on some other occasion to be more deeply examined and more authoritatively determined. With these observations, I agree with the order proposed but not without hesitation and reluctance.

Firm Messrs Chanan Ram-Jagan Nath v. The State of Punjab and others

Dua, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

AMRITSAR SUGAR MILLS COMPANY LIMITED,—*Petitioner.*

versus

U. S. NAURATH AND OTHERS,—*Respondents.*

Civil Writ No. 724 of 1962.

1964

March 26th

East Punjab General Sales Tax Act (XLVI of 1948)—as amended by the East Punjab General Sales Tax (Amendment) Act (VII of 1958)—Ss. 2 (ff) and 4—Purchase of oil for the production of vegetable ghee—Whether liable to purchase-tax.

Held, that for the purposes of the East Punjab General Sales Tax Act, 1948, the conversion of oil into vegetable ghee amounts to 'manufacture' of vegetable ghee. The substance that is produced is a new substance known to the trade apart from oil. If anybody goes to buy groundnut oil in the market he will be given the oil in the liquid. farm. Nobody will give him vegetable ghee manufactured from groundnut oil. He will have to specifically ask for Vanaspati ghee and if he wants Vanaspati ghee produced from groundnut oil he will have to say Vanaspati ghee produced from groundnut oil. Thus, it will be apparent that in trade circles as well as to the common man, the oil and the vegetable ghee produced from that oil are two different substances, though they have the common use in daily life, that is, both serve as a cooking medium. Moreover, there is an additional use which is universally recognised to which the vegetable ghee is put. It is, commonly used to adulterate pure ghee (animal fat.) On

the other hand groundnut oil or even refined groundnut oil without hydrogenation or without being solidified by any other process is wholly unfit for the purpose of adulteration with pure ghee. The purchase of raw groundnut oil for the manufacture of vegetable ghee is acquisition of goods for use in the manufacture of goods for sale within the meaning of section 2(ff) of the Act and is liable to purchase tax under the Act.

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 10th April, 1963 to a larger bench for decision of an important question of law involved in the case and the case was finally decided by a division bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Prem Chand Pandit, on 26th March, 1964.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order, or direction be issued directing respondent No. 1 to forbear from taking any steps penal or otherwise against the petitioners in pursuance of its order dated 13th May, 1962, passed by respondent No. 1.

R. SACHAR, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL and M, R. SHARMA, ADVOCATE, for the Respondents.

ORDER

Mahajan, J.

MAHAJAN, J.—This petition under Article 226 of the Constitution is by the Amritsar Sugar Mills Company Limited, G. T. Road, Amritsar—hereinafter referred to as the Company. The Company, among other things, is engaged in converting oil into hydrogenated oil, which in common parlance is called Vanaspati (Vegetable ghee). The Company acquires oil for the manufacture of Vanaspati. The State Government imposed purchase-tax by amending the provisions of the East Punjab General Sales Tax Act, 1948 (XLVI of 1948)—hereinafter called the

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Act—by the East Punjab General Sales Tax (Amendment) Act, 1958 (No. 7 of 1958) and by reason of the aforesaid amendment, the Company was required to pay purchase-tax on the purchase of oil required by it for the production of Vanaspati. The amended provisions under which the purchase-tax was sought to be imposed are sections 2(ff) (definitive section) and 4 (charging section). These provisions are as follows:—

"2. (ff) 'purchase', with all its grammatical or cognate expressions, means the acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge:

"Provided that nothing in this definition shall apply in relation to a dealer who exercises his option under sub-clause (i) of clause (i) or to section 14 or to clause (d) of sub-section (1) of section 23;

"4. (1) Subject to the provisions of sections 5 and 6, every dealer except one dealing exclusively in goods declared tax-free under section 6 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958:

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Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act.

(2) Every dealer to whom sub-section (1) does not apply or who does not deal exclusively in goods declared to be tax-free under section 6 shall be liable to pay tax under this Act on the expiry of 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum:
Provided * * * * * *."

