®

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR. JUSTICE DILIP B BHOSALE

AND

THE HON'BLE MR. JUSTICE B MANOHAR

W.A.NOS.6586-6633/2012 c/w W.A.No.6634/2012,

W.A.No.6657/2012 (T-RES)

IN W.A.NOS.6586-6633/2012

BETWEEN

M/S BALANOOR PLANTATIONS AND INDUSTRIES LTD
EMPIRE INFANTRY, 3RD FLOOR
NO.29, INFANTRY ROAD
BANGALORE-560 001
REPRESENTED BY ITS MANAGING DIRECTOR
SRI ASHOK KURIYAN,
AGED ABOUT 58 YEARS
S/O SRI K.O.KURIYAN ... APPELLANT

(BY SRI S S NAGANAND. SR. ADV., FOR SRI ATUL K ALUR, ADV.,)

AND

1. STATE OF KARNATAKA
   REPRESENTED BY PRINCIPAL SECRETARY TO
   GOVERNMENT, FINANCE DEPARTMENT
   GOVERNMENT OF KARNATAKA
   VIDHANA SOUDHA, BANGALORE-560 001

2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA
   VANIJYA THERIGE KARYALAYA

GANDHINAGAR
BANGALORE-560 009

3. ASSISTANT COMMISSIONER OF COMMERCIAL
TAXES (AUDIT)-13, DVO-1
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009 .. RESPONDENTS

(BY SMT S SUJATHA, AGA)

THESE WRIT APPEALS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.5739/11 & 18322-332/11 C/W 5740-42/11 & 18286-318/11 DATED 16/08/2012.

IN W.A.No.6634/2012

BETWEEN

M/S BADRA ESTATES & INDUSTRIES LTD
EMPIRE INFANTRY III FLOOR
NO 29, INFANTRY ROAD, BANGALORE 560 001
REP BY TIS MANAGING DIRECTOR
SRI JACOB MAMMEN
AGED ABOUT 43 YEARS
S/O LATE SRI K C MAMMEN ... APPELLANT

(BY SRI S S NAGANAND. SR. ADV., FOR SRI ATUL K ALUR, ADV.,)

AND

1. STATE OF KARNATAKA
REP BY ADDL. CHIEF SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA, BANGALORE 560 001

2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA
VANIJYA THERIGE KARYALA
GANDHINAGAR,
BANGALORE 560 009

3. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(AUDIT) 13, DVO-1,
VANIJYA THERIGE KARYALAYA
GANDHINAGAR,
BANGALORE 560 009 ... RESPONDENTS

(BY SMT S SUJATHA, AGA)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.16015/11 & 23815-825/11, 25518/11 & 43584-593/11 DATED 16/08/2012.

IN W.A.No.6657/2012

BETWEEN

M/S DEVON PLANTATION & INDUSTRIES LTD
EMPIRE INFANTRY, III FLOOR
NO.29, INFANTRY ROAD
BANGALORE 560001
REPRESENTED BY ITS MANAGING DIRECTOR
SRI.K. KURIAN
AGED ABOUT 55 YEARS
S/O LATE SRI RAJU K ... APPELLANT

(BY SRI S S NAGANAND. SR. ADV., FOR SRI ATUL K ALUR, ADV.,)

AND

1. STATE OF KARNATAKA
REPRESENTED BY ADDL. CHIEF SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA, BANGALORE

2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE

3. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(AUDIT) 16, VAT DIVISION-1
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE ... RESPONDENTS

(BY SMT S SUJATHA, AGA)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.16162/11 & 41091-101/11 DATED 16/08/2012.

THESE APPEALS COMING ON FOR HEARING AND HAVING RESERVED FOR JUDGMENT ON 18.02.2014, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

JUDGMENT (Dilip B Bhosale, J):

In these writ appeals, a short, yet important question of law, that falls for our consideration is whether the appellants-assessees, who are engaged in growing of tea/coffee plants and so also in manufacturing of tea/coffee as marketable commodity are entitled to take tax credit of inputs such as fertilizers, chemicals, pesticides, agricultural implements etc., used in the process of its growing/cultivation?

2. Factual matrix, that is necessary to consider and appreciate the arguments advanced by learned counsel for

the parties while addressing the question, in brief is as under.

2.1. The appellants-assessees own coffee and tea estates and are engaged not only in growing of tea leaves/coffee cherries (fruits) but also in manufacturing of coffee/tea as commodity ready for sale in domestic market.

2.2. The assessee/appellants - M/s.Balanoor Plantations and Industries Limited, (for short "**Balanoor Plantations"**) has called in question the reassessment order dated 14.11.2011, passed by the Assistant Commissioner of Commercial Taxes (Audit)-13, DVO-1, Bangalore (for short "**AA"**), levying additional tax alongwith interest and penalty for the tax period 2005-06 and consequent demand notice. Balanoor Plantations has also challenged reassessment order of the very same date passed by the AA for the tax periods 2006-07, 2007-08 and 2008-09 and consequent demand notices.

2.3. The assessee/appellants – M/s Badra Estate and Industries Ltd. Bangalore (for short "**Badra Estate**") has also impugned the reassessment order dated 25-3-2011 passed by the AA for the tax period between April 2006 and March 2007 and consequent demand notices. They have also called in question the reassessment order dated 31-5-2011 passed by the very same authority for the tax period between May 2007 and March 2008 and consequent demand notice. They are engaged in growing, curing and processing of coffee only.

2.4. Insofar as the assessee/appellants - M/s.Devon Plantation & Industries Limited (for short **"Devon Plantation"**) is concerned, they have also called in question the reassessment order dated 25-3-2011 passed by the AA for the tax period between April 2006 and March 2007 and consequent demand notice.

2.5. Admittedly, the appellants are "registered dealers" as defined by Section 2(12) of the Karnataka Value Added Tax Act, 2003 (for short "**the Act**"). All the

appellants together shall be hereinafter referred to as the '**assessees'** only.

3. Assessing Authority (AA) denied "input tax credit" to the assessees on purchases of fertilizers, chemicals, pesticides, agricultural machinery etc., holding that inputs used for cultivation of tea plants/coffee plants are not eligible for such credit. The AA held that such deduction is available towards the tax paid only on inputs as defined under Section 2(19) of the Act that are purchased 'in the course of' and 'for use' in their "business". He observed that an activity of growing tea plants/coffee plants do not fall within the meaning of term "business" as defined by Section 2(6) of the Act and, therefore, the tax paid on purchase of inputs/goods, which is not in the course of business or for use in the business, is not available for deduction as per the provisions contained in Section 10 of the Act. The AA as well as learned Single Judge placed heavy reliance upon the judgment of the Supreme Court in **M/s.Travancore Tea Estates Company Limited Vs.**

State of Kerala, 39 STC 1 (SC) to hold that cultivation of tea plants/the growth of tea leaves is distinct and separate from sale of tea, as a product for consumption. In other words, it is observed, that cultivation and growth of tea plants cannot be comprehended in the expression 'in the manufacture of or processing of goods for sale'. Thus, he held that while calculating net tax payable on sale of tea under Section 10(3) of the Act, no deduction can be given in respect of tax paid on goods purchased for use in the activity of growing tea plants/coffee plants.

