IN THE HIGH COURT OF KARNATAKA AT BANGALORE ®

DATED THIS THE 16TH DAY OF AUGUST, 2012

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.5739/2011 & W.P.Nos.18322-332/2012
C/w
W.P.Nos.5740-42/2011 & W.P.Nos.18286-318/2011,
W.P.No.16015/2011 & W.P.Nos.23815-825/2011,
W.P.No.16162/2011 & W.P.Nos.41091-101/11,
W.P.No.25518/2011 & W.P.Nos.43584-593/2011 (T-RES)

IN W.P.5739/2011 & W.P.Nos.18322-332/2012
C/W
W.P.Nos.5740-5742/2011 & W.P.Nos.18286-318/2011:

BETWEEN:

M/s.Balanoor Plantations and Industries Ltd.,
Empire Infantry, 3rd Floor,
No.29, Infantry Road,
Bangalore-01,
Rep.by its Managing Director
Sri Ashok Kuriyan
Aged about 58 years,
S/o Sri K.O.Kuriyan. **... PETITIONER (COMMON)**

(By Sri G.Rabinathan & M.Thirumalesh, Adv.)

AND:

1. State of Karnataka,
   Represented by Principal Secretary to Govt.,
   Finance Department,
   Government of Karnataka,
   Vidhana Soudha,
   Bangalore-01.

2. Commissioner of Commercial Taxes,
   Vanijya Therige Karyalaya,

Gandhinagar,
Bangalore-09.

3. Assistant Commissioner of Commercial
Taxes (Audit)-13, DVO-1,
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-09. **... RESPONDENTS (COMMON)**

(By Sri T.K.Vedamurthy, HCGP)

IN W.P.No.16015/2011 & W.P.Nos.23815-825/2011
C/W
W.P.No.25518/2011 & W.P.Nos.43584-593/2011:

BETWEEN:

M/s.Badra Estates & Industries Ltd.,
Empire Infantry, 3rd Floor,
No.29, Infantry Road,
Bangalore-01,
Rep.by its Managing Director
Sri Jacob Mammen,
Aged about 49 years,
S/o late Sri K.C.Mammen. **... PETITIONER (COMMON)**

(By Sri G.Rabinathan & M.Thirumalesh, Adv.)

AND:

1. State of Karnataka,
Represented by Additional Chief
Secretary to Government,
Finance Department,
Government of Karnataka,
Vidhana Soudha,
Bangalore-01.

2. Commissioner of Commercial Taxes, Karnataka,
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-09.

3. Assistant Commissioner of Commercial
   Taxes (Audit)-13, DVO-1,
   Vanijya Therige Karyalaya,
   Gandhinagar,
   Bangalore-09. **... RESPONDENTS (COMMON)**

(By Sri T.K.Vedamurthy, HCGP)

IN W.P.No.16162/2011 & W.P.Nos.41091-101/11:

M/s. Devon Plantation & Industries Ltd.,
Empire Infantry, 3rd Floor,
No.29, Infantry Road,
Bangalore-01,
Rep. by its Managing Director
Sri K.Kurian,
Aged about 55 years,
S/o late Sri Raju.K. **... PETITIONER**

(By Sri G.Rabinathan & M.Thirumalesh, Adv.)

AND:

1. State of Karnataka,
   Represented by Additional Chief
   Secretary to Government,
   Finance Department,
   Government of Karnataka,
   Vidhana Soudha,
   Bangalore-01.

2. Commissioner of Commercial Taxes, Karnataka,
   Vanijya Therige Karyalaya,
   Gandhinagar,
   Bangalore-09.

3. Assistant Commissioner of Commercial
   Taxes (Audit)-13, DVO-1,
   Vanijya Therige Karyalaya,
   Gandhinagar,
   Bangalore-09. **... RESPONDENTS**

(By Sri T.K.Vedamurthy, HCGP)

W.P.5739/2011 & W.P.Nos.18322-332/2012 and W.P.Nos.5740-5742/2011 & W.P.Nos.18286-318/2011 are filed under Articles 226 & 227 of the Constitution of India, praying to declare that the petitioner is eligible to deduction of the tax paid on fertilizers, pesticides etc., purchased from dealers registered under KVAT Act, 2003 from the output tax payable on sales of coffee and etc.

