blended by the assessees for the

(1) 16 Sales Tax Cases 935

(2) 10 Sales Tax Cases 500

A purpose of producing the tea mixture could be said to have been 'processed' after the purchase within the meaning of the proviso to sec. 8(a), so as to preclude the assessees from being entitled to deduct from their turn-over under section 8(a) the value of the tea purchased by them. The High Court of Bombay held that the different brands of tea purchased by the assessees could not be regard-
B ed as 'processed' within the meaning of the proviso to clause (a) of sec. 8, because there was "not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation" and the commodity remained in the same condition. The argument of the Revenue before us was that this decision
C of the Bombay High Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture in accordance with a formula evolved by the assessees could not be regarded as 'processing' of tea, equally on a parity of reasoning, blending of ore of different chemical and physical compositions could not be held to constitute 'processing' of the ore. Now
D undoubtedly there is a close analogy between the facts of *Nilgiri Tea Company's* case and the facts of the present case, but we do not think we can accept the decision of the Bombay High Court in the *Nilgiri Tea Company's* case as laying down the correct law. When different brands of tea were mixed by the assessees in *Nilgiri's Tea Company's* case for the purpose of producing a tea mixture of a different kind and
E quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture. There are it is true, some observations in the judgment
F of the Bombay High Court which seem to suggest that if instead of manual application of energy in mixing the different brands of tea, there had been application of mechanical force in producing the tea mixture, the Court might have come to a different conclusion and these observations were relied upon by the assessee, since in the present case the lending was done by application of mechanical force,
G but we do not think that is the correct test to be applied for the purpose of determining whether there is 'processing'. The question is not whether there is manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether
H the operational constitutes 'processing'. We are clearly of the view that the blending of ore in the course of loading through the Mechanical Ore Handling Plant amounted to 'processing' of ore within the

meaning of sec. 8(3)(b) and Rule 13 and the Mechanical Ore Handling Plant fell within the description of "machinery, plant, equipment" used in the processing of ore for sale. It must therefore follow as a necessary corollary that if any items of goods were purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare-parts, stores, accessories, fuel or lubricants" for the Mechanical Ore Handling Plant, they would be eligible for inclusion in the Certificate of Registration of the assessee.

The question which then arises is as to whether items of goods purchased by the assessee for use in carrying the ore from mining site to the river side and from the river side to the Marmagoa harbour could be said to be goods purchased for use in mining or in processing of ore for sale. Now there can be no doubt, and indeed this could not be seriously disputed that the process of mining comes to an end when ore is extracted from the mines, washed, screened and dressed in the dressing plant and stacked at the mining site and the goods purchased by the assessee for use in the subsequent operations could not therefore be regarded as goods purchased for use 'in mining'. The requirement of sec. 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'. It is only the items of goods purchased by the assessee for use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operations subsequent to the stacking of the ore at the mining site. This view finds support from the decision of this Court in *Indian Copper Corporation Limited* v. *The Commissioner of Commercial Taxes.*(1)

But the claim of the assessee for including in the Certificate of Registration items of goods purchased for use in carrying ore from mining site to the river side and from river side to the Marmagoa harbour was not based solely on the ground that these items of goods are purchased for use 'in mining'. The alternative contention of the assessee was that these items of goods are purchased for use in processing of ore for sale. The assessee submitted that mining of ore and processing it for the purpose of sale by carrying out blending through the Mechanical Ore Handling Plant constitute one integrated process and carrying the ore from the mining site to the river side and from the river side to the Marmagoa harbour where the processing is being done, is part of this integrated process and hence the items of goods purchased for use in this latter operation are eligible for inclusion in the Certificate of Registration. We think there is great force in this submission of the

(1) 15 STC 259.

A assessee. Where a dealer is engaged both in mining operation as also in processing the mined ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site mined ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be B carried from the mining site where the mining operation comes to 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 clearly C be goods used in processing of ore for sale. It is obvious that, in the present sase, the mining of ore is done by the assessee with a view to processing the mined ore through the Mechanical Ore Handling Plant at the Marmagoa harbour and the entire operation of mining ore and processing the mined ore is one integrated process of which transportation of the mined ore from the mining site to the Marmagoa harbour is D an essential part and, in the circumstances, it is difficult to see how the machinery, vehicles, barges and other items of goods used for transporting the mined ore from the mining site to the Marmagoa harbour can be excluded from consideration on the ground that they are not goods used in processing of ore for sale. The decision of this Court in *Indian Copper Corporation case* (supra) is directly in point E and completely supports this conclusion which we are inclined to reach on principle. The assessee in that case was a company which mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. There were several questions which arose for consideration, before the Court in regard to the assessees' claim for inclusion of certain items of goods F in its certificate of registration and one of them was whether the locomotives and motor vehicles used for removing ore from the place where the mining operations were concluded to the factory where the manufacturing process was going on, could be said to be goods intended for use in the manufacture or processing of goods for sale within the meaning of sec. 8(3)(b) and Rule 13. This Court held that they G were goods falling within this description so as to be entitled to inclusion in the Certificate of Registration of the assessee and Shah, J. speaking on behalf of the Court gave the following reasons for taking this view·

> "We are also of the opinion that in a case where a dealer H is engaged both in mining operations and in the manufacturing process-the two processes being inter-dependent-it would be impossible to exclude vehicles which are used for

removing from the place where the mining operations are concluded to the factory where the manufacturing process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for excluding locomotives and motor-vehicles used in carrying finished products from the factory. The expression "goods intended for use in the manufacturing or processing of goods for sale" may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage. If this be the correct view, the restrictions imposed by the High Court in respect of the vehicles and also the spare parts, tyres and tubes would not be justifiable."

These reasons apply with equal force in the present case and strongly support the conclusion that the machinery, vehicles, barges and other items of goods purchased by the assessee for use in carrying the mined ore from the mining site to the river side and from the river side to the Marmagoa harbour fall within the description of goods intended for use in processing of ore for sale within the meaning of sec. 8(3) (b) and Rule 13. If any of these items of goods are purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare-parts, stores, accessories, fuel or lubricants" in carrying the mined ore from the mining site to the river side and from the river side to the Marmagoa harbour, they would qualify for inclusion in the Certificate of Registration.

It is in the light of this discussion that the question whether the 14 items of goods disallowed by the Sales Tax Authorities and the Judicial Commissioner are eligible for inclusion in the Certificate of Registration has to be decided. We do not however think any useful purpose will be served by ourselves examining each of these 14 items for the purpose of deciding whether, according to the principles enunciated by us, any of them qualifies for being included in the Certificate of Registration. That is a matter which can appropriately be decided by the Sales Tax Officer in the light of the principles laid down by us and it need not occupy our time here. We accordingly allow the appeal of the assessee and direct the Sales Tax Officer to examine these 14 items of goods and determine in the light of the principles laid down in this judgment whether any of these 14 items of goods is liable to be included in the Certificate of Registration. So far as the

A appeal of the Union of India is concerned, we do not think that the Judicial Commissioner was in error in giving relief to the assessee in respect of 4 items of goods, since these items of goods were clearly goods intended for use in the process of mining and were rightly directed to be included in the Certificate of Registration. The appeal of the Union of India will accordingly stand dismissed. Since the B assessee has substantially succeeded, the fair order of costs would be that the Revenue must pay the costs of the assessee throughout.

V.D.K. *C.A.* 1632/73 *allowed and* *C.A.* 107/74 *dismissed.*