4. A reference to clarification under Section 59(4) of the Act, at this stage, is necessary. The Commissioner of Commercial Tax (for short "**the Commissioner"**) in the proceedings dated 22-11-2010 held that the activity of raising or growing tea plants continues to be an agricultural activity as per Section 2(1) and the person raising or growing tea plants continues to be an agriculturist as per Section 2(2). The Commissioner while giving clarification, in exercise of the power conferred

under Section 59(4) of the Act, relied upon the judgment of the Supreme Court in *Travancore (supra)*. The clarification was made in pursuance of the application filed by M/s.Diwan Bahadur S.L.Mathias & Sons (for short **"M/s.Diwan Bahadur"**) and so also pursuant to the direction issued by this Court while remitting their matter for consideration vide order dated 13-7-2010 rendered in Writ Petition Nos.12993-994/2010 and Writ Petition Nos.13420-422/2010.

5. The controversy that falls for our consideration has arisen in the light of the aforementioned clarification issued by the Commissioner under Section 59(4) of the Act dated 22-11-2010. The order of the AA, as a matter of fact, rests on the said clarification. It is against this backdrop, the assessees instead of filing appeals, preferred writ petitions in this court challenging the orders passed by AA, contending that in view of the clarification under Section 59(4) of the Act, no useful purpose would be served by filing appeals. The writ petitions were, therefore

entertained and decided on merits. When, initially we expressed that the assessees ought to have filed appeals and further when we expressed that even at this stage parties can be relegated to a remedy of appeal, learned counsel expressed their desire to have hearing of these intra court appeals on merits and our opinion on the question formulated in the first paragraph of this judgment.

5.1 The learned single Judge while dealing with the writ petitions, after making reference to the clarification, quoted the relevant observations made by this Court in M/s.Diwan Bahadur and noticed that this Court had referred to the definition of the term 'agricultural produce or horticultural produce' as defined by Section 2(3) and Explanation 4(a) to Section 2(12) of the Act and in the light thereof, considered the submissions advanced by learned counsel appearing for the parties to hold that fertilizers, pesticides, fungicides, chemicals, agricultural machineries, pump sets and other electrical

equipments used for growing tea leaves by tea planters cannot at all be regarded as goods used in the course of production of tea meant for sale. He applied the same logic and the reasoning to take a similar view in respect of coffee, holding that cultivation and growing of coffee is distinct from manufacturing coffee for sale.

5.2 In the course of hearing of these appeals and on conclusion of the arguments advanced on behalf of the appellants, it was revealed that there was no challenge to the circular/clarification issued by the Commissioner under Section 59(4) of the Act dated 22-11-2010. In the absence thereof, we expressed certain difficulties in considering and deciding the question raised on behalf of the appellant. Mr.Naganand, learned Senior Advocate, who advanced leading arguments on behalf of the appellants, therefore, sought permission to file an application seeking amendment of the writ appeals and to raise challenge to the circular. On such permission being granted, the appellants filed application bearing

I.A.No.1/2014. The respondents filed statement of objections opposing the amendment as sought. We however, in the interest of justice, allowed the application and accordingly, amendment was carried out by the appellants. But, we made it clear to the learned counsel for the parties that we would deal with the challenge to the circular only if it is necessary and/or if the circumstances so demand. We also made it clear that we would hear the appeals on merits and our endeavour would be to decide the appeals on the basis of provisions of law and the law laid down by the Supreme Court and High Courts having bearing on the question of law framed by us.

6. We have heard learned counsel for the parties at great length and with their assistance gone through the orders of the AA and of the learned single Judge and so also the other materials, including judgments of the Supreme Court and High Courts placed before us for consideration.

6.1. Mr.Naganand, learned senior Counsel appearing for the appellants in Writ Appeal Nos.6586-6633/12, at the outset, submitted that growing of tea leaves/coffee cherries and the manufacture of tea/coffee, constitute one continuous integrated process and therefore, the assessees are entitled to input tax credit on inputs for cultivation, such as, fertilizers, pesticides, fungicides, chemicals, agricultural machinery and implements purchased from registered dealer and used in cultivation of tea and coffee, in view of the statutory scheme of the Act, in particular, Sections 10(2) read with Section 2(19) and 2(6) of the Act. In support of his contention, Mr.Naganand, placed heavy reliance upon the following judgments of the Supreme Court in **Travancore Tea Estates Co. Ltd. v. State of Kerala, (1977) 39 STC 1 (SC); Chowgule & Co. Pvt. Ltd. v. Union of India (1981) 1 SCC 653, paragraph 9; and of the Kerala High Court in The Travancore Tea Estates Co. Ltd. v. The State of Kerala, (1973) 32 STC 47 (Ker), at page 50.**

6.2. Mr.Naganand, then submitted that Section 10(2) of the Act permits 'input tax credit' on any goods for use in the course of business. Section 2(19) of the Act defines 'input' as any goods including capital goods purchased by a dealer in the course of business, or any other use in business. Section 2(6) of the Act, defines 'business', is of wide import, and includes any transaction in connection with or incidental or ancillary to trade, commerce, manufacture, adventure or concern. In short, he submitted that cultivation and growing of tea leaves/coffee cherries is in connection with, or incidental or ancillary to the manufacture of tea/coffee and therefore, the assessees are entitled to input tax credit on the inputs used for cultivation, such as, fertilizers, pesticides, chemicals, etc. In support, he placed reliance upon the following judgment of the Supreme court in **State of Tamil Nadu & Another v. Board of Trustees of the Port of Madras, (1999) 114 STC 520 (SC); State of Tamil Nadu v. Binny Ltd. Madras, (1982) 49 STC 17 (SC), and of this Court in**

United India Insurance Co. Ltd. v. Commissioner for Commercial Tax, ILR 1983 Kar. 3418.

6.3. Mr. Naganand further submitted that physical presence of an input in the final finished product is not a pre-requisite for claiming input tax credit under other comparable statutes which provide for tax credit. In support of his contention, he placed heavy reliance upon the following judgments of the Supreme Court in **Jaypee Rewa Cement v. CCE, M.P., (2001) 8 SCC 586; Vikram Cement v. CCE, Indore, (2006) 2 SCC 351; Commercial Taxation Officer, Udaipur v. Rajasthan Taxchem Ltd. (2007) 3 SCC 124; and Flex Engineering Ltd. V. CCE, U.P. (2012) 5 SCC 609.**

6.4. Mr.Naganand, then placed reliance upon the definitions of agriculturist (Section 2(2)), agricultural produce or horticultural produce (Section 2(3)) and dealer (Section 2(12) to submit that assessees are not agriculturists and tea/coffee are not agricultural or horticultural produce for the purposes of the Act as has

been rightly held by the learned single Judge in **M/s.Divan Bahadur S.L. Mathias and sons** (W.P.Nos.12993-94/2010 & 13420-422/2010) decided on 13th July 2010. In support of the case of the assessees, Mr.Naganand submitted the Division Bench of this Court in **Income Tax – III vs. Sami Labs Limited** (ITA 207/2011 decided on 21-02-2012) held that in case of herbal extract manufacturer, expenditure incurred on cultivation of coleus crop (a plant) is deductible under the Income Tax Act, 1961 for computing taxable income, as such, the expenditure is 'laid out' for its business. Relying on this proposition he submitted that even the expenditure incurred on the inputs such as fertilizers, pesticides, chemicals, etc. are deductible under the Act.