W.P.No.16015/2011 & W.P.Nos.23815-825/2011 and W.P.No.25518/2011 & W.P.Nos.43584-593/2011 are filed under Articles 226 & 227 of the Constitution of India, praying to declare that the petitioner is eligible to deduction of the tax paid on fertilizers, pesticides etc., purchased from dealers registered under KVAT Act, 2003 from the output tax payable on sales of coffee and etc.

W.P.No.16162/2011 & W.P.Nos.41091-101/2011 are filed under Articles 226 & 227 of the Constitution of India, praying to declare that the petitioner is eligible to deduction of the tax paid on fertilizers, pesticides etc., purchased from dealers registered under KVAT Act, 2003 from the output tax payable on sales of coffee and etc.

These petitions having been heard and reserved for orders on 16.07.2012, coming on for Pronouncement of Order, this day, the Court made the following:

ORDER

1. W.P.No.5739/2011 is filed by M/s.Balanoor Plantation and Industries Limited. It is a Company incorporated under the Indian Companies Act, 1956 and a dealer registered under the provisions of the Karnataka Value Added Tax Act, 2003 (for short, 'the Act'). It owns coffee and tea estates located in Chickmagalur District and is engaged in the cultivation of coffee and tea and in manufacturing/processing of cured coffee and

roasted tea for sales in domestic market. It is calling in question the reassessment order dated 14.01.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit) – 13, DVO-1, Bangalore, levying additional tax along with interest and penalties for the tax period 2005-06 and the consequent demand notice issued.

2. W.P.Nos.5740-742/2011 and W.P.Nos.18286-318/2011 are also filed by M/s.Balanoor Plantation and Industries Limited challenging the reassessment orders dated 14.01.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit)-13, DVO-1, Bangalore, for the tax periods 2006-07, 2007-08 and 2008-09 and consequent demand notices issued.

3. W.P.No.16015/2011 and W.P.Nos.23815-825/2011 are filed by M/s.Badra Estates and Industries Limited, Bangalore. It is a company incorporated under the Indian Companies Act, 1956 and a dealer registered under the Act. Petitioner – Company owns plantations and is engaged in growing coffee, curing and processing of goods for sale of cured coffee to its customers in the State. It is challenging the reassessment order dated 25.03.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit–16), VAT Division No.1, Bangalore,

for the tax period April, 2006 to March, 2007 and the consequent demand notice issued.

4. W.P.No.25518/2011 and W.P.Nos.43584-593/2011 are also filed by M/s.Badra Estate and Industries Limited challenging the reassessment order dated 31.05.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit–11), DVO-1, Bangalore, for the tax period May, 2007 to March, 2008 and the consequent demand notice issued.

5. W.P.No.16162/2011 and W.P.Nos.41091-41101/2011 are filed by M/s.Devon Plantation and Industries Limited. It is a company incorporated under the Indian Companies Act, 1956 and a dealer registered under the Act. It is engaged in growing coffee and tea and also in curing and processing of the goods for sale of the processed tea and cured coffee locally to its customers in the State. It is calling in question the reassessment order dated 25.03.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit-16), VAT Division-I, Bangalore, for the tax period April, 2006 to March, 2007 and the consequent demand notice issued.