The Act was further amended in the year 1959 by Act 13 of 1959, and one of the amendments made was the addition of a new sub-clause (vi) to sub-section (2) of section 5 of the Act. Sub-clause (vi) read as follows:—

"5. (2)(vi) purchase of goods, specified in his certificate of registration for use by him in the manufacture of any goods for sale, made from a registered dealer who has manufactured such goods:—

"Provided that in the case of such purchases a declaration in the prescribed form duly filled and signed by the registered dealer from whom the goods are purchased is furnished by the dealer who purchases the goods;"

Thereafter another amendment was made in the parent Act by Act 24 of 1959. The definition of the

word 'purchase' in section 2(ff) was altered and the new definition was substituted as under:—

> "2. (ff) 'purchase', with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule 'C' for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge:
>
> * * * * * * * * *".

Oil was not included in Schedule 'C'.

The dispute as to the imposition of purchase-tax is confined only to the period from 1st April, 1959 to 31st March, 1960.

When the case of the petitioner-Company for the assessment of sales-tax came up for consideration before the Assessing Authority, the latter took the position that—

(i) the company was liable to pay purchase-tax from 1st April, 1959 to 19th April, 1959 in all circumstances; and

(ii) from 20th April, 1959 to 15th July, 1959 it would be allowed to deduct from its taxable turnover those purchases of goods for which it could give a declaration signed by the registered dealer from whom the goods had been purchased. In case such a certificate was not furnished, all purchases of oil in taxable turnover would be liable to purchase-tax.

The petitioner-company objected to the imposition of the purchase-tax on various grounds before the the Assessing Authority, including the ground that

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the amending Acts were *ultra vires* the Constitution. All the contentions of the petitioner-company were rejected by the Assessing Authority and it directed the company to file purchase-tax return for the purpose of assessing the company to the same. It is against this order that the present petition under Article 226 of the Constitution has been filed.

This petition came up for hearing before me on the 10th April, 1963, and in view of the importance of the question involved, I referred the same to a Division Bench and that is how the matter has been placed before us.

It may be mentioned that a large number of grounds were raised in the petition, but all of them have now been dropped and the only contention raised before us is that no purchase-tax is leviable because the conversion of oil into Vanaspati does not amount to manufacture within the meaning of section 2(ff) of the Act as it stood at the relevant time after its amendment in the year 1958 and before its amendment in the year 1959. As already stated the disputed period is between 1st April, 1959 and 31st March, 1960 and the tax is sought to be imposed in view of the defiinition in section 2(ff) read with section 4(1) of the Act as they stood by reason of the amendment of the parent Act by Act 7 of 1958.

The contention of the learned counsel for the petitioner-company in short is that by conversion of vegetable oil into vegetable ghee, there is no process of manufacture involved. At the initial stage, it is oil, and at the final stage, in which it emerges in a semi-solid form, it is still oil. Therefore, he contends that before and after the alleged manufacture the substance remains the same. Its uses and properties

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remain the same and the mere fact that a liquid becomes semi-solid after a certain process would not amount to manufacture within the meaning of the definition in section 2(ff) of the Act.

What amounts to manufacture came up for consideration in this Court in *Messrs Raghbir Chand-Som Chand* v. *Excise and Taxation Officer, Bhatinda* (1), and *Messrs Puran Chand-Gopal Chand* v. *The State of Punjab* (2). In *Raghbir Chand's case* the question that arose for determination was whether ginned cotton obtained from raw cotton was obtained by any process of manufacture. It was held by the Bench presided over by Chief Justice Khosla that ginned cotton obtained from raw cotton after ginning did not involve any process of manufacture. The learned Chief Justice observed that—

> "The Corpus Juris Secundum defines 'Manufacture' as 'the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labour or by machinery; also anything made for use from raw or prepared materials'. This definition is neither very exact nor exhaustive, but in the very nature of things it is not easy, to define 'manufacture' and it has been pointed out that 'manufacture' is susceptible of many applications and many meanings, but the generally understood meaning of the process of manufacture is to alter the nature of raw material and turn it into something new. Ginned cotton still remains raw material. It certainly has not been turned into anything new in the process of ginning and it

(1) I.L.R. 1960 (1) Punjab 852=1960 P.L.R. 175.
(2) A.I.R. 1963 Punj. 28.

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continues to remain a raw material from which other articles are to be manufactured. Indeed, ginned cotton is not a finished product which can be used as such for any purpose."

