JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 79/92

COR: THE HON MR JUSTICE RATTRAY - P.
THE HON MR JUSTICE FORTE J A
THE HON MR JUSTICE WOLFE J A

BETWEEN	THE COMMISSIONER OF GENERAL CONSUMPTION TAX	APPELLANT
AND	UNITED ESTATES LIMITED	RESPONDENT

William Alder with Sonia Mitchell for Appellant

Allan Wood & Peter DePass instructed by Livingston, Alexander & Levy for Respondent

April 18, 19 & October 24, 1994

RATTRAY P

I have had the opportunity of reading the judgments of Forte, J A and Wolfe J A which arrive at differing conclusions as to the fate of this appeal.

I agree with both that the production of orange juice in the manner described does not fall within Group 10 of the First Schedule of the General Consumption Tax Act and cannot for the reasons given in both judgments fall under the rubric of "agricultural production."

The learned trial judge was, therefore, wrong in law in zero rating the orange juice under this provision of the Act. I am, however, of the view that the orange juice falls to be zero rated under the classification of Group I:

> "Raw foodstuffs as follows:
>
> (a) fresh fruits and vegetables ... which contain no additive and which is not subject to any process other than ...
>
> (ii) slicing, mincing, grinding, drying or chopping."

The process to which the orange fruit was subjected is the grinding process.

For the reasons given by Forte J A in his judgment, with which I fully agree, I would dismiss the appeal with costs to the respondent to be taxed if not agreed.

FORTE J A

On the 18th and 19th April 1994, having heard arguments of counsel, we announced that we would take time out to consider the very interesting submissions before coming to a determination of the issues involved in the appeal.

The appeal concerns the basic question of whether the respondent's orange juice is subject to the payment of General Consumption Tax or whether it is qualified to be zero-rated by virtue of the provisions of Group I and/or 10 of Part II of the first schedule of the General Consumption Tax Act 1991. At the hearing of the appeal made by the respondent company to the Revenue Court, the learned judge found that the orange juice was zero-rated by virtue of Group 10 (supra), but concluded that it did not come within the matters zero-rated under Group I (supra).

Before us, on the basis of the Commissioner's challenge of the learned judge's finding re Group 10, and the company's challenge in Respondent's notice re the finding in respect of group I, the questions remained the same. In order to maintain the order in which the arguments were heard, I propose to deal firstly with the appeal of the Commissioner which dealt with Group 10 (supra) i.e. whether the orange juice is qualified for zero-rating on the basis of being an "agricultural production" as provided therein, and thereafter to deal with the Respondent's Notice which concerns the question of whether the orange juice qualifies under Group I (supra) by virtue of being fresh fruit to which no additives have been added, and which has gone through no processes other than those provided in the schedule.

Agricultural Production

In coming to his decision in favour of the proposition that the orange juice boxed in the label "Tru-juice" is agricultural production the learned trial judge relied on the following passage in **W & JB Eastwood Ltd v Herrod (Valuation Officer)** 1 All E R 774 at 778 per Lord Reid:

> "The whole object of producing a crop on the agricultural land is to market it in one form or another, and I think that anything done in the farm buildings, including storage and treatment, must be held to be done in connection with the agricultural operations on the land."

but he was also aware of the caution expressed by Lord Reid (at the same page)

> "But here again there must be a limit. Everything is saleable at a price, so even storage for a time or very simple treatment is not strictly necessary. One must have regard to ordinary and reasonable practice. But there comes a stage when further operations cannot reasonably be said to be consequential on the agricultural operations of producing the crop."

The learned judge concluded:

> "If the appellant's operations could be described as a simple farmgate disposal, I do not think there would be any doubt in the minds of reasonable men, that this was done in connection with its agricultural operations and therefore part of its agricultural production activities."

then:

> "I would say, in spite of the urging of Revenue Counsel, that disposal of the crop is part of agricultural production because this is the commonsense approach. People produce goods. It's common sense that the people produce in order to put for sale. ... I have taken the view that the appellant's claim to be zero-rated falls within Group 10 of Part II of the Schedule to the Act ...".