7. Government Advocate, on the other hand, at the outset, submitted that use of fertilizers, chemicals, pesticides etc., for cultivation/growing of tea/coffee plants cannot be stated to be the inputs for its (tea/ coffee) manufacturing. These goods, she submitted, of which

input tax credit is claimed, in other words, are not used in the manufacturing process of tea/coffee. Cultivation and growth of tea leaves/coffee cherries is prior stage of manufacturing process. Cultivation of tea leaves and coffee cherries and manufacture of tea/coffee are two distinct activities. Fertilizers, chemicals, pesticides etc., are used for cultivation and/or not the inputs used in the course of the business of manufacture and sale of tea/coffee as marketable commodities. She, based on clause (b) of Section 2(6), submitted that the agricultural operation/cultivation of tea are not incidental or ancillary to the manufacture of tea/coffee. She submitted that insofar a Company is concerned, such as the assessees, it is deemed to be a dealer, in respect of turnover relating to sale of the products as mentioned in Clause(b) of Explanation 4 of Section 2(12) of the Act. This legal fiction is only with respect to turnover relating to sales of such products not otherwise. Lastly, she submitted the scope of 'business' cannot be stretched to the source of input/raw materials, required for growing/cultivation of

tea/coffee. Growing of tea leaves or coffee cherries is not incidental or ancillary to the business activities of manufacturing and sale of tea as marketable commodity. In support of her contentions, she placed reliance on the following judgments in **D.H.Brothers Pvt. Ltd. vs. Commissioner of Sales Tax (U.P.) [1992] 84 STC 267 (SC); Commissioner of Income Tax vs. Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466; Union of India & Another vs. Belgachi Tea Co. Ltd. & others, [2008] 304 ITR 1 (SC).**

8. For addressing and answering the main question that falls for our consideration, in the light of the arguments advanced on behalf of the parties, in our opinion, we would also have to consider whether an agricultural/horticultural activity of cultivating/growing tea/coffee plants is a business within the meaning of the provisions contained in Section 2(6) of the Act, or in other words, whether the word 'business' as defined by Section 2(6) of the Act could be expanded to mean and include

even agriculture/horticulture or agricultural/horticultural activity and whether goods such as fertilizers, pesticides, etc., could be treated as inputs used in the process of manufacture of tea/coffee for sale in the market as commodity for consumption.

9. We now proceed to advert to the arguments advanced on behalf of the parties and consider the relevant provisions of the Act.

10. Section 2(1) defines "agriculture". With its grammatical variations, agriculture includes horticulture, the raising of crops, grass or garden produce and grazing but does not include dairy farming, poultry farming, stock breeding and mere cutting of wood. From bare perusal of this definition, it is clear that growing of tea/coffee, is an agriculture. This definition is general in nature and does not specify any particular class of crop/s or exclude any crop or class of crop/s.

11. Sub-section (2) of Section 2 defines 'agriculturist' which means a "person" who cultivates land personally. Section 2(12) defines "dealer". If clauses (a) and (b) of Explanation 4 of Section 2 (12) are read, it is clear that the word 'person' used in the definition of 'agriculturist' also includes a company as defined under the Companies Act, 1956. Sub-section (5-A) of Section 2 defines body corporate and Sub-section (9) of Section 2 defines Company. Both mean a company as defined in the Companies Act. Thus, for the purpose of this Act, a company could also be an agriculturist, as defined under Section 2(2) of the Act.

12. Sub-section (3) of Section 2 of the Act defines "agricultural produce or horticultural produce" (for short "AP or HP"). Arguments advanced by learned counsel for the parties were centered round this provision for quite some time. It would be relevant to reproduce this provision, which reads thus :

> "**Agricultural produce or horticultural produce**" shall not be deemed to include tea,

> beedi leaves, raw cashew, timber, wood, tamarind and such produce, (except coffee) as has been subject to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying."

12.1 A glance at this provision would show that certain agricultural produce, by creating deeming fiction, are excluded from the preview of the definition of AP or HP for the purpose of this Act, such as, tea, beedi leaves, raw cashew, timber, wood and tamarind. These items, except coffee, as per the definition, shall not be deemed to include as agricultural produce provided they are subjected to any physical, chemical or other process for being made fit for consumption.

12.2 Sub-section (3) of Section 2, which defines "AP or HP", speaks about six agricultural produce, such as, tea, beedi leaves, raw cashew, timber, wood and tamarind. By creating deeming fiction, for the purpose of the Act, they are not treated AP or HP, though in common parlance, perhaps these produce would also be treated as

agricultural or horticultural produce. So far as coffee is concerned, it is not excluded from being agricultural produce irrespective of the fact whether it is subjected to any physical, chemical or other process for being made fit for consumption.

13. The Act was introduced to replace the Sales Tax System which was governed by the Karnataka Sales Tax Act (Karnataka Act No.25/57), 1957 (for short 'the KST Act'). The KST Act also defines AP and HP under Section 2(c) thereof. Definition of AP and HP in the Act and in the KST Act is word to word and line to line same. The definition in the KST Act, since the day on which it came into force in 1957, was amended thrice. By the first amendment, vide Act No.16/89, w.e.f. 18.10.1983, the words/expression "except coffee" were inserted in the definition. Then it was amended vide Act No.23/83 w.e.f. 18.11.1983 and the following portion was inserted "*and such produce, except coffee as has been subject to any physical, chemical or other process for being made fit for*

consumption and mere cleaning, grading, sorting or drying". By the third amendment vide Act No.4/99 w.e.f. 01.04.1999 the following words/produce were introduced in the definition of AP and HP: "beedi leaves, raw cashews, timber, wood, tamarind".

13.1. Thus, in the definition of "AP or HP", as it stood prior to these amendments, initially the words "except coffee" were inserted in 1989 w.e.f. 18.10.1983, and thereafter, the second amendment was made on 18.11.1983 and lastly, five aforementioned produce were inserted in the said definition by way of amendment w.e.f. 1.4.1999, and were excluded from being Agricultural Produce. The Act was introduced and brought into force from 11th day of March, 2005 also has the definition of "AP or HP" under Section 2(3) which, as stated earlier, is word to word and line to line same. In other words, it was introduced in the Act, with all that was inserted by way of the three amendments in the definition under Section 2(c) of the KST Act.

13.2. Learned Government Advocate brought to our notice notes of the Cabinet prepared when the words "except coffee" were inserted in the definition of "AP or HP" under Section 2(c) of the KST Act. The notes state that "'coffee' is an 'agricultural produce' as defined under Section 2(c) of the KST Act. But, however, doubt has been expressed as to whether pulping and other operations carried on by the planters to make their coffee fit for delivery to Coffee Board would bring about any kind of physical or chemical change so as to exclude it from the purview of the definition of 'agricultural produce'. Therefore, in order to remove ambiguity and to remove doubts, it is proposed to amend the definition of 'agricultural produce' retrospectively".

13.3. It is in this backdrop, when we read the definition of "AP or HP" under Section 2(3) of the Act, it is clear as crystal that 'coffee' is an agricultural/horticultural produce. In other words, it has not been excluded from being 'agricultural/horticultural produce' by this definition.