For his conclusion, the learned Chief Justice also relied on the decision of an American case in *East Taxes Motor Freight Lines* v. *Frozen Food Express* (3), wherein the question that fell for determination was whether a chicken that had been killed and dressed is still a chicken. It was held by the learned Judges in that case that the removal of feathers and entrails did not involve any process of manufacture and that a killed chicken minus its feathers and entrails was as much a chicken as a live chicken. Tek Chand, J. who agreed with the learned Chief Justice in *Raghbir Chand's case*, after noticing the definition of 'manufacture' in the Corpus Juris Secundum, observed as follows:—

"The learned Advocate-General has drawn our attention to the meaning given to the word 'manufacture' and other cognate expressions by the lexicographers. Etymologically 'manufacture' is a compound word from Latin *manu*, meaning 'hand' and 'factus' which means 'made'. In its primary sense, 'manufacture' is the action or the process of making by hand. In the modern sense, 'manufacture' is fashioning of a raw or wrought material by manual or mechanical manipulation, resulting in its transformation. The primary meaning of the word 'manufacture' in the sense of 'made by hand' as distinguished from 'nature growth' underwent a

(3) 100 Law Ed. 917.

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change with the supplanting of primitive methods of making, by machinery. Ordinarily a manufactured article takes a different form and subserves a different purpose from the original material and is usually given a different name. The meaning of the term 'manufacture', has acquired broader meaning so as to include products of human industry not only as a result of the direct action of human hand but also by employment of machinery.

According to the Century Dictionary, 'manufacture' is defined as the production of articles for use from raw or unprepared materials by giving these materials new forms, qualities, properties or combinations, whether by manual labour or machinery.

The definitions given by lexicographers are couched in general terms and do not help in drawing a sharp line of demarcation between mere processing short of manufacture and making finished articles after manufacturing them. It is well understood, that manufacture implies a change, but every change is not manufacture, in spite of the fact that every change in an article may be the result of treatment, labour and manipulation. For purposes of manufacture something more is necessary and there must be a transformation ; a new and different article must emerge having a distinctive name, character or use,—*vide Anheuser-Busch Brewing Association* v. *United States* (4), and *Charles Marchand Co.* v. *Higgins* (5).

(4) 207 U. S. 556=52 Law Ed. 336.
(5) 36 Fed. Supp. 792.

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"The mere bestowal of labour on an article, even if it is applied through machinery will not make an article a manufactured good unless the treatment has progressed so far, that a transformation ensures, and the article becomes commercially known as another and a different article from the original raw product."

In *Messrs Puran Chand's case,* the question that arose for determination was whether the conversion of old gold and silver ornaments into silver and gold bullion amounted to manufacture as contemplated by section 2(ff). It was held that conversion of old ornaments into bullion amounted to manufacture. While dealing with what the word 'manufacture' means and as to what it connotes in section 2(ff), learned Judges observed as follows :—

"The word 'maanufacture' seems to me to have various shades of meaning, but as used in section 2(ff) it appears to involve a process of manual labour by which one object is changed into another for selling it, it is unnecessary in this case to go into or consider the etymological meaning of the word "manufacture' as the legislative intent in the statute which concerns us is even otherwise fairly obvious. The petitioner has, apart from making the general averment in the writ petition that conversion of old ornaments into silver, gold or bullion by removing alloy does not amount to manufacture, not shown as to what is the precise process, so that it may be determined whether or not it amounts in law to 'manufacture' within section 2(ff). Even removal of alloy from old ornaments so as to convert them into bullion might well in-

volve a process of manufacture and it is difficult to hold as a matter of law that it is not so in the instant case."

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Learned counsel for the petitioner-company basing himself on the above two decisions and also on the decision of the Supreme Court in *Messrs. Tungabhadra Industries Limited* v. *The Commercial Tax Officer* (6), contended that the purchase of oil in the present case was not liable to purchase-tax as it has been held by their Lordships of the Supreme Court in *Tungabhadra Industries* case that conversion of groundnut oil into vegetable ghee does not alter the nature of the commodity which remains groundnut oil, both at the stage of purchase and at the final stage when it emerges as vegetable ghee. Strong reliance has been placed by him on the following passages in the Supreme Court decision:—

"The next question is whether if beyond the process of refinement of the oil, the oil is hardened, again by the use of chemical processes it is rendered any the less 'groundnut oil.' In regard to this the learned Advocate-General first laid stress on the fact that while normally oil was a viscous liquid, the hydrogenated oil was semi-solid and that this change in its physical state was itself indicative "of a substantial modification of the identity of the substance." We are unable to accept this argument. No doubt, several oils are normally viscous fluids, but they do harden and assume semi-solid condition on the lowering of the temperature. Though groundnut oil is, at normal temperature, a viscous liquid, it assumes a semi-solid condition if kept for a long

(6) A.I.R. 1961 S. C. 412.

enough time in a refrigerator. It is, therefore, not correct to say that a liquid state is an essential characteristic of a vegetable oil and that if the oil is not liquid, it ceases to be oil. Mowrah oil and Dhup oil are instances where vegetable oils assume a semi-solid state even at normal temperatures. Neither these, nor coconut oil which hardens naturally on even a slight fall in temperature, could be denied the name of oils because of their not being liquid. Other fats like ghee are instances where the physical state does not determine the identity of the commodity.