In support of the learned judge's finding the respondent relied on the above passages as also a further passage in the speech of Lord Reid in **W & J B Eastwood Ltd v Herrod** (supra) at page 779 letter a:

> "I agree with Lord Patrick when he said in Assessor for Midlothian v Buccleuch Estates Ltd [1962] SC 453 at 459 -
> 'I would agree that agriculture and pasturage do not cease when the crops are grown or beasts raised, but may properly include operations reasonably necessary to make the product marketable or disposable to profit."

Mr. Wood for the appellant used these passages, inter alia, to formulate the following submission:

> "The Respondent submits that upon any proper construction of that term, steps taken to make a farmer's produce marketable must be regarded as a part of the farmer's agricultural activity, and where as in the present case, the produce is only marketable after undergoing a process or treatment then it is permissible to regard that treatment as a part of the farmer's activity of agricultural production. In this regard the evidence of the Respondent to the effect that the oranges which are used for the production of juice are not otherwise marketable, and would otherwise be dumped, is most relevant for the determination of this issue. This is not a case where the farmer carries on business which can be described as independent of the production of its crop. Rather, the activity of producing orange juice is an ancillary activity, which is intimately connected to the Respondent's farm and carried out at the farm with the sole objective of making a part of the Respondent's produce marketable so that it would not otherwise go to waste."

In order to determine whether the case of **W & J B Eastwood Ltd v. Herrod** (supra), in which there was such heavy reliance, is of assistance to the issues in this case, a summary by Lord Reid (page 776), of the facts in that case is hereunder set out:

> "My Lords, the ratepayers produce broiler chickens for the market. They occupy 1,150 acres at various points on which are a large number of buildings including 72 broiler houses each of which houses 22,000 birds. These birds are hatched in a hatchery and transferred to broiler houses when a day old and they are kept for ten weeks in the broiler house and then sent to a packing station to be killed and dressed. To provide the eggs from which these birds are hatched day-old cockerels and laying hens are bought and put in 20 layer houses. The cockerels are put out on land amounting to some 20 acres for 15 weeks when eight weeks old, but neither the laying hens nor the broiler chickens ever go out of the buildings. The 20 acres on which the cockerels are put out is changed from time to time but otherwise substantially the whole of the 1,150 acres is used to grow barley for feeding the birds. But this is not nearly enough. There is a mill on the land where this barley, other grain purchased and other foodstuffs are made up into suitable food for the birds. The grain grown on this land is only about 13 per cent of the total grain used in the mill."

Then he stated the issue in that case:

> "The question in this case is whether all these buildings are exempt from rating by reason of the provisions of the Rating and Valuation (Apportionment) Act 1928."

In order to be exempt, the buildings would have to be "agricultural buildings" as defined in the Act, (per Lord Reid at page 777):

> " 'Agricultural buildings' means buildings (other than dwelling houses) occupied together with agricultural land or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon."

In refining the issue in the case Lord Reid determined that the single important point for determination was whether the buildings were solely used in connection with agricultural operations on the agricultural land. He concluded at page 779 letter b:

> "If I have correctly determined the meaning of the statutory definition, the buildings with which this case is concerned fall far outside its scope. Their use is in no sense ancillary to the agricultural operations on the land. This is a large commercial enterprise in which the use of the land plays a very minor part. Seven-eights of the grain and all the other constituents of the food for the poultry are bought in the market, far the greater part of the poultry never go on the land at all, and the fact that the cockerels run for a few weeks on a small part of the land is a very small element in the whole operation. It would I think be a travesty of language to say that these buildings are used solely in connection with agricultural operations on this land."