What has been excluded from the purview of the said definition by creating deeming fiction are tea, beedi leaves, timber etc. and that too, if they are subjected to any physical, chemical or other process for being made fit for consumption or made it a marketable commodity. Mere cleaning, grading, sorting etc., however, would not exclude even 'tea' from being 'agricultural produce'. The Legislature, thus, has made a clear distinction between 'tea' and 'coffee'. The word 'tea' used in the said definition would mean tea made fit for consumption or available in the market as commercial commodity, which is subjected to any physical, chemical or other process. Its mere cleaning or grading or sorting shall not exclude it being an agricultural produce.

13.4. The definition of AP or HP is not articulately drafted. The legislature could have made it more clear by using a straight and simple language. By creating deeming fiction, tea and other produce mentioned therein, except coffee, are excluded from being AP or HP, only if

they are subjected to physical, chemical or other process for being made fit for consumption, otherwise they continue to be AP or HP. In other words, mere cleaning or grading or sorting or drying would not change their original character being AP or HP.

13.5. Explanation 4(a) and 4(b) appended to Section 2(12) of the Act, which is relevant, provide that an agriculturalist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of Clause(a). This Clause, it appears to us, would also means an agriculturist who sells only cleaned, graded or sorted tea leaves, requires no registration as a dealer, under the provisions of the Act. In other words, apart from cleaning, grading and sorting, if tea is subjected to any physical, chemical or other process for being made fit for consumption, one would require registration as dealer for its sale under the provisions of the Act. Clause (b) of Explanation 4 speaks only about the agriculturist, which is

a Company, and if the Company is selling coffee apart from other produce mentioned in the said clause, grown on land cultivated by them personally or directly or otherwise, such Company, shall be deemed be a dealer in respect of turnovers relating to the sale of coffee. Thus, 'coffee' though is not excluded from being an agricultural produce within the meaning of Section 2(3) of the Act, still the agriculturist-Company which grow and sale 'coffee' as marketable commodity needs registration as a dealer in respect of turnovers relating to sale of coffee in market under the provisions of the Act.

14. Indubitably, the Act makes distinction between coffee and tea to the extent, as indicated above, though both are basically agricultural produce. In the light of these provisions, we had a glance at the third schedule of the Act, which gives a long list of several taxable goods. Entry 24 therein reads as follows: *"Coffee beans and seeds (whether raw or roasted); cocoa pods and beans; green tea leaf and chicory".* Entry 92 in the third Schedule

speaks only of "Tea". Entry 92, in our opinion, means 'Tea', which is subjected to any physical/chemical/other process.

14.1. As is seen in the Explanation 4(a) of Section 2(12) an agriculturist who exclusively sells agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause. Despite this Clause, Entry 24 provides for 'green tea leaves', which in our opinion, indicates that if 'green tea leaves' are grown and sold by a person who is not an agriculturist and who has not grown it on land cultivated by him personally, may be a middleman, he requires to pay tax as provided for in the third Schedule of the Act. On the other hand, a Company, which is an agriculturists, or a person who is an agriculturist grows/cultivates green tea leaves and is not involved/engaged in any further process such as any physical, chemical or other process, or any other business for which registration as dealer is required and sells tea leaves to any factory which is engaged in

further process need not get itself/himself registered as dealer under the provisions of the Act. In other words, if a Company which is engaged only in cultivation/growing of 'green tea leaves' and is not doing any other business whatsoever, it need not get itself registered as 'dealer' under the provisions of this Act. Clause (b) of Explanation 4 does not make any reference to 'Tea'. The word 'Tea' used in Entry 92 means tea which is subjected to any physical, chemical or other process for being made fit for consumption by a company, such company is bound to get itself registered as dealer under the provisions of this Act and its production shall be subjected to tax.

15. The definition of 'input' as we find in Sub-section (19) of Section 2 means any goods including capital goods purchased by a dealer in the course of his business for resale or for use in the manufacture or processing or packing or storing of other goods or any other use in business. From bare look at this definition, it shows that the inputs which have direct connection/nexus with

business or purchased by a dealer 'in the course of' business or for resale or for 'use in the manufacture' of other goods or 'any other use' in business, could only be treated as inputs. Unless the word 'business' is read also to mean an agriculture or agricultural activity, the inputs, such as, fertilizers, chemicals, pesticides, agricultural implements etc. used for cultivation, in our opinion, cannot be treated as inputs within the meaning of 'input' as defined by Section 2(19) of the Act. In the later part of the judgment, we would record further reasons for observing this conclusion.

16. From bare perusal of the provisions contained in Sections 2(1), 2(2), 2(3), 2(6) and 2(12), in particular, Explanation 4(a)(b) of Section 2(12), we are satisfied that tea plantation and coffee plantation are agricultural/horticultural activities and that it would not be correct to say that tea and coffee are either not agricultural/horticultural produce or its cultivation does not amount to agricultural activity. In fact, both are true. But,

for the purpose of this Act agricultural produce namely "tea", once made fit for consumption, stand excluded from being agricultural produce.

17. The arguments advanced by learned counsel for the parties were also centered around the word "business" as defined by Sub-section (6) of Section 2 of the Act. It would be advantageous to reproduce the definition of 'business' to understand what it exactly means for our purpose. The definition of "business" (Section 2(6) of the Act) reads thus:

> "Business" includes-
>
> "(a) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on in furtherance of gain or profit and whether or not any gain or profit accrues therefrom; and
> (b) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern."

17.1. The word 'business', within the meaning of Sub-section (6) of Section 2 of the Act, includes any

'trade', 'commerce', 'manufacture' or any 'adventure' or 'concern' in the nature of trade, commerce or manufacture, whether or not it is carried on in furtherance of gain or profit and whether or not any gain or profit accrues therefrom. It further includes that any 'transaction' in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

17.2. The Supreme Court in **State of Tamil Nadu and another vs. Board of Trustees of the Port of Madras, 1999 (144) STC 520,** had an occasion to consider the definition of 'business' as defined under Section 2 (d) of the Tamil Nadu General Sales Tax Act, 1959 (for short "the Tamil Nadu Act"). Definition of 'business' as occurs in Section 2(d) of the Tamil Nadu Act is pari materia with the definition under Section 2(6) of the Act. As a matter of fact, the definitions of word 'business' in both the Acts are word to word and line to line are same. The Supreme Court in the **Board of Trustees of**

the Port of Madras (supra) while dealing with the definition of the word 'business' in paragraphs 13 and 14 observed thus:

> "13. Now the definition of "business" in section 2(d) and in most of the sales tax statutes is an inclusive definition and includes "trade or business or manufacture, etc.". This itself shows that the **Legislature has recognised that the word "business" is wider than the words "trade, commerce or manufacture, etc.".** The word "business" though extensively used is a word of indefinite import, in taxing statutes, it is normally used in the sense of an occupation, a profession which occupies time, attention and labour of a person, normally with a profit-motive and there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive and not for sport or pleasure (State of Andhra Pradesh v. H. Abdul Bakshi and Bros. [1964] 15 STC 644 (SC); AIR 1965 SC 531). Even if such profit-motive is statutorily excluded from the definition of "business" yet the person could be doing "business".
>
> 14. The word "carrying on business" requires something more than merely selling or buying etc. Whether a person "carries on business" in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive [Board of Revenue v. A.M. Ansari [1976] 38 STC 577 (SC); (1976) 3 SCC 512]. Such

> profit-motive may, however, be statutorily excluded from the definition of "business" but still the person may be "carrying on business".
>
> (emphasis supplied)

17.3. A bare look at the definition of 'business', shows that the legislature has recognized the word 'business', wider than the words 'trade, commerce, or manufacture etc.'. Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture or adventure or concern is also business irrespective of the fact whether or not it makes any profit. The definition of business though has brought within its purview any trade, commerce, manufacture or any adventure or concern or any transaction in connection therewith, in our opinion, would not either directly or indirectly include agriculture/horticulture or agricultural/horticultural activity.