The next submission of the learned Advocate-General was that in the course of hydrogenation the oil absorbed two atoms of hydrogen and that there was an inter-molecular change in the content of the substance. This however, is not decisive of the matter. The qustion that has still "to be answered is whether hydrogenated oil continues even after the change to be 'groundnut oil'. If it is, it would be entitled to the benefit of the deduction from the turnover, or to put it slightly differently, the benefit of the deduction from the turnover cannot be denied, unless the hydrogenated groundnut oil has ceased to be 'groundnut oil'. To be groundnut oil, two conditions have to be satisfied. The oil in question must be from groundnut and secondly the commodity must be 'oil'. That the hydrogenated oil sold by the appellants was out of groundnut not being in dispute, the only point is whether it continues to be oil even after hydrogena-

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tion. Oil is a chemical compound of glycerine with fatty acids or rather a glyceride of a mixture of fatty acids—principally oleic, linoleic, stearic and fat varying in the case of the oil from different oil-seeds and it remains a glyceride of fatty acids even after the hardening process, though the relative proportion of the different types of fatty acids undergoes a slight change. In its essential nature, therefore, no change has occured and it remains an oli—a glyceride of fatty acids—that it was when it issued out of the press.

"In our opinion, the learned Judges of the High Court laid an undue emphasis on the addition by way of the absorption of the hydrogen atoms in the process of hardening and on the consequent inter-molecular changes in the oil. The addition of the hydrogen atoms was effected in order to saturate a portion of the oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality and utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood. Thus for instance there are absorptions of matter and inter-molecular changes which deteriorate the quality or utility of the oil and it might be interesting to see if such additions and alterations could be taken to render it any the less 'oil'. Groundnut oil when it issued out of the expresser normally, contains a large proportion of unsaturated fatty acids—oleic and linoleic—which with other fatty acids which

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are saturated are in combination with glycerine to form the glyceride which is oil. The unsaturated fatty acids are unstable, i.e., they are subject to oxidative changes. When raw oil is exposed to air particularly if humid and warm, i.e., in a climate such as obtains in Madras oxygen from the atmosphere is gradually absorbed by the unsaturated acid to form an unstable peroxide (in other words the change involves the addition of two atoms of oxygen) which in its turn decomposes breaking up into aldehydes. It is this oxidative change and particularly the conversion into aldehydes that is believed to be responsible for the sharp unpleasant odour, and the characteristic taste of rancid oil. If nothing were done to retard the process the rancidity may increase to such extent as to render it unfit for human consumption. The change here is both additive and inter-molecular, but yet it could hardly be said that rancid groundnut oil is not groundnut oil. It would undoubtedly be very bad groundnut oil but still it would be groundnut oil and if so it does not seem to accord with logic that when the quality of the oil is improved in that its resistance to the natural processes of deterioration through oxidation is increased, it should be held not to be oil.

"Both the Tribunal as well as the High Court have pointed out that except for its keeping quality without rancidity and ease of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food

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value as refined groundnut oil. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Similarly we consider that hydrogenated oil still continues to be 'groundnut oil' notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. In our opinion, the assessee-company was entitled to the benefit of the deduction of the purchase price of the kernel—or groundnut, under R. 18(2), which went into the manufacture of the hydrogenated groundnut oil from the sale turnover of such oil."

It will be apparent from the aforesaid observations of their Lordships that what they were considering was whether groundnut oil ceased to be groundnut oil because it had been subjected to the process of hydrogenation. The question that has been agitated before us was not the question that fell for determination before their Lordships. On the other hand, there is another decision of the Supreme Court reported as *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.* (7), wherein the question that fell for determination was whether in the case of manufacture of Vanaspati the refined oil that is concomitant for its manufacture could be taxed to excise duty. While dealing with this question it was observed by their Lordships that "excise duty is on the manufacture of goods and not on the sale". Their Lordships further

(7) A.I.R. 1963 S. C. 791.