The above extracts from the case demonstrate that it was concerned with the activities in the buildings to determine whether the buildings were solely used in connection with agricultural operations on the agricultural land. All the dicta relied on by the learned judge and Mr. Wood, refer to some activity done in order to make the product marketable. In my view, this contention is not within the area for determination. Here, we are concerned with whether the product is by virtue of Group 10 of Part II of the First Schedule of the Act zero-rated and not whether the process by which it is produced is entitled to that rating. Group 10 of Part II of the First Schedule of the General Consumption Tax Act, under which this claim is made reads as follows:

> "1. Agricultural production, including stock farming, forestry cultivation and fresh water fish farming.
>
> 2. Provision of water services.
>
> 3. Production of bauxite and alumina.
>
> 4. Supply of services at private hospitals (including veterinary hospitals and medical diagnostic centres and laboratories) approved by the Minister of Health.

> "5. International freight and ancillary services including port and harbour services, docking, berthing and mooring, conservancy aircraft landing, parking and housing, apron services, airport navigation services, transportation to the point where the goods are entered, demurrage or arranging any such services."

It is clear from the wording employed in this Group, that it relates to activities in relation to all the items which are therein zero-rated, and not to the end product. In my view the words "agricultural production" as used in this section relates to the act of producing some form of agricultural goods, and does not relate to the produced goods. In this view I am fortified not only by the unambiguous wording of the section, but also by the fact that items which would be the result of agricultural production are zero-rated by virtue of Group I of Part II of the Schedule which deals with foodstuff e.g. fresh fruits vegetables meat, poultry and fish. For emphasis however it is only necessary to note that Group 10 is headed "Activities" and then paragraph I having stated "agricultural productions" continues "including stock-farming, forestry cultivation, and fresh water fish farming, each of which connotes an activity in the area to which it relates.

As we are concerned here with whether orange juice is zero-rated, and not with the activity involved in its production it is my view that Group 10 is irrelevant and cannot avail the taxpayer in his claim that orange juice is zero-rated by virtue of the provisions in Group 10 of Part II of the First Schedule of the Act. I would conclude that the learned judge was in error when he found to the contrary.

I now turn my attention to the respondent's claim that the orange juice is zero-rated by virtue of Group I of the said Schedule which reads:

"Items which are zero-rated
Group I - Foodstuff

1. Raw foodstuff as follows -

(a) fresh fruits and vegetables, excluding imported apples, pears and quinces, apricots, cherries, peaches (including nectarines), plums and sloes, berries and grapes, kiwis

(b) ground provision;

(c) legumes;

(d) onions and garlic;

(e) meat;

(f) poultry;

(g) fish, crustacean or mollusc,

which contain no additive and which is not subject to any process other than -

(i) freezing, chilling, salting or packaging,

(ii) slicing, mincing, grinding dicing or chopping; or

(iii) natural drying.

The matter came before the Revenue Court, as a result of the ruling of the Commissioner that fresh orange juice did not come within Group I of Part II of the First Schedule of the Act and therefore was not qualified to be zero-rated. In its appeal to the Revenue Court, the respondent alleged on this issue that the Commissioner erred as a matter of Law in that "he failed to appreciate that the Appellant's (the Respondent Company) orange juice fell within Group I item I(a)of Part II of the First Schedule to the Act in that such juice is produced from fresh fruit, namely oranges which contain no additives whatsoever and are not subject to any process other than grinding, chilling and in some events packaging and so ought to be treated as zero-rated."

In his Statement of Case to the Revenue Court, the Commissioner alleged that having received a submission by the company that the oranges should be zero-rated as no process other than "squeezing" is utilized in its extraction, he subsequently indicated to the

company's attorney-at-law by letter dated 14th October, 1991, that in his opinion the oranges were subject to a process other than those mentioned in the Act and consequently the juice extracted therefrom was subject to General Consumption Tax.

He then signified his intention, to advance that contention when in paragraph 4, he pleaded thus:

> "4. AND FURTHER TAKE NOTICE that the Respondent will contend at the hearing of this Appeal that the aforesaid Decision has been validly made and should be confirmed by this Honourable Court for the following, inter alia, reasons:
>
> REASONS
>
> a) That in extracting the juice from the oranges, the orangesare subject to a process other than those mentioned in Group I of Part II of the FIRST SCHEDULE to the General Consumption Tax Act."