6. By the impugned orders, the Assistant Commissioner of Commercial Taxes has denied the input tax credit to the petitioners on purchases of fertilizers, chemicals, pesticides and agricultural machinery holding that inputs used for cultivation of tea plants/coffee were not eligible for input tax credit. The Assistant Commissioner of Commercial Tax has held that cultivation of different plants, no doubt requires inputs such as chemicals, fertilizers, pesticides, etc. and tax would have been paid by the dealer concerned on such purchases made by them. However, as per the provisions of the Act, deduction is available to a registered dealer towards tax paid only on inputs as defined under Section 2(19) of the Act that are purchased in the course of his business and for use in his business. He has further held that the activity of growing tea does not fall within the meaning of the term 'business' as defined under Section 2(6) of the Act. Hence, tax paid on purchase of goods, which are not in the course of business and for use in the business, was not available for deduction as per the provisions contained in Section 10 of the Act. Reliance has been placed on the judgment of the Apex Court in the case of **M/S.TRAVANCORE TEA ESTATES CO. LTD. VS. STATE OF KERALA – 39 STC 1 (SC)**, wherein it is held that cultivation and growth of tea plants cannot be

comprehended in the expression 'in the manufacture or processing of goods for sale'. He has further held that cultivation of tea plants and the growth of tea leaves is distinct and separate from sale of tea, consequently, the liabilities imposed and facilities extended in respect of sale of tea could not be applicable to cultivation of tea plants, hence, while calculating the net tax payable on sale of tea under Section 10(3), no deduction can be given in respect of tax paid on goods purchased for use in the course of growing tea leaves.

7. Learned counsel for the petitioners Sri Rabinathan has placed reliance on the order passed by this Court in the case of **DIWAN BAHADUR S.L.MATHIAS & SONS, CHIKMAGALUR VS. STATE OF KARNATAKA AND OTHERS 2010 (69) KAR.L.J. 280** to contend that it has been already held by this Court that tea growing is not an agricultural activity and the judgment of the Apex Court in **Travancore**'s case was rendered in the context of Central Sales Tax Act, 1956, where no provision has been made to exclude tea cultivation from the purview of agriculture, hence the said decision could not have been made basis for the impugned order passed by the Assessing Officer. His contention is that despite such an order passed by this Court, the Commissioner

of Commercial Taxes vide his proceedings dated 22.11.2010 has held that the activity of raising or growing tea plants continued to be agricultural activity as per Section 2(1) and the person raising or growing tea plants continued to be an agriculturist as per Section 2(2).

8. The Commissioner of Commercial Tax, while giving clarification in the matter, has relied on the judgment of the Apex Court in **Travancore**'s case. He has given such clarification exercising his powers under Section 59(4) of the Act pursuant to the application filed by M/s.Diwan Bahadur S.L.Mathias & Sons and in pursuance of the direction issued by this Court while remitting the matter for reconsideration vide order dated 13.07.2010 passed in W.P.Nos.12993-994/2010 & W.P.Nos.13420-422/2010 (M/s.Diwan Bahadur S.L.Mathias & Sons case).

9. As the controversy has arisen in the light of the clarification issued by the Commissioner for Commercial Taxes on 22.11.2010 which is produced at Annexure-C in W.P.No.5739/2011 which in turn is the result of the direction issued by this Court in M/s.Diwan Bahadur S.L.Mathias & Son's case, it is necessary to notice the observations made by

this Court while remitting the matter for reconsideration to the Commissioner for Commercial Taxes. Paragraphs 11 to 15 are relevant for this purpose. They are extracted hereunder:

> "11. Sri Shivayogiswamy further submits that the definition of the term "input" as contained in Section 2(19) of the said Act is that any goods purchased by the dealer in the course of his business for resale or for use in the manufacturing or processing or packing or storing of other goods or any other use in business.
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> 12. 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.
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> 13. Further, decision of the Apex Court in the case of *Travancore* has served as the foundation for rejecting the claim of the petitioner. But what cannot be lost sight of is that the said judgment was passed in a case falling for consideration under

the Central Sales Tax Act, 1956. As contended by Sri Venkatesh, the learned Counsel for the petitioner, there are no provisions in the CST Act excluding the tea cultivation/plantation from the purview of agriculture. A judgment is a good law for what it has decided.

14. 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 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 2.

