KARNATAKA FOREST DEVELOPMENT CORPORATION LTD. ETC. ETC.

*v.*

CANTREADS PVT. LTD. AND ORS.

APRIL 15, 1994

R.M. SAHAI, S.P. BHARUCHA AND N.VENKATACHALA, JJ.]

*Karnataka Forest Act, 1963 : ss.2(7), 98A, 101A—'Forest produce'—'Caoutchouc'—Raw smoked rubber—Shaped in RMA sheets of grades I to V—Levy of Forest Development Tax on—Held, caoutchouc or latex obtained from trees, treated by sulphuric acid and dried with smoke to obtain shape of sheets continued to be the same—RMA sheets of grades I to V were forest produce.*

**The appellant-Corporation supplied sheets of natural rubber of grades RMA I to V to the respondent-Company. The Chief Conservator of Forest issued a notification under s.101A of the Karnataka Forest Act, 1963, levying Forest Development Tax on raw smoked rubber. The State Government informed the respondent the rate of supply of rubber in accordance with the order of the Chief Conservator of Forest. The respondent challenged the fixation of seigniorage by filing a writ petition before the High Court which held that the natural rubber in the shape of RMA sheets as purchased by the respondent was not forest produce. The State's appeal was dismissed by the Division Bench of the High Court holding that latex being a natural produce, hardened by chemical process in the form of sheets, dried with the help of smoke and graded in Grades I to V, resulted in bringing out a commodity different from latex and could not be treated as forest produce and, therefore, no tax could be levied on it.**

**In appeal to this Court, it was contended on behalf of the appellants that the word 'caoutchouc' enumerated as a 'forest produce' under s.2(7) of the Act was wide enough to include rubber sheets of varying grades supplied to the respondent.**

**Allowing the appeal, this Court**

**HELD : 1.1. 'Caoutchouc' which is included as one of the forest produce under s.2(7) of the Karnataka Forest Act, 1963, is natural rubber**

A **which includes latex. Latex is the modern name for caoutchouc. It is nothing but natural rubber. Caoutchouc or latex means not only milky substance obtained from the trees but it included all milk substances processed, till it is made marketable. It cannot remain as such for long, therefore, it needs processing. Since the processing does not result in bringing out a new commodity but it preserves the same and renders it**
B **fit for being marketed, it does not change its character. Caoutchouc or latex obtained from the trees continued to be the same when it was treated by sulphuric acid and even after it was dried with smoke to obtain the shape of sheets. [pp. 542-G-H; 543-G-H; 544-A]**

C **1.2. The High Court, while applying the test of commercial parlance, erred in holding that where latex produced from the tree underwent processing howsoever meagre it was, the resultant produce obtained by addition of sulphuric acid could not be treated to be forest produce and; that since government rubber plantations itself treated grade rubber sheets as different from wet latex while selling the same in auction, it**
D **could not claim that the latex after processing remained the same. The test of commercial parlance while considering entries in Sales Tax Act cannot be applied while considering the definition of forest produce.**

**[543-F-H, 544-A-C]**

*Random House Dictionary, Encyclopaedia Britannica,* **and** *En-*
E *cyclopaedia of Social Sciences,* **Vol. XIII-XIV, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2674 of 1991 etc. etc.

From the Judgment and Order dated 4.3.91 of the Karnataka High
F Court in W.P.No. 14734 of 1990.

S.K. Kulkarni and Suryakant for the Appellants.

K.N. Bhat, Ravi P.Wadhwani, M. Veerappa and K.H. Nohin Singh for the Respondents.

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The Judgment of the Court was delivered by

**R.M. SAHAI, J.** The short and the only question of law that survives for consideration in these appeals directed against the judgment and order of the High Court of Karnataka is whether rubber sheets of various grades
H supplied by the State of Karnataka or the Karnataka Forest Plantation

Corporation to the private limited companies, were Forest Produce within the meaning of the Karnataka Forest Act, 1963 (hereinafter referred to as 'the Act') and hence liable to payment of forest development tax under Section 98-A thereof. A

Even though validity of sub-section (1) of Section 101-A, which enabled the State Government to grant or supply forest produce to any person on payment of seigniorage value as may be fixed by the Chief Conservator of Forest, was challenged, it does not appear to have been pressed in the High Court either before the learned Single Judge or the Division Bench nor was it pressed even, in this Court to support the order of the High Court. The dispute, thus, centres round the question whether rubber sheets could be regarded as 'forest produce'. It may further not be out of place to mention that the definition of 'Forest Produce' in the Act was amended in 1989 and rubber latex was added as one of the items in it. But the learned counsel for the State did not rely on the amended definition as clarificatory of what was included earlier. He based his submission, rather on claim that the word 'caoutchouc' was wide enough to include rubber sheets. B C D

The respondent, a private limited company, negotiated with the State of Karnataka in 1979 for supply of 60 tonnes of natural rubber of grade RMA I to V per month for a period of five years. A year later State Forest Corporation was constituted. The State, therefore, transferred the liability of supply of the quota of rubber to the Corporation. In the meantime the Chief Conservator of Forest issued notification fixing seigniorage on raw smoked rubber. The State Government informed the company, that the supply of rubber from 9.1.1981 onwards would be at the rate mentioned in the orders made by the Chief Conservator of Forests under Section 101-A of the Act. The company challenged that fixation of the seigniorage by the Chief Conservator of Forests by a writ petition filed in the High Court. The writ petition was allowed by the learned Single Judge and it was held that the natural rubber, which has been agreed to be purchased by the Company from the Corporation or the State, being in the shape of RMA sheets, was not forest produce. While the State filed appeal against that order of the Single Judge, the Company filed writ petition for refund of the amount paid by it. Since the controversy in the appeal and the writ petition was the same, the Division Bench decided both, the writ petition and appeal, by a common order, agreeing with the learned Single Judge that latex, which is E F G H

A the natural produce, hardened by application of the sulphuric acid and given the shape or form of sheets and thereafter dried with the help of smoke and graded into grades of I to V could not be treated as forest produce, for the process applied resulted in bringing out a commodity which was different from latex, and therefore, no tax could be levied on it.