18. Mr.Naganand, learned Senior Advocate appearing for the assessees vehemently submitted that an agriculture is also a business as it is an "adventure" or

"concern" carried on in furtherance of gain or profit irrespective of the fact whether or not any gain or profit accrues therefrom. To test this argument, we have carefully gone through clause (b) of sub-section 2(6) of the Act which defines 'business'. It states that any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern. Clause (a) makes it clear that any adventure or concern also should be in the nature of trade, commerce or manufacture whether or not it is carried on in furtherance of gain or profit and whether or not any gain or profit accrues therefrom. Even any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concerned only would be business under this provision. In our opinion, having read the definition of word 'business', 'agricultural/horticultural activity' and 'agricultural/horticultural produce' by no stretch of imagination could be termed as trade or commerce or manufacture or adventure or concern so as to mean business. In other words, 'agriculture' as is

defined under Sub-section (1) of Section 2 cannot be termed as trade, commerce, or manufacture, adventure or concern. The definition of agriculture as occurs in the Act with its grammatical variations includes only horticulture, the raising of crops, grass or garden produce. In view thereof, it is impossible for us to agree with the submission advanced by Mr.Naganand that agriculture is also 'business' within the meaning of the definition of business under Section 2(6) of the Act. Merely because a company is involved in any trade, commerce or manufacture, is also an agriculturist as defined by Sub-section (2) of Section 2 would not mean that the agriculture is business. They may do it as business and use AP or HP for manufacturing products, such as tea/coffee, but that by itself would not turn the agricultural activity into a business. In short, business and agricultural activity are two distinct or independent activities and have no concern whatsoever with each other except the fact that agricultural produce could be used by a company for trade, commerce or manufacture.

19. The word 'Trade' means exchange of goods for goods or goods for money or, any business carried on with a view to provide, whether manual or mercantile as distinguished from the liberal arts or learned professions and from agriculture. (Industrial Disputes Act, 1947). The word 'Commerce' means buying and selling of the commodities and services, trade including the banking, insurance etc., and social dealings or communication. The words 'trade and commerce' are usually used together. In common parlance the word 'commerce' means carrying of any trade, business or profession, sale or exchange of goods of any type whatsoever and also includes the running of with a view to make profits. Thus, the word 'commerce' is a term of largest import. The word 'manufacture' includes any process carried out in the course of making the product. It also includes assemble. The word 'manufacturer' means any person who manufactures a product. Thus, by no stretch of imagination, agriculture/horticulture or agricultural/

horticultural activity could be termed as 'business' or 'business activity'

19.1. The Supreme Court in **State of Tamil Nadu vs. Binny Ltd. Madras, 1982 49 STC 17** had an occasion to deal with the very same definition of business as occurs in Tamil Nadu Act. It would be relevant to reproduce the observations made by the Supreme Court in paragraph (3) of the report. Relevant observations reads thus :

> "This Court observed in the Burmah Shell case [1973] 31 STC 426 (SC) that for the purpose of attracting the applicability of clause (ii) of section 2(d), it was not necessary that the **transaction in question must partake of the characteristics of business but it was sufficient if it was "in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern". The word "such" in clause (ii) was in the opinion of the court, referable to trade, commerce, manufacture, adventure or concern referred to in clause (i) and if there was in existence some trade, commerce, manufacture, adventure or concern falling within clause (i), any transaction is connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern, would constitute "business" within the meaning of** clause (ii) even though the transaction by itself may not have

> the characteristics of business as understood in ordinary parlance".
>
> (emphasis supplied)

19.2. In that case, it appears that activity of selling provisions to the workmen in the factory premises was treated as an activity incidental to the business of manufacturing of textiles. Wrongly applying the same analogy it was contended that in the present case, there cannot be manufacturing of tea/coffee, as a marketable product, without growing of tea leaves and coffee cherries and therefore, it is incidental and ancillary to manufacture of tea/coffee.

19.3. Clause (b) of sub-section (6) of Section 2 undoubtedly states that any transaction in connection with, or incidental or ancillary to, such trade commerce, manufacture, adventure or concern. The word 'such' in clause (b) is referable to trade, commerce, manufacture, adventure or concern referred to in Clause (a) and if there exists some trade, commerce, manufacture, adventure, or concern falling within Clause (a) any transaction in

connection with or incidental or ancillary to such trade, commerce, manufacture only would constitute business, irrespective of the fact whether such transaction has characteristics of business as understood in common parlance. Whether agricultural/horticultural activity or agricultural/horticultural produce could be treated as transaction in connection with or incidental or ancillary to such trade, commerce or manufacture etc., is the question. In our opinion it is not. These are two independent activities namely business and agriculture. If we hold that Agricultural activity is incidental or ancillary to manufacture of tea/coffee, perhaps all products fit for consumption, made from agricultural produce will have to be taken as incidental or ancillary to such finished products and in that eventuality, deduction or input tax credit on fertilizers, chemicals, pesticides etc., will have to be granted in all such cases. That, in our opinion, is not the intendment of the legislature. In other words, if that was the intention of the legislature it would have reflected in so many words in all relevant provisions in the Act such as

the definitions contained in Sections 2(1), 2(2), 2(3), 2(6), 2(12), 2(19) and Sections 3, 10 etc.

19.4. **In United India Insurance Co., Ltd. vs. Commissioner of Commercial Taxes, ILR 1986 Kar.3418,** this Court while dealing with the word 'business' observed thus:

> "17. On a careful analysis of the decisions relied upon for the State and in view of the principle laid down by the Supreme Court dealing with the definition of 'business', as including transactions, which are incidental or ancillary and depending upon the facts of each case, I am of the view that the contention of the Department has to be upheld. That the general Insurance Company, in this case, is carrying on the business of general insurance is not in dispute.
>
> 20. Applying the principles laid down by the Supreme Court in the case of Binny and company – (49 STC 17); Burmah Shell (31 STC 426) and Northern Railway (37 STC 423), the contention of the petitioner, has to be rejected. **After the definition of 'business' was expanded, it includes all ancillary and incidental transactions and it is no longer open to the petitioner to contend that the sale of the goods was not incidental to its business.** It is not necessary that a transaction for purpose of attracting charging Section of the Act should always involve buying and selling-vide

> observations of – Justice Sri Jaganmohan Reddy, in Burmah Shell case in 31 STC 426 at page 433."
>
> (emphasis supplied)

This Court in United India Insurance Company Limited (supra) was considering the question whether insurance company which sells insured goods in salvage steel is liable to tax, the sale being incidental ancillary to its business under Section 2(f2) of the Karnataka Sales Tax Act, 1957 after considering the definition of 'business' it was observed that it includes the ancillary and incidental transactions and it was no longer open to the petitioner therein to contend that the sale of goods was not incidental to its business. This judgment also will not help to take the assessees contention further that for growing of tea/coffee plants, use of fertilizers, chemicals, pesticides etc., is incidental or ancillary to the business of manufacturing of tea/coffee as a marketable commodity. In other words, fertilizers, chemicals, pesticides, etc. in any case cannot be said to be either ancillary or incidental

to manufacturing of tea/coffee as marketable product/commodity.