15. For all the aforesaid reasons, the impugned order is liable to be quashed and accordingly it is quashed, but the same does not automatically mean that the petitioner is entitled to input tax credit or set off on fertilizers, chemicals, manure, etc. The issue has to be re-examined by the second respondent."

10. It is necessary to notice here that in the aforementioned judgment, this Court has referred to the definition of the term 'agricultural produce or horticultural produce' as defined under Section 2(3) and explanation 4(a) to Section 2 (12). Based on the above observations made in paragraph 11 to 15 of the judgment, learned counsel appearing for the petitioners submits that the term 'agricultural produce or horticultural produce' as defined in Section 2(3) and the term 'agriculturist' as defined under Section 2(2) have fallen for consideration before this Court and this Court after considering the respective contentions has held that the petitioners' activity of tea growing was not an agricultural activity.

11. This contention of the petitioners is strongly resisted by the learned Government Pleader stating that such a pronouncement is not made in the judgment of this Court as this Court did not analyse the definition of the term 'agricultural produce or horticultural produce' except referring to the same and extracting the same in the order. He further contends that as the matter has been remitted for fresh consideration to the Commissioner for Commercial Taxes directing him to reexamine the issue, this Court has to consider

the question whether tea growing is an agricultural activity and tea is an agricultural produce and consequently as to whether petitioners are entitled for any deduction towards input tax paid on fertilizers, chemicals, pesticides, etc., for growing tea. Similar is the contention addressed with reference to the activities leading to growing of coffee and the manufacture and sale of coffee.

12. It is true this Court has not analysed the definition of the term 'agricultural produce or horticultural produce' and has not authoritatively pronounced on the meaning and scope of the said term as used in Section 2(3) of the Act. But it is also true that this Court has observed in so many words that in its opinion, the 2nd respondent therein (Commissioner for Commercial Tax) had proceeded on the fallacy that the petitioner Diwan Bahadur S.L.Mathias & Sons was carrying on an agricultural activity by growing tea.

13. Even assuming that this Court has not analysed the definition clause used in Section 2(3) of the Act, while characterizing the conclusion reached by the 2nd respondent – Commissioner of Commercial Tax as fallacious in stating that growing of tea was an agricultural activity, it is clear that this

Court has opined that growing of tea is not an agricultural activity.

14. Paragraph-15 of the judgment further makes it clear that as the growing of tea was not an agricultural activity and the tea not being 'agricultural produce or horticultural produce', for the purpose of the Act what was required by the Commissioner for Commercial Tax to consider was the entitlement of the petitioner for input tax credit when the petitioner therein was not an agriculturist and the tea grown was not an agricultural produce or horticultural produce. It is for the consideration of this aspect of the matter and for passing fresh orders, the matter was remitted to the 2nd respondent – Commissioner for Commercial Tax with a direction to reexamine the issue.

15. After reexamination, the Commissioner for Commercial Tax has come to the conclusion that 'the activity of raising or growing tea plants continues to be an agricultural activity and the person raising or growing tea continues to be an agriculturist'. He also further points out that in the light of the definition of the terms 'input' and 'business' as used in the Act, tax paid on goods purchased by the petitioners in the course of their agricultural activities and for use in such agricultural

activity does not fall within the ambit of input tax as provided under Section 10.

16. It is thus clear that the Commissioner of Commercial Tax has not kept in mind the observations made by this Court in paragraphs 11 to 15 extracted herein above, particularly paragraph-14. Though this Court had directed the Commissioner to consider the implication of the matter proceeding on the premise that the petitioners were not agriculturists and tea grown was not an agricultural or horticultural produce for the purpose of KVAT Act, regarding the claim made for input tax credit or set off on fertilizers, chemicals, pesticides, etc., the Commissioner has proceeded on the premise that tea cultivation continued as an agricultural activity.

17. Learned Government Pleader submits that even if this Court proceeds on the premises that tea is not an agricultural produce, petitioners in these cases are not entitled for such input tax credit. Whereas, the counsel for the petitioner contends to the contrary.

