was paid by her husband, the debt was paid off. Both the wife and the daughter used to maintain themselves on credit and they used to clear off their debts on the deposit of the maintenance amount by the husband. Under those circumstances, I held that the maintenance amount could not be taken into consideration for finding out whether she was possessed of sufficient means to enable her to pay the fee prescribed by law and whether or not she was a pauper.

(15) Such a situation has not, however, arisen in the present case. It is in evidence that the petitioner's father is practising as an Advocate at Karnal and it was he, who was maintaining her all through. The petitioner has appeared in the witness-box and she produced her father also as a witness, apart from some other persons. None of them has stated that she had borrowed any money for her maintenance, which had to be paid out of the maintenance amount deposited by the husband. All that has been said is that up-til date the petitioner's father has been maintaining her. The maintenance amount, which has been deposited before the date of the filing of the pauper application, has, therefore, become her sole property, out of which she owes nothing to anybody. This amount is completely within the control of the petitioner and can be utilised for paying the requisite court-fee on the plaint. Under these circumstances, it is not possible to say that she is not possessed of sufficient means to enable her to pay the prescribed court-fee. That being so, she cannot be held to be pauper within the meaning of the explanation to rule 1 of Order 33, Code of Civil Procedure.

(16) In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to costs. She is, however, allowed a period of three months to pay the necessary court-fee on the plaint.

N. K. S.

SALES TAX REFERENCE

Before Harbans Singh, C.J., and Prem Chand Jain, J.

MESSRS PYARE LAL KHUSHWANT RAI—*Appellant.*

versus

THE STATE OF PUNJAB—*Respondent.*

Sales Tax Reference No. 40 of 1971.

November 6, 1973.

Punjab General Sales Tax Act (XLVI of 1948)—Section 4(1) and (2)—The word 'manufacture'—Meaning of—Assessee purchasing

trees in forests, felling, chopping and selling them as firewood—Whether a 'manufacturer'.

Held, that the word 'manufacture' has various shades of meaning and in the context of sales tax legislation if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. When used as a verb it 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. There must be transformation; a new and different article must emerge having a distinctive name, character or use. If the goods to which labour is applied remains essentially the same commercial article, it cannot be said that the final product is the result of manufacture.

Held, that when an assessee purchases trees in forests, fells, chops and then sells them as fire-wood is not a 'manufacture' within the meaning of section 4 provisions of Punjab General Sales Tax Act, 1948. The tree which are felled in the jungle, are wood and can be either timber or fuel wood. By chopping off the branches or by cutting it into small pieces the nature is not changed nor does such a transformation take place by which a different article emerges having a distinctive name or character.

G.S.T. Reference u/s 22(1) *of the Punjab General Sales Tax Act, made by the Sales Tax Tribunal, Punjab,—vide his order dated 8th November*, 1973 *to this Court for decision of the following question of law arising out of the order of the Financial Commissioner Taxation, Punjab, dated 28th September*, 1966, *in Misc. No.* 70 *of* 1970-71, *regarding the assessment year* 1959-60:

> *"Whether the business of fire wood carried on by the applicant firm can be called a manufacturing business and it can be called a manufacturer and further whether the liability of assessee to pay tax arises at Rs.* 50,000 *or Rs.* 10,000?"

J. N. Kaushal, Advocate, with Ashok Bhan, Advocate, *for the appellant.*

Harbans Lal, Advocate, *for* Advocate-General, Punjab, *for the respondent.*

JUDGMENT

Judgment of this Court was delivered by:—

JAIN, J.—(1) This judgment of ours would dispose of Sales Tax References 40 and 41 of 1971, which relate to the same firm, that is

Messrs Pyare Lal Khushwant Rai (hereinafter referred to as the assessee firm). The references relate to the assessment years 1959-60 and 1960-61. The assessee firm is an unregistered dealer in fire wood. It was held liable to pay sales tax by the Assessing Authority and the order of the Assessing Authority was upheld though with a little modification by the highest revisional authority. An application was made under section 22(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act) for referring certain questions of law arising out of the order of the Financial Commissioner (Taxation), Punjab but the same was dismissed as time-barred by the Presiding Officer, Sales Tax Tribunal, Punjab. The matter was brought to this Court by filing petitions under section 22(2) of the Act for issuing direction to the Sales Tax Tribunal, Punjab, to refer the question of law, which were allowed by D. K. Mahajan and B. R. Tuli, JJ. on October 28, 1970. Thereafter the matter again went back to the Presiding Officer, Sales Tax Tribunal, Punjab, who has referred the following question of law for our decision:—

> "Whether the business of fire wood carried on by the applicant firm can be called a manufacturing business and it can be called a manufacturer and further whether the liability of assessee to pay tax arises at Rs. 50,000 or Rs. 10,000?"