It should be noted, however, that in its Reply to the Statement of Claim, the Company (respondent) denied that it had ever submitted to the Commissioner that no process other than "squeezing" is utilized in the extraction of juice from its oranges, but instead submitted to the Commissioner that no process other than "grinding" is so utilized.

The issues then confined itself to whether the process by which the juice was extracted from the oranges involved "grinding" which is specifically mentioned in Group I or "squeezing" which is not specifically mentioned therein. In his affidavit, Mr. Mark McConnell a member of the Management Committee of the Company, attested inter alia, the following:

> "The Appellant produces on average 300,000 field boxes of oranges per annum from its citrus farm. A field box weighs on average ninety pounds. Approximately 20 per cent of the Appellant's orange crop is marketed in the form of orange juice without any

> "additives, which is produced at the Appellant's farm in Bog Walk. This orange juice is produced by an extractor manufactured by Food Machinery Corporation. The oranges are placed in the extractor which in effect grinds the oranges to extract the juice. The ground orange skins and pulp are sold by the Appellant as animal feed."

Mr. McConnell, also gave verbal evidence at the hearing, in which he stated that 70% of the oranges grown on the farm are exported, of the remaining 30% a small portion is sold in Jamaica as fresh oranges; the remainder is made into orange juice in various forms and sold. The oranges used for juicing, are not exported because they have blemishes, and would have had to be dumped if not so used. He then explained in detail, the process by which the juice is extracted from the oranges as follows:

> "Oranges are washed, to remove dirt from the outer skin and then conveyed along a conveyor belt to Extractor where they fall into Extractor which has five cups. Each cup has an upper and lower cup. Oranges fall into lower one and upper one is forced down mechanically under extreme pressure. At the same time, there is a strainer which is fixed into the middle of the orange. Pressure from cup grinds the orange and forces the juice through the strainer. In the next motion, the two cups come apart, moving the ground peel on to another conveyor which takes it to an Animal Feed Bay. The ground peel is sold to farmers as animal feed for cattle."

In cross-examination he stated:

> "Cups are in the form of fingers - fingers from top cup mesh exactly with fingers of lower cup. The insides of the fingers are very sharp and cut oranges as fingers go down and form a sealed cup. Oranges do not get broken until fingers form sealed cup preventing spillage. It encloses and then continues on applying pressure. The oranges are then sliced up and squeezed. There is a strainer in

> "the shape of a point which goes up through the middle of both cups and pressure forces the juice into the strainer. Juice is then allowed to flow out of cup into a container. Each machine has five pairs of cups. So in one action the machine's 5 cups move in approximately one (1) second.

As to whether the process could be described as grinding or squeezing, in reply to counsel for the Commissioner he maintained that the description is a matter of terminology and stated that the makers of the machine - FMC Extractor refers to it as crushing, grinding and squeezing and any of these three terminologies, has been used in his plant. It being agreed on both sides that the orange juice was not subjected to any treatment and that no additives etc were added to it, the issue was confined to whether it was zero-rated by virtue of the classification in the First Schedule of the Act Part II as an item falling under 1(a)(ii). Was the process applied in extracting the juice within the exceptions in the section thus allowing the product to retain the classification of fresh fruits?

The learned judge answered the question thus:

> "It seemed to me that, on the evidence, what took place involved a process other than those delineated in the paragraph. I refer, of course, to the process of extraction. I have phrased my response to submissions in this form because although a number of submissions were made about the meaning of grinding, and whether or not this included squeezing, I do not, with respect, think that the arguments based thereon are particularly helpful or relevant. The Appellant says grinding and the description in part describes a grinding process. If therefore the matter stopped there, then it seems to me that it would be entitled to succeed under Group I. However, in my judgment, based on the evidence, the process described by the witness is more complex than one of grinding simpliciter. The operation involves subjecting the orange to pressure in a cup which produces a separation of the juice from the pulp and that juice, by a process, is led through a pipe into a tank. The remaining pulp goes on to a separate conveyor where it ends up in bays for sale as animal feed.

> "I therefore find on that evidence that what is involved in the Appellant's production of orange juice is a process of grinding oranges and a further process of separating the juice from the pulp and therefore it cannot be said that it is not subject to any process other than grinding and therefore it cannot be zero-rated, at any rate, under this provision in the statute.