20. In the present case, the assessees claim that they grow green tea leaves and also manufacture tea as marketable commodity. But to test the arguments we would like to pose a question whether an 'agriculturist' who only grows/cultivates green tea leaves personally and supply it to the a manufacturer of tea fit for consumption, whether he would have to pay tax on supply of tea leaves? Our answer is in the negative, it being an agricultural produce. That being so the question of granting input tax credit on the items used for cultivation would not arise.

20.1. Take a case of purchase of building material as a part of works contract. A contractor would purchase cement and for purchasing it he would be entitled for input tax credit/deduction of tax paid for purchasing the cement. He cannot claim input tax credit on the raw materials used for manufacturing of cement. It is the manufacturer of cement would be entitled to claim input tax credit on such

raw material. In our case, to manufacture of tea/coffee the raw material would be "tea leaves" or "coffee cherries" and certainly not the items used for its cultivation, such as fertilizers, chemicals etc. Cultivation of tea plants is distinct and separate from manufacture of tea and selling it in market. In other words, cultivation and growth of tea plants cannot be comprehended in the expression "in the manufacture of or processing of goods for sale".

21. The expression input tax has the meaning assigned to it in Section 10 of the Act. Section 10 speaks of output tax, input tax and net tax. It would be relevant to reproduce the said Section so as to appreciate whether, on the facts and in the circumstances of the present case, it is possible for the assessees to claim input tax credit. Section 10 reads thus :

> "**10. Output tax, input tax and net tax:**
>
> (1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on

behalf of such dealer subject to issue of a prescribed declaration by such agent.

(2) Subject to input tax restrictions specified in Sections 11, 12, 14, 17 and 18, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases.

(3) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

(4) …….
(5) ……..”

21.1. Sub-section (1) of Section 10 speaks about output tax. Sub-section (2) speak about input tax, which, in short, means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in

such cases. Sub-section (3) provides for net tax payable which means the difference between output and input tax payable by the dealer.

21.2. From bare perusal of the provisions contained in Section 10 read with definition of 'input' and the definition of 'business', it appears to us that unless agriculture/horticulture or agricultural/horticultural activity is held to be a 'business', an assessee, such as, the assessees in the present case, is not entitled for input tax credit. The basic requirement to seek input tax credit on purchases of goods, such as fertilizers, chemicals, pesticides, etc. is that they are purchased by a dealer "in the course of his business" for resale or for use in the manufacture or processing or packing or sorting of other goods or any other use in business. The agriculture/horticulture or agricultural/horticultural activity or the business as contemplated by the relevant definitions, it is clear that the word 'business' as occur in Sub-section (6) of Section 2 is independent and therefore,

input tax credit on the purchases such as fertilizers, chemicals, pesticides etc. used in agricultural/horticultural activity cannot be granted.

22. The controversy between the parties, before us is centered round the question as to whether fertilizers, chemicals, pesticides, agricultural implements etc., could be treated as the goods intended for use in the course of their business, or for processing of tea/coffee to make it fit for consumption or sale in the market. Section 10(2) of the Act states that input tax means the tax collected and payable under this Act on the sale of any goods for use 'in the course of business'. Section 10(3) provides that the net tax payable shall be the amount of output tax payable less the input tax deductible shall be accounted for in accordance with the provisions of the Act. It is true that, growing/cultivating of green tea leaves/coffee cherries and its processing in the factory follow each other so as to constitute continuous process, but still those are, in our opinion, distinct and separate. As observed earlier,

cultivating/growing of tea/coffee plants is distinct from manufacturing process during which green leaves/cherries, as raw material, are subjected to physical/chemical/other process in the factories to make it fit for consumption and a marketable commodity, namely tea/coffee. This at the most could be called an integrated income derived from two distinct activities namely growing of green leaves or cherries and manufacturing of tea/coffee ready for sale in the market. Integrated income does not mean that the manufacturer of tea/coffee could be entitled to take tax credit on inputs such as fertilizers, chemicals, pesticides etc. These items are necessary for cultivation and growth of tea/coffee plants. There is no direct relationship, as observed by the Supreme Court in Travancore Tea Estate, between use of fertilizers, pesticides etc. and manufacturing process in respect of tea/coffee meant for sale.

23. At this stage, it would be relevant to consider the judgment of the Supreme Court in **The Travancore Tea**

Estates Co. Ltd. (supra). The relevant observations read thus:

> "In J. K. Cotton Spinning & Weaving Mills Co. Ltd. (supra) the appellant manufactured for sale cotton textiles, tiles and other commodities. Certain items of goods in the certificate of registration of the appellant were deleted by the sales tax authorities on the ground that they had been earlier erroneously included in the certificate. This Court in that context dealt with the scope and ambit of section 8(3) (b) of the Act read with rule 13. It was held that the expression "in the manufacture of goods" in section 8(3)(b) should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. **Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods."** It was further held that the process of designing might be distinct from the actual process of turning out finished goods. But there was no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. **The expression "in the manufacture" was held to take in within its compass all processes which are directly related to the actual production.** Drawing and photographic materials directly related to the actual production of goods were held to be goods intended for use "in the manufacture of

goods". Building material, including lime and cement, not required in the manufacture of tiles for sale was, however, held to be not raw material in the manufacture or processing of goods or even as "plant".

We may now turn to the present case. The question which essentially arises for determination is whether fertilisers and other goods mentioned in item No. (1) are intended for use by the appellant as equipment or stores in the manufacture or processing of tea meant for sale, as urged on behalf of the appellant. The controversy between the parties has centered round the point as to whether fertilisers and other goods mentioned in item No. (1) can be said to be goods intended for use in the manufacture or processing of tea meant for sale. So far as this question is concerned, we find that the growing and plucking of tea leaves from the plants and the processing of those leaves in the factories are parts of a continued activity. The assertion of Mr. Desai that the tea leaves would lose their value unless they are processed in the factory soon after they are plucked is not being questioned. It does not, however, follow from that that the cultivation of tea plants and the growth of tea leaves is not something distinct from the manufacturing process to which tea leaves are subjected in the factories. The fact that the time-lag between the plucking of tea leaves and their being subjected to manufacturing process in the factories is very little would not detract from **the conclusion that the cultivation and growth of tea plants and leaves is something distinct and separate from the manufacturing process to which those leaves are subjected in the factories for turning them**

into tea meant for sale. Income which is realised by sale of tea by a tea company which grows tea on its land and thereafter subjects it to manufacturing process in its factory is an integrated income. **Such income consists of two elements or components. One element or component consists of the agricultural income which is yielded in the form of green leaves purely by the land over which tea plants are grown. The second element or component consists of non-agricultural income which is the result of subjecting green leaves which are plucked from the tea plants grown on the land to a particular manufacturing process in the factory of the tea company.** Rule 24 of the Income-tax Rules, 1922 and rule 8 of the Income-tax Rules, 1962, prescribe the formula which should be adopted for apportioning the income realised as a result of the sale of tea after it is grown and subjected to the manufacturing process in the factory. Sixty per cent is taken to be agricultural income and the same consists of the first element or component, while 40 per cent represents non-agricultural income and the same comprises the second element or component: (see Tea Estate India P. Ltd. v. Commissioner of Income-tax).