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observed that "if from the raw material (that is unrefined groundnut oil or any other oil) has been brought into existence a new substance by the application of processes one or more of which are with the aid of power and that substance is the same as refined oil as known to the market an excise duty may be leviable under item 23 (the present item 12)." But it was held that "it was not shown that the substance, produced by the petitioner is at any intermediate stage before Vanaspati comes into existence refined oil as known to the market." It may be mentioned that in coming to the conclusion that the refined oil before manufacture of Vanaspati could not be taxed to excise duty, their Lordships did not hold that no process of manufacture was involved but on the other hand held that the refined oil that was manufactured was not a marketable commodity as such and this would be clear from their Lordships' observations in paragraph 13 of the report : "the raw oil purchased by the respondents for the purpose of manufacture of Vanaspati does not become at any stage 'refined oil' as is known to the consumers and the commercial community". While dealing with the question what the use of the word 'manufacture' denotes their Lordships observed that to say that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change is to equate 'processing' to 'manufacture' and for this there is no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as bringing into existence a new substance and does not mean merely to produce some change in a substance, however, minor in consequence the change may be. Therefore, it appears that in *Tungabhadra Industries case* where the exemption was to vegetable oil the mere fact that groundnut by hydrogenation had been turned into a semi-solid form was held not to alter its essential nature of being oil that is in either event it remained

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groundnut oil. In that case, their Lordships were not concerned with the question whether groundnut oil subjected to a process of manufacture produced entirely a new substance for purposes of purchase-tax under the East Punjab General Sales Tax Act or to excise duty under the Central Salt and Excise Tax Act. The latter decision of the Supreme Court in *Delhi Cloth and General Mills Co.*, however, clearly lays down that excise duty was leviable on vegetable ghee because it was the result of manufacture. In any case, this is implicit from that judgment.

The question that falls for determination in the present case is whether for the purposes of the East Punjab General Sales Tax Act the conversion of oil into vegetable ghee amounts to 'manufacture' of vegetable ghee. In our view, it does, and lot of assistance can be derived from the Supreme Court decision in *Delhi Cloth and General Mills Co's.* case. Moreover, the substance that is produced is a new substance known to be trade apart from oil. If anybody goes to buy groundnut oil in the market he will be given the oil in the liquid form. Nobody will give him vegetable ghee manufactured from groundnut oil. He will have to specifically ask for Vanaspati ghee and if he wants Vanaspati ghee produced from groundnut oil he will have to say Vanaspati ghee produced from groundnut oil. Thus it will be apparent that in trade circles as well as to the common man, the oil and the vegetable ghee produced from that oil are two different substances though they have the common use in daily life, that is, both serve as a cooking medium. Moreover, there is an additional use which is universally recognised to which the vegetable ghee is put. It is commonly used to adulterate pure ghee (animal fat). On the other hand groundnut oil or even refined groundnut oil without hydrogenation or without being solidified by any other process is wholly unfit for the purpose of adulteration with pure ghee. If all these

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considerations are kept in view, no doubt is left in my mind that the purchase of raw groundnut oil for the manufacture of vegetable ghee is acquisition of goods for use in the manufacture of goods for sale within the meaning of section 2(ff) of the Act.

For the reasons given above, I am of the view that there is no merit in this petition. The same fails and is dismissed, but there will be no order as to costs.

Pandit, J.

PANDIT, J.—I have gone through the judgment of my learned brother and I agree with him that this writ petition should be dismissed with no order as to costs.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and Harbans Singh, JJ.

GULAB SINGH,—*Appellant.*

versus

CHIEF SETTLEMENT COMMISSIONER, PUNJAB AND OTHERS,—*Respondents.*

Letter Patent Appeal No. 211 of 1963.

1964

April, 1st

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 10—Allotment of land made to a displaced person on the basis of entries in the copies of Jamabandis received from Pakistan—Such displaced person disputing the correctness of such entries and requesting the Department for comparison with the original record at Wagah border—Department refusing such comparison unless the displaced person deposits the purchase price for the extra land claimed by him—Whether justified.

Held, that where a displaced person disputes the correctness of the entries in the copies of the *jamabandis* received from Pakistan, it is only fair that his claim should