In its Respondent's notice, the company challenged this finding of the learned judge in the following ground:

> "The learned judge erred as a matter of law when he found that there was a process of separation after the Respondent's oranges were ground in circumstances where, to the contrary, there was no such evidence before him and it was the uncontradicted evidence adduced on behalf of the Respondent that after the oranges were ground in the manner hereinbefore set forth, there was no further process applied."

In advancing this argument before us, Mr. Wood for the respondent relied inter alia on the verbal testimony of Mr. McConnell, in which in explaining the process, and in answer to counsel for the Commissioner he stated, (as already referred to but repeated here for convenience) that:

> "Each machine has five pairs of cups. So in one action the machine's 5 cups move in approximately one (1) second."

There was really no contest that the orange juice is extracted from the orange, in one motion by the machine, and there is really no evidence, that there is some additional process by which the juice is extracted after the oranges have been ground. In my view, the evidence of Mr. McConnell, as to the workings of the mechanism of the F M Extractor demonstrates that it is this action of the machine that results in the extraction of the juice from the orange. To put it another way, this action results in the juice being separated from the rest of the orange i.e. the pulp

and skin. I therefore agree with the contention of Mr. Wood that the learned judge erred when he found that there was a further process which led to the separation of the juice from the pulp etc. In fact, the only evidence of "another motion" is the cups coming apart after the process is completed in order to release the juice, pulp and skin.

However, there still remains to be answered, whether the process by which the juice was extracted could be described as "grinding" for which the respondents contend thereby bringing it within the provisions of Group I. The learned judge concluded that the action of the machine, as described by Mr. McConnell indicated at least that there was in part a grinding process, and if that were all he would have found that the orange juice came within Group I. He was apparently influenced by the application of pressure on the cups which in his opinion produces the separation of the juice from the pulp in coming to the finding that this action was a further process. It is clear then that had he not fallen into error in finding that this was a further process, he would have been satisfied that the process applied to the orange was one of grinding.

The contention of the appellants, however, is that no matter what the action is called, the evidence reveals that there was an extraction of the juice, and therefore a separation from the skin and pulp of the orange which resulted in something other than a fresh fruit.

This argument must be considered against the background of the provisions of Group I, which allows the processes e.g. natural drying and salting which would necessarily result in the changing of character of a "fresh" fruit or vegetable or for that matter any of the items zero-rated thereunder. In addition, it cannot be contradicted that the juice of an orange is a part of that orange, and in circumstances where no additives have been added to it, in my view

even after it has been extracted it is but a part of the fresh fruit which is zero-rated. If the appellants are correct in their contention, then it would lead to the absurd conclusion that the orange would be zero-rated, but the juice within would not be. What then, if after the grinding process, the juice, the pulp and the skin remained together, and were sold in that form without any other process. If that were so, then there could be no argument that what resulted from the grinding would be zero-rated. It seems to me to be absurd to say that since they are separated, and dealt with differently, there can be no classification of zero-rating. Another example of absurdity, would be the case of a restaurant, where the orange could be sold at zero-rated tax, but once the customer requests the juice of that orange the juice would attract a tax, because the orange was squeezed in order to extract the juice.

In my view, there was evidence upon which the learned judge could have come to his conclusion that a grinding process was described by the respondents but he fell into error by concluding that some further process was applied which took the orange juice derived therefrom, out of the scope of Group I. The evidence showed one process which was a grinding process and this preserved the zero-rating provided for in Group I for fresh fruit. In any event I would find that the juice being a part of the fresh fruit (the orange) it would nevertheless qualify for zero-rating under Group I, not being subjected to any additives or any process other than one which resulted in its extraction from the fruit.

I would conclude that the orange juice qualifies for zero-rating by virtue of Group I of Part II of the First Schedule of the Act, but does not under Group 10 of the same Schedule.

In the result I would dismiss the appeal.