Fertilisers and the other goods mentioned in item No. (1) are intended for use not in the manufacturing process in respect of tea meant for sale; they are essentially needed for the cultivation and growth of tea plants and leaves. There is no direct relationship between use of fertilisers and other goods mentioned in item No. (1) and the manufacturing process in respect of tea meant for sale. What is meant by manufacture of tea is clear from pages

863-4 of Vol. 21 of Encyclopedia Britannica (1965 Edition), wherein it is observed:

"Black and green teas result from different manufacturing processes applied to the same kind of leaf. After plucking, the leaf is withered by being spread on bamboo trays in the sun, or on withering tats within doors. The process takes 18 to 24 hours. Next it is rolled by hand or by machines. The object of rolling is to break the leaf cells and liberate the juices and enzymes sealed within. The roll may last as long as three hours. Then it is taken to the roll breaker and green leaf sifting machine and after that fermented in baskets, on glass shelves or on cool cement floors under damp cloths for ½ or 4½ hours. The firing process (drying) follows, in pans or baskets or in firing machines. It takes 30 to 40 min. The difference between black tea and green tea is the result of manipulation. Green tea is manufactured by steaming without fermentation in a perforated cylinder or boiler, thus retaining some of the green colour. Black tea is allowed to ferment after being rolled and before firing. In the case of black tea the process of fermentation, or oxidation, reduces the astringency of the leaf and, it is claimed, develops the colour and aroma of the liquor. In making green tea, the fermentation process is arrested by steaming the leaf while it is green and by light rolling before drying."

(emphasis supplied)

24. Mr. Naganand placed heavy reliance upon the judgment in **Income Tax III v. Sami Labs Ltd., (ITA No.207/2011, decided on February 21, 2012)**, in

support of his contentions. The relevant paragraphs, on which reliance was placed, read thus:

> "9. If the Assessee has spent money by way of financial accommodation to the farmers or expenses incurred in supplying seedling, fertilizers and for other cultivation expenses, then it would be in the nature of revenue expenditure. It is incurred by the Assessee for a commercial expediency. It was incurred wholly and exclusively for the purpose of business and the Assessee would be entitled for allowance of the said cultivation expenses as revenue expenditure.
>
> 10. In the instant case, material on record disclose, the Assessee is in the business of manufacture and export of standardized herbal extracts as well as in the manufacture of fine chemicals. In order to carry on their business, they were in need of herbal coleus plants, they thought of roping the farmers for growing said herbal plant. They provided seedlings, fertiliser and financial assistance to the farmers with an agreement to deduct the expenses out of the cost of the plant sold by the farmers. But, even the farmers could not grow the said herbal plant. Consequently, they sustained loss and in turn the assessee sustained loss. The said cultivation expenses was Rs.90.64 Lakhs. Therefore, the assessee claimed the said amount as revenue expenditure as the said expenditure was incurred to facilitate its business and due commercial expediency. As such the loss are primarily attributable to the business which the Assessee is carrying on and the said expenses are wholly and exclusively for the purpose of business. The said

> cultivation expenses incurred by the Assessee is in the nature of revenue expenditure in the course of business and the Assessee is entitled to deduction of the same as business expenditure. Therefore, the Tribunal is justified in upholding such claim and granting relief to the assessee."

From perusal of this judgment and the above paragraphs in particular, it is clear that the manufacturer of Herbal extracts and fine chemicals, in order to carry on their business, had roped in the farmers for growing herbal plants, for which they provided seedlings, fertilizers and financial assistance with clear agreement to deduct the said expenses/financial aid out of the cost of the plants sold by the farmers. This judgment, on the contrary shows, what ultimately the manufacturer was entitled for, is deduction of the costs of the plants sold by the farmers. This view in fact supports the view taken by us in this judgment.

25. The following observations made in **Aspinwall & Co.Ltd. v. CIT, Ernakulam, [2001] 7 SCC 525,** by the

Supreme Court were also relied upon heavily by the assessees :

> "15. Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. **The coffee beans have an independent identity distinct from the raw material from which it was manufactured.** A distinct change comes about in the finished product.
>
> 16. Submission of the learned counsel for the Revenue that the assessee was doing only the processing work and was not involved in the manufacture and production of a new article cannot be accepted. **The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity.** That process itself may consists of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. **The assessee after processing the raw berries converts them into coffee beans which is a commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity.**"
>
> (emphasis supplied)

26. In **Chowgule & Co. (supra),** the Supreme Court was dealing with a dealer who was engaged both in mining operation as also in processing the mined ore for sale. The test for determining, according to the Supreme Court in the said case, whether manufacture can be said to have taken place is whether the commodity was subjected to process of manufacture can no longer be regarded as original commodity, but it is recognized in trade as a new and distinct commodity. There, the Supreme Court held that such operation would amount to processing of commodity and that the nature and extent of the change is not material. The question is not whether there was manual application of energy or there was application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, the Supreme Court held, that it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes 'processing'. In our opinion, this judgment is of no avail to the assessees to

contend that two processes namely, growing of tea/coffee plants and manufacturing of tea/coffee as marketable commodity, are integrated or one and the same.

27. In **Jaypee Rewa Cement (supra)** on the explosives a duty had been paid and the appellant who was engaged in the manufacture of cement held to be entitled to claim credit because the explosives were used for manufacture of intermediate product, namely, limestone, which, in-turn, was used for manufacture of cement. In **Vikram Cement (supra)**, the question before the Supreme Court was whether it was necessary for inputs to be used within the factory premises where manufacture of final products takes place for the purposes of availing credit. The Supreme Court after referring to its judgment in Jaypee Rewa Cement (supra) held that MODVAT was allowable on the use of explosives in the manufacture of cement irrespective of the fact that the explosives were used directly in the mines and never entered the factory of the manufacturer of cement. In

Commercial Taxation Officer, **Udaipur (supra)**, the question under consideration before the Supreme Court was whether diesel could be called raw material in the manufacture of polyster yarn and it was held that diesel is being used for the purpose of running the generator set for the production of ultimate product which is also required for the purpose of manufacturing the end product the diesel can only be termed as raw material and not otherwise. In **Flex Engineering Limited (supra)**, the Supreme Court held that it is trite to state that "manufacture" takes place where raw materials undergo a series of changes and transformation that result in the formation of a commercially distinct commodity having a different name, character and use. It was further held that physical presence of input in the final finished excisable goods is not a pre-requisite for claiming MODVAT credit under Rule 57A of the Central Excise Rules, 1944.

28. These judgments are of no avail to the assessees in the present case, to contend that physical presence of

inputs such as fertilizers, chemicals, pesticides etc in final finished goods, such as, tea/coffee is not a pre-requisite for claiming input tax credit under other comparable statutes which provide for tax credit.

29. Even the judgment of the Supreme Court in **Reliance Industries Limited** and in **National Aluminum Company Ltd** are also of no avail to the assessees to take their case further and claim input tax credit on fertilizers, chemicals, pesticides, etc.