B 'Caoutchouc' is included as one of th forest produce under sub-section (7) of Section 2 of the Karnataka Forest Act. In Chambers English Dictionary, 'caoutchouc' is defined as 'India-rubber, gum-elastic; the latex of rubber trees'. In Random House Dictionary, 'rubber' is defined as 'India-rubber, natural rubber, gum-elastic caoutchouc - a highly elastic, C light cream or dark amber colored, solid substance polymerized by the drying and coagulation of the latex or milky juice of rubber tree and plants'. 'Caoutchouc' is described in Encyclopaedia Britannica as, 'the principal constituent of natural rubber and therefore sometimes called pure rubber. It occurs as a vegetable gum, mixed with 1/20 to 8 times its own weight of other substances. Caoutchouc is a white resilient solid; at 0-10 degree D celsius it is hard and opaque, but it becomes soft and translucent above 20 degree celsius. In the same book 'Rubber' is described as, 'an organic substance - obtained from natural sources of synthesized artificially - which has the desirable properties of extensibility, stretchability and toughness. Previously known as caoutchouc, a term that has become limited to the E chemically pure form of the substance'. In Encyclopaedia of Social Sciences, Vol. XIII-XIV it is described thus,

> "Latex, which is not the sap of the tree but a milky fluid contained in the bark, is obtained by narrow incisions in the bark. F During the period of high process trees were tapped once or even twice a day. With lower prices it has become customary to tap less frequently, but over a wider circumference of the tree. The trees are ordinarily rested for two months or more each year. After the latex has been gathered it is brought to the plantation warehouses and coagulated by acetic acid or some other chemical. The result- G ing rubber comes on the market as "crepe" rubber or, if it has gone through a smoking process, as "smoked sheet".

'Caoutchouc' is, thus natural rubber which includes latex. The natural rubber or latex is milky fluid obtained by incisions, in the bark of trees. It H cannot remain as such for long therefore it needs processing.

In the Rubber Grower's Companion 1991 it is mentioned that the main crop for the rubber tree is latex, a milky white dispersion of rubber in water which is harvested by the process of tapping. The latex that flows out from the rubber trees on tapping is channelled into a container attached to them. The latex gets dried up on the tapping panel (tree lace) and the collection cups (shall scrap) from part of the crop and are collected by the tapper. The different kinds of crops harvested from rubber plantations are highly susceptible to bacterial action due to contamination on keeping. Therefore, it is essential to process them into forms that will allow safe storage and marketing. One of the marketable items is ribbed sheet rubber. It further discusses how the latex is converted into ribbed sheets. Latex is coagulated in suitable containers into thin slabs of a coagulum and sheet through a set of smooth rollers followed by a grooved set and dried to obtain ribbed sheet rubbers depending upon the drying method sheets rubbers are classified into two ribbed smoked sheets and the air dried sheets. It is further mentioned that the ribbed sheets after 2 or 3 hours are put in the smoke house where the certain degree of temperature is maintained. The completely dried sheets are removed to the packing sheets where they are carefully inspected and classified according to standards published by the Rubber Manufacturers Association.

The High Court found that since what was sold by the appellant was not rubber obtained from the trees but sheets or blocks of rubber which were chemically and mechanically processed it could not be held to be forest produce. The High Court applied the test of commercial parlance and held that where latex produced from the tree underwent processing howsoever meagre it was the resultant produce obtained by addition of sulphuric acid could not be treated to be forest produce. It was further found that since Government rubber plantations itself treated grade rubber sheets as different from wet latex while selling the same in auction it could not claim that the latex after processing remained the same. Neither reasoning appears to be well founded. The meaning of the word 'caoutchouc' has been discussed. Latex is the modern name for caoutchouc. It is nothing but natural rubber. Caoutchouc or latex means not only milky substance obtained from the trees but it included all milk substance processed, till it is made marketable. Since the processing does not result in bringing out a new commodity but it preserves the same and renders it fit for being marketed. It does not change its character. It was caoutchouc or latex when it was obtained from the trees, it continued to be caoutchouc

A or latex when it was treated by sulphuric acid and continued to be so even after it is dried with smoke to obtain the shape of sheets.

The test of commercial parlance while considering entries in Sales Tax Act was evolved as the tax under the Salex Tax enactments is normally either on sale or purchase or on manufacture or import etc. Therefore, it
B is the understanding or the knowledge of the item by the common man or persons dealing it in the market and not in the technical or botanical sense which was accepted by this Court as the deciding factor. But that test cannot be applied while considering the definition of forest produce.

In the result, these appeals succeed and are allowed. The order
C passed by the High Court is set aside and the writ petitions filed by the respondents shall stand dismissed.

R.P. Appeal allowed.