WOLFE, J.A.: (DISSENTING)

The respondent is an Industrial and Provident Society engaged in the business of citrus farming. The respondent cultivates approximately 1,550 acres of land at Bog Walk in the parish of Saint Catherine in citrus, particularly oranges. Further, the respondent is an approved farmer pursuant to the provisions of the Income Tax Act section 36(D)(1) by an order made on July 7, 1987, by which the respondent's agricultural activity in connection with the growing of citrus is approved for the grant of relief from income tax for a period of ten years from 1986.

Approximately 70% of the oranges grown is packaged and exported. Of the remaining 30%, approximately 10% is sold locally. The remaining 30% is converted into orange juice and sold locally without any additives.

Having regard to issues raised in this appeal, it becomes necesary to set out the process employed in extracting the juice from the oranges. The oranges are washed to remove the dirt from the outer skin and then conveyed along a conveyor belt to an extractor where they fall into the extractor which has five cups. Each cup has an upper and lower cup. Oranges fall into the lower one and the upper one is forced down mechanically under extreme pressure. At the same time there is a strainer which is fixed into the middle of the orange. Pressure from the cup grinds the orange and forces the juice through the strainer.

In the next motion, the two cups come apart, moving the ground peel on to another conveyor which takes it to an animal feed bay. The ground peel is sold to farmers as animal feed for cattle.

By letter dated August 27, 1991, the respondent sought from the Commissioner of General Consumption Tax exemption from General Consumption Tax on the basis set out in the said letter:

"27th August, 1991

Mr. Clive Nicholas
The Commissioner
General Consumption Tax
191 Constant Spring Road
Kingston 8

Dear Mr. Nicholas,

Re: United Estates Limited

We act on behalf of United Estates Limited, a Company actively engaged in the agricultural sector of Jamaica which produces, inter alia, freshly squeezed orange juice. This product contains no additives such as water, concentrate or sugar and is not subject to any process other than grinding for the extraction of the juice. This product is retailed in boxes and also sold in bulk to companies manufacturing beverages. This is the means whereby approximately 30% of the Company's annual citrus crops is marketed locally and is a vital part of its agricultural production.

We are of the opinion that freshly squeezed orange juice produced by our client is zero rated for General Consumption Tax purposes it is a part of the Company's agricultural production which is zero rated under Group 10 - Activities and as it falls within the definition of 'Raw Foodstuff' under Group 1 - Foodstuff both set out in part II of the First Schedule to the General Consumption Tax Act 1991.

It is interesting to note that in the United Kingdom, freshly squeezed citrus fruit juice is zero rated. Enclosed is a copy of the correspondence between Sunjuice Limited and H.W. Customs and Excise Vat Office relative to this product.

We would ask that you let us have your early confirmation that the product above-described is zero rated and consequently not subject to General Consumption Tax.

Yours faithfully,

LIVINGSTON, ALEXANDER & LEVY

Per: ANGELA M. FOWLER (MRS)

c.c. Mr. Mark McConnell
United Estates Limited."

By letter dated October 14, 1991, the Commissioner ruled that the product was subject to General Consumption Tax for the reasons stated in the letter:

"Messrs Livingston Alexander & Levy
P O Box 142
72 Harbour Street
KINGSTON JAMAICA WI

Attention Mrs Angela Fowler

Dear Madam

Re: United Estates Limited

I refer to your letters of August 27th and October 8, 1991 concerning the above named client.

It has been decided that the squeezing of oranges to make orange juice will be subject to General Consumption Tax (GCT) as in our opinion, the oranges are subject to a process other than those mentioned in Part II of the First Schedule of the Act.

Our understanding is that so long as the zero-rated goods (oranges) are subject to any process other than those mentioned in the Act, the product would no longer be the same.

The delay in replying is regretted.

Yours truly

THE GENERAL CONSUMPTION TAX DEPARTMENT

CLIVE NICHOLAS
COMMISSIONER, GCT."

The ruling of the Tax Commissioner led the respondent to appeal to the Judge of the Revenue Court seeking an order that:

> "...orange juice without additives produced by the Appellant is zero rated pursuant to the provisions of the General Consumption Tax Act and therefore does not attract General Consumption Tax."