18. In this background, it has become necessary for this Court to examine the issue at some detail. It is necessary to refer to the definition of the term 'agricultural produce or horticultural produce' as defined in Section 2(3). It reads as under:-

> **"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)."

19. Similarly, it is also necessary to understand the meaning and definition of the term 'dealer' so far as it is relevant for the present purpose. The relevant portion of the definition needs to be extracted as under:

> "**Dealer**" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes.-
> (a)……..

(b).....

(c).....

(d).....

(e).....

(f).....

(g).....

(h).....

(i).....

Explanations-

(1) ...

(2) ...

(3) ...

(4) (a) An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally or a person who is exclusively engaged in poultry farming and sells the products of such poultry farm shall not be deemed to be a dealer within the meaning of this clause;

(b) Where the agriculturist is a company and is selling pepper, arecanut, cardamom, rubber, timber, wood, raw cashew or coffee grown on land cultivated by it personally, directly or otherwise, such company, shall be deemed to be a dealer in respect of turnovers relating to sales of such produce."

20. The term '**agricultural produce or horticultural produce**' as defined in Section 2(3) introduces a deeming clause stating that agricultural 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.

21. It is contended by the learned counsel for the petitioner that the qualifying phrase – 'as has been subject to any physical, chemical or other process for being made fit for consumption' used in the definition qualifies only the words 'such produce' and not the words preceding the word 'and'. In other words, according to him, tea, beedi leaves, raw cashew, timber, wood, tamarind shall not be deemed to be included in the definition of the term 'agricultural produce or horticultural produce'. But, as regards other such produce are concerned, the deeming clause will apply only when they are subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying.

22. A descriptive phrase normally qualifies the expression which immediately precedes it. In the definition clause, the

word 'and' is used. It is clear that the expression 'as has been subject to any physical, chemical, or other process for being made fit for consumption' is not used to restrict the meaning of the terms 'tea, beedi leaves, raw cashew, timber, wood, tamarind' so as to hold that they shall not be deemed to be agricultural or horticultural produce only if they are made fit for consumption by some physical or chemical process. If tea is made fit for consumption by physical or chemical process which ultimately means processed tea or tea powder, it hardly requires to be clarified that it is not an agricultural produce as it undergoes the process of drying, processing, powdering/breaking etc.

23. What then is the meaning of the term 'such produce'. The word such produce is followed by the expression 'except coffee as has been made. Hence, the descriptive clause qualifies the expression 'such produce'. The descriptive clause cannot be taken to qualify the word coffee in the instant case. If it is so construed then it will result in absurdity as it will tantamount to saying coffee made fit for consumption by physical, chemical other process can be construed as agricultural or horticultural produce, which is not intended. Therefore, I am of the view that the definition clause in Section 2(3) makes it clear that tea shall

not be deemed to be included in the definition of 'agricultural produce or horticultural produce'.

24. If this is so, then, the next important question that requires to be addressed is, in the light of the term 'input' and the definition of the term 'business' coupled with the definition of the term 'dealer' whether the petitioners are entitled to claim input tax credit for the purchase of fertilizers, chemicals, pesticides, fungicides, etc., and other capital goods purchased for growing tea.

25. The definition of the term 'dealer' is already extracted insofar as it is relevant for the purpose of this case. The term '**input**' is defined in Section 2(19). It reads as under:

> "**Input**" means any goods including capital goods purchased by a dealer in the course of his business for re-sale or for use in the manufacture or processing or packing or storing of other goods or any other use in business'.

26. The expression '**capital goods**' is defined in Section 2(7). It reads as under:

> "**Capital goods**" for the purpose of Section 12 means plant, including cold storage and similar plant, machinery, goods vehicles,

equipments, moulds, tools and jigs, and used in the course of business other than for sale'.

27. The term '**business**' is defined in Section 2(6). It reads as under:

"**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.

28. Chapter – II of Act deals with incidence and levy of tax. Section 3 which provides for levy of tax states that tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act. It further states that tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the

course of his business, by a person who is not registered under this Act.