30. For the reasons recorded in the foregoing paragraphs, the judgments in **Jawahar Mills Ltd. (supra)** and **Rajasthan Spinning & Weaving Mills Ltd. (supra)** would also not help the assessees to claim input tax credit on capital goods such as agricultural machinery and implements. In Jawahar Mills Ltd., the Supreme Court was considering the issue regarding availing of MODVAT credit in respect of certain items by the manufacturers treating those items as capital goods in terms of Rule 57-Q of the Central Excise Rules. The controversy before the

Supreme Court was whether those items were capital goods within the meaning of Rule 57-Q. Similarly, in Rajasthan Spinning and Weaving Mills Ltd. the question was whether the assessee therein was entitled to avail of MODVAT credit in respect of steel plates and MS Channels used in fabrication of chimney for the diesel generating set, by treating those items as capital goods in terms of Rule 57-Q of the Central Excise Rules.

31. At this stage, we would like to refer to a judgment of this Court on which heavy reliance was placed on behalf of the assessees, in **M/s Diwan Bahadur (supra)**, wherein, learned single Judge after considering the judgment of the Supreme Court in Travancore (supra) observed that the said judgment was passed in a case falling for consideration under CST Act, and that there is no provision in the CST Act excluding the tea cultivation/plantation from the purview of agriculture. The learned Judge, in paragraphs-12 and 14 observed as follows:

> "The submissions of the learned counsel have received my anxious consideration. **My perusal of the impugned order reveals that the second respondent has proceeded on the fallacy that the petitioner's tea growing is an agricultural activity.** He has held that, as the fertilizers, chemicals, pesticides are not required for the business activity, the input tax paid on their purchases cannot be considered for deduction out of the output tax payable on the sale of commercial tea.
>
> **The implications of the petitioner not being an agriculturist and the tea not being agricultural or horticultural produce for the purpose of the said Act are not examined by the second respondent.** What is required to be considered by the respondent No.2 is the entitlement or otherwise based on the petitioner's registration as a dealer under the said Act, when the petitioner is not an agriculturist and tea is not an agricultural or horticultural produce. This aspect of the matter has to be examined and thereafter fresh orders are to be passed by the respondent No.2."
>
> (emphasis supplied)

32. **In D.H. Brothers Pvt. Ltd. Vs. Commissioner of Sales Tax (U.P.),** the question that fell for consideration of the Supreme Court was whether a sugarcane crusher (kohlu) is an "agricultural implement" within the meaning of U.P. Government notification dated

November 14, 1980, and as such is exempt from levy of sales tax. In that case, the Supreme Court considered the judgment of Allahabad High Court in Bharat Engineering and Foundry Works v. U.P.Government [1963] 14 STC 262 and quoted with approval the following observations from the said judgment :

> "**Cane crushers and boiling pans are used only in the manufacture of gur from sugarcane. Sugarcane is an agricultural produce and the process which results in the production of sugarcane is undoubtedly agriculture, but the production of gur from sugarcane is a manufacturing process and not an agricultural process.** The agricultural process comes to an end with the production of sugarcane and when gur is subsequently being prepared it is manufacturing process that commences. **Merely because sugarcane is an agricultural produce anything that is done to it after it is produced is not necessarily a continuation of the agricultural process.** It cannot be doubted that agricultural produce can be subjected to a manufacturing process; merely because gur is produced out of sugarcane which is an agricultural produce, the process of preparing gur does not become an agricultural process…… **An agricultural implement is an implement that is used in agriculture; any implement that is used after the agricultural process comes to an end and a manufacturing process commences, is not an agricultural implement.**"
>
> (emphasis supplied)

32.1. Then the Supreme Court also quoted with approval the observations made by the very same High Court in **Commissioner of Income Tax v. Raja Bency Kumar Sahas Roy [1957] 32 ITR 466 :**

> "Agriculture is the basic idea underlying the expressions 'agricultural purposes' and 'agricultural operations' and it is pertinent therefore to enquire what is the connotation of the term 'agriculture'. As we have noted above, the primary sense in which the term agriculture is understood is agar-field and cultra-cultivation, i.e., the cultivation of the field, and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be

> agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all…."

33. In **Union of India & Another vs. Belgachi Tea Co. Ltd. & others, [2008] 304 ITR 1 (SC),** the Supreme Court was dealing with the provisions of the Centre for Purposes of Income Tax Act, 1961 and Bengal Agricultural Act, 1944 and so also the provisions of Income Tax Act, 1961 and while dealing with the question whether the agricultural income be taxed under the 1961 Act, made the following observations:

> "It is true that both rule 8 of the Income-tax Rules, 1962, and section 8 of the 1944 Act provide how the mixed income from the growing tea leaves and tea manufacturing can be taxed. "Mixed income" means the income derived by an assessee from the combined activities, i.e., growing of tea leaves and manufacturing of tea. Therefore, for purpose of computation of income under the 1961 Act, it should be the mixed income from "tea grown and manufactured" by the assessee."

34. In the light of discussions made in the foregoing paragraphs, in our opinion, the following conclusions emerge on the questions of law and the facts:

i) 'Tea', (green tea leaves) though basically is an agricultural produce, the moment it is subjected to any physical, chemical or other process for being made fit for consumption, ceases to be an agricultural produce.

ii) 'Coffee', even after it is subjected to any physical, chemical or other process for being made ready for consumption/sale, for the purpose of this Act, is not excluded from being AP/HP under Section 2(3), of the Act. An agriculturist-company, which grow and sale coffee as a marketable commodity, however, needs registration as dealer under the Act.

iii) An agriculture or an agricultural activity, in any case, cannot be treated/termed as 'business' as contemplated by Section 2(6) of the Act, and use of inputs such as fertilizers, pesticides, fungicides, agricultural implements etc. for growing/cultivating of tea/coffee cannot be stated to be the goods used in the course of 'business' i.e., for manufacturing and sale of tea/coffee as marketable commodity.

iv) For the business of manufacturing tea/coffee as marketable commodity for sale, the major input/raw material would be 'tea leaves' or 'coffee cherries', and the inputs used for its cultivation/growth, such as chemicals, fertilizers, pesticides etc. cannot be treated as inputs for its manufacturing.

v) Agricultural/horticultural activity and manufacturing process of tea/coffee are distinct and/or independent of each other, and, therefore, use of fertilizers, pesticides, fungicides, agricultural implements, etc. cannot be stated to be the goods used 'in the course of business'.

vi) Inputs such as fertilizers, chemicals, agricultural implements, though are used in agriculture, cannot be treated as inputs used in the manufacturing process of tea/coffee as marketable commodities. Merely because tea leaves/coffee cherries are agricultural produce anything done to it after it is grown to make it marketable commodity is not necessarily a continuation of agricultural

process. It is altogether a distinct and separate process called manufacturing process which brings out a complete transformation in the original produce/article so as to produce a commercially different article/commodity.

vii) An agriculturist, who grows/cultivates green tea leaves and not involved in any of its physical, chemical or other process, and so also is not in any other business of sale and purchase, which requires registration as a dealer, and only sells green tea leaves to the manufacturer of tea as marketable commodity, requires no registration as dealer under the provisions of the Act.

viii) Companies, like the assessees, who are engaged in growing of tea/coffee plants and so also in manufacturing of tea/coffee as marketable commodity, are not entitled to take credit of inputs such as fertilizers, pesticides, fungicides, agricultural implements, etc. used in the process of its growing/cultivation.

35. In the result, these appeals are dismissed. The questions formulated by us in the first and the eighth paragraphs of the judgment are answered in favour of the revenue and against the asseesees. In view of the peculiar facts and circumstances of the case, there shall be no order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

Ia/tl