(2) The relevant provision of the Act which would be relevant for the decision of the question referred to, reads as under:—

> "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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> (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 that in the case of a dealer who imports any goods for sale or use in manufacturing or processing, or who manufactures or processes any goods for sale the liability to pay tax shall commence with effect from the date on which his gross turnover during any year first exceeds the taxable quantum".

The assessee firm has been assessed as a dealer who manufactures goods for sale. The contention of Mr. J. N. Kaushal, Senior Advocate, was that in the circumstances and on the facts of this case, the assessee firm could not be held a manufacturer of goods and that it had to be assessed as a general dealer. After giving our thoughtful consideration to the entire matter, in the light of the submissions made before us by the learned counsel for the parties, we are of the view that there is considerable force in the contention of the learned counsel for the assessee firm. From the statement of the case we find that the case of the Department was that the assessee was an authorised contractor engaged in the purchase of fire wood, removed trees from the forest and brought the same to his business premises, chopped and sold the same as fire wood. The question that arises for consideration is whether all this process results in manufacture of any goods? The answer, in our view, has to be in the negative. As observed by their Lordships of the Supreme Court in *Commissioner of Sales Tax, U.P., Lucknow* v. *Harbilas Rai and sons* (1), the word 'manufacture' has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain assentially the same commercial article, it cannot be said that the final product is the result of manufacture. As to what do we mean by the word 'manufacture', in another decision of the Supreme Court in *Union of India and another* v. *Delhi Cloth and General Mills, Co. Ltd. etc.* (2), it was observed as follows:—

"The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance'

(1) (1968) 21 S.T.C. 17.

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

and does not mean merely 'to produce some change in a substance,' however, minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus:—

" 'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use'. "

The trees which are felled by the assessee in the jungle, are wood and can be either timber or fuel wood. By chopping off the branches or by cutting it into small pieces, the nature is not changed nor does such a transformation take place by which a different article emerges having a distinctive name or character. After felling the tree when it is sold as such or after cutting it into pieces it remains fuel food. The trees by the name of *beri, kikar, dhak, jand,* etc., are used only as fuel wood and after felling the same their nature would not change and still they would only be used as fire wood. Even after cutting the trees into small pieces or big pieces, the raw material retains the same character. In a given case, the customer may just purchase a tree at a lower rate and may himself cut it into pieces and use it as fuel wood while in another case the dealer may cut it into pieces and sell the same as fuel wood. In both the cases the character of the material remains the same. No transformation takes place nor does a different article having a distinctive name or character emerge. It has been observed by Bhutt. J., in *The State of Madhya Pradesh* v. *Wasudeo* (3), that without any work of art the trees are liable to be sold only as raw material, whether as fuel or timber. In another Division Bench decision of Madhya Pradesh High Court in *Mohanlal Vishram* v. *Commissioner of Sales Tax, Madhya Pradesh, Indore* (4), Pandey, J., who prepared the judgment, while interpreting similar provision of law, observed that by felling standing timber trees, cutting them and converting some of

(3) (1955) 6 S.T.C. 30.

(4) (1969) 24 S.T.C. 101.

them into 'ballis' the assessee did not alter their character as timber or used them for manufacture of 'other goods' within the meaning of section 8(1) of the M.P. General Sales Tax Act, 1958. Mr. Harbans Lal, learned counsel for the Department, drew our attention to a Singh Bench decision of the Calcutta High Court in *Shaw Bros. and Co.* v. *The State of West Bengal* (5), wherein it has been held that chopping of timber into fire wood is a manufacturing process, and therefore, fire wood is a manufactured article. With great respect we are unable to agree with this view, for the reasons recorded in the earlier part of the judgment. In the light of the discussion above we hold that the business of fire wood carried on by the assessee firm could not be called a manufacturing business nor could the assessee firm be called a manufacturer and the liability of the assessee firm to pay the tax arose at Rs. 50,000. Consequently the answer to the question referred to us is returned in the negative, i.e., against the Department. The assessee firm shall have its costs in both the References separately which are assessed at Rs. 150 each.

N.K.S.

MISCELLANEOUS CIVIL

Before Bal Raj Tuli, J.

M/S. NARAINDAS RAJARAM & CO. PVT. LTD.—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER—*Respondents.*

Civil Writ 1497 of 1973.

November 12, 1973.

Punjab General Sales Tax Act (XLVI of 1948)—Section 5—Dealers purchasing goods in the State of Punjab and exporting them out side the country within 6 months of the purchase—Whether entitled to deduction of the purchase price of the goods so exported under Section 5(2)(a) (vi).

(5) (1963) 14 S.T.C. 878.