29. In terms of Section 4, every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover in respect of goods mentioned in the said provisions.

30. In respect of goods mentioned in Third Schedule the dealer is required to pay tax at the rate of 5%. In the Third Schedule, different goods are mentioned including coffee beans and seeds (whether raw or roasted); cocoa pods and beans, green tea leaf and chicory. This is found in Item No.24 of the Third Schedule. In Item No.92 of the Third Schedule, tea is mentioned as one of the goods taxable as per Section 4 on the taxable turnover.

31. As per the definition of the term 'dealer' as extracted above, an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of the clause. However, explanation (4)(b) to Section 2(12) makes it clear that where the agriculturist is a company and is selling pepper,

arecanut, cardamom, rubber, timber, wood, raw cashew or coffee grown on land cultivated by it personally, directly or otherwise, such company, shall be deemed to be a dealer in respect of turnovers relating to sales of such produce. It is therefore clear that all agriculturists and all agricultural produce are not kept out of the purview of tax as only those agriculturists who sell exclusively agricultural produce grown on land cultivated by them personally are not required to be registered as dealer as they are not deemed to be a dealer within the meaning of the term 'dealer'. Similarly, if the agriculturist is a company selling certain specified produce, even if such produce is grown on land cultivated by it personally, such company is deemed to be a dealer in respect of turnover relating to sales of such produce. Therefore, it has to be borne in mind that distinction between agricultural produce and non-agricultural produce is relevant only to a certain extent, for the purpose of understanding whether a person engaged in carrying on business of buying, selling, supplying or distributing goods is a dealer.

32. The real issue is what is the nature of the business the petitioners are carrying on, what is the input that they use for

the purpose of their business and whether they are entitled for input tax credit for the tax paid while purchasing fertilizers, pesticides, chemicals and other capital goods for growing tea and coffee. As is evident from the definition of the term 'input', input means any goods including capital goods purchased by a dealer in the course of his business for re-sale or for use in the manufacture or processing or packing or storing of other goods or any other use in business. The tax that is sought to be collected from the petitioners is in respect of the taxable sale of goods namely tea powder/coffee produced by the dealer in the course of his business.

33. For the purpose of finding out the taxable sale of goods produced by the dealer in the course of his business, in the instant case, the term 'business' has to be regarded as the trade, commerce, manufacture or any adventure in the nature of trade, commerce or manufacture in respect of the manufacturing, processing of tea or coffee including different processes involved in that regard and this cannot be stretched to include cultivation and growing of tea plants and tea leaves or coffee. The term 'business' as used in Sub-Clauses (a) & (b) of Clause (6) of Section 2 of the Act to mean any trade, commerce or manufacture or any adventure or concern in the

nature of trade, commerce or manufacture carried on by any person and transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern would mean the business of manufacturing/processing tea. Understood in the light of the definition of the term 'input' which 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 the business, it means that in the course of this business, if the dealer purchases any capital goods or other goods for use in the manufacture or processing or packing or storing of other goods or any other use in the business, then the dealer can claim input tax credit.

34. The contention of the learned counsel for the petitioners is that the term 'any other use in business' used in the definition of the term 'input' includes use of fertilizers, pesticides and other capital goods for the purpose of growing tea plants and tea leaves. Merely because the petitioners, apart from engaging themselves in the process of manufacturing tea, are also cultivating tea plantation and are growing tea leaves, it cannot be said that both the activities of

growing tea leaves and manufacturing of tea powder has to be taken as an integral part of their business for the purpose of understanding the definition of the term 'input', to claim input tax credit.

35. As adverted to above, the definition of the term 'capital goods' encompasses machinery, goods vehicles, equipment used in the course of business other than for sale. As per Section 12, deduction of input tax shall be allowed to the registered dealer in respect of capital goods for purchase of such capital goods for use in the business of sale of any goods in the course of export out of the territory of India and in the case of any other dealer in respect of the purchase of capital goods wholly or partly for use in the business of taxable goods. The taxable goods produced by the petitioner in the instant case is tea and coffee. In the course of manufacture or production of these goods, whatever goods including capital goods are purchased for use in the manufacture or for processing or packing or storing of other goods or any other use in business, which can be described as 'input' as per definition in Section 2(19), petitioners are entitled to claim deduction of input tax.

36. But, in the instant case, petitioners seek to claim deduction of input tax for having purchased agricultural machineries, motor car, fertilizers and chemicals on the ground that they are purchased by them for use in their business which includes growing of and maintaining tea plantation apart from processing and manufacturing tea. This contention cannot be accepted. Fertilizers and Chemicals or for that matter agricultural machineries, such as tractors, trailers, transformers, motor car, pump sets and electrical goods, which are used for tea cultivation cannot be regarded as goods falling within the definition of the term 'input' for the purpose of the business of the petitioners, which in the instant case is manufacturing and processing of tea for the sale of which output tax is claimed. The 'output tax', in the instant case, is not claimed on the sale of tea leaves, on the other hand, the output tax is paid on the sale of manufactured tea. Therefore, the business of the dealer for the purpose has to be understood confining it to the manufacturing process resulting in production of tea and any transaction in connection therewith or incidental or ancillary to it. Viewed in this background, even though the petitioners are engaged in cultivating tea plantation and in growing tea leaves, this cannot be regarded as business

and has no relevance for the purpose of granting input tax credit to the inputs used by way of purchase of fertilizers, chemicals etc., in the course of cultivation of tea.

37. The expression 'business' used in Section 2(6), in this background, cannot be stretched to include the tea plantation and cultivation by the dealer for the purpose of claiming input tax credit. Therefore, fertilizers, chemicals, pesticides and other agricultural machineries, which are used for the purpose of growing tea leaves cannot be termed as goods purchased by the petitioners in the course of their business in manufacturing or processing or packing of tea produced by them or storing of other goods or any other use in that business. It is in this background that useful reference can be made to the judgment of the Apex Court in **Travancore**'s case, for the limited purpose of understanding that the cultivation of tea plants and the growing of tea leaves, though not something entirely distinct from the manufacturing process to which tea leaves are subjected in the factories and although the time-lag between the plucking of tea leaves and their being subjected to manufacturing process in the factories is very little, the same 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 realized by sale of tea by tea company, which grows tea on its land and thereafter subjects it to manufacturing process in its factory consists of two elements or components, one is the component consisting of income from growth of tea leaves which is yielded in the form of green leaves purely by the cultivation in the land. The second component consists of the income which is the result of subjecting the green leaves which are plucked from the tea plants grown on the land and to a particular manufacturing process in the factory of the tea company.

38. In **Travancore**'s case, the Apex Court has observed by referring to Rule 24 of the Income Tax Rules, 1922 and also Rule 8 of the Income Tax Rules, 1962, which prescribed the formula to be adopted for apportioning the income realized as a result of the sale of tea after it is grown and subjected to manufacturing process in the factory. 60% is taken to be the agricultural income which consisted of the first element or component, while 40% represented non-agricultural income

which consisted of the second element or component. In this regard, the Apex Court referred to the judgment in the case of Tea Estate India Pvt. Ltd., Vs. Commissioner of Income Tax (1976)103 ITR 784 (SC). Therefore, it is very evident and crystal clear that fertilizers, pesticides, fungisides, chemicals, used in tea cultivation and the agricultural machineries, pump sets and other electrical equipments, used for growing tea leaves by the tea planters cannot at all be regarded as goods used in the course of production of tea meant for sale. There is no direct relation between the two.

39. Same logic and reasoning applies to coffee as the cultivation and growing of coffee is distinct from manufacturing/preparing coffee for sale.

In the result and for the foregoing, I do not find any merit in these writ petitions and the same are therefore dismissed.

Sd/-
JUDGE

PKS