On the 22nd day of July, 1992, Marsh, J., Judge of the Revenue Court, allowed the appeal against the decision of the Commissioner of General Consumption Tax on the basis that the respondent's orange juice qualified for zero rating under Item 1 of Group 10 of Part II of the First Schedule to the General Consumption Tax Act.

The appellant now seeks to set aside the order of the Judge of the Revenue Court and to restore the order made by the Tax Commissioner. The respondent in a Respondent's Notice contends that the judgement of the learned judge of the Revenue

Court ought to be affirmed on the additional ground that the product qualified for zero rating under Item 1 of Group 1, Part II, of the First Schedule of the General Consumption Tax Act.

Three grounds of appeal were argued by the appellant, viz:

> "1. That the learned Judge erred and/or misdirected himself in law in failing to apply the proper rules of construction in interpreting Item 1 of Group 10 of Part II of the First Schedule to the General Consumption Tax Act.
>
> 2. That the learned Judge erred and/or misdirected himself in law in applying the wrong tests and/or principles in determining whether the Respondent's orange juice in question was **'agricultural production'** within the meaning of that term as used in Item 1 of Group 10 of Part II of the First Schedule to the General Consumption Tax Act.
>
> 3. That the learned Judge erred and/or misdirected himself in law in holding that the Respondent's orange juice in question is entitled to a zero rating pursuant to Item 1 of Group 10 of Part II of the First Schedule to the General Consumption Tax Act."

All three grounds were argued together and so can conveniently be dealt with together in this judgment.

The issue which arose for resolution was whether or not the orange juice produced by the respondent qualified to be zero rated under the provisions of the General Consumption Tax Act. For the purpose of this appeal, three provisions of the Act are relevant. Section 3(1) enacts:

> "Subject to the provisions of this Act there shall be imposed from and after the appointed day, a tax to be known as general consumption tax --
>
> (a) on the supply of goods and services by a registered tax payer in the course or furtherance of a <u>taxable activity</u> carried on by that tax payer.
>
> Section 2(1) defines taxable activity as 'any activity, being an activity carried on in the form of a business, trade...'."

Part II of the First Schedule deals with items which are zero rated under the Act pursuant to section 24. Group 1 deals with foodstuff:

> "1. Raw foodstuff as follows:
>
> (a) fresh fruits and vegetables, excluding imported apples, pears and quinces, apricots, cherries, peaches (including nectarines), plums and sloes, berries and grapes, kiwis
>
> ...
>
> which contain no additive and which is not subject to any process other than --
>
> (i) freezing, chilling, salting or packaging;
>
> (ii) slicing, mincing, grinding, dicing or chopping; or
>
> (iii) natural drying."

The other relevant provision is Group 10 of the said First Schedule which deals with activities which are zero rated:

> "1. Agricultural production, including stock farming, forestry cultivation and fresh water fish farming."

Does the orange juice, produced by the respondent, qualify to be zero rated under Group 1 or 10 of the First Schedule to the Act?

Group 1 of the First Schedule deals with raw foodstuff - fresh fruits and vegetables. The question therefore is, can orange juice be classified as fresh fruit or vegetables? No doubt the fruit orange would fall within the ambit of the section. Juice is obtained by extracting it from the fruit. I am inclined to the view that the extract is not embraced within the scope of Group 1. The Encyclopaedia Brittanica Vol. 9 at page 965 in its definition of fruit says:

> "Fruit in its strict botanical sense is the freshly or dry ripened ovary of a plant enclosing the seed or seeds. Popularly however the term is restricted to the ripened ovaries that are sweet and either succulent or pulpy."

This definition clearly excludes the juice, extracted from the fruit, being classified as fresh fruit.

This conclusion, however, does not finally dispose of the issue as the section goes on to speak about "which contains no additive and which is not subject to any other process other than:

> "(i) freezing, chilling, salting or packaging;
>
> (ii) slicing, mincing, grinding, dicing or chopping; or
>
> (iii) natural drying."

Can the product come within the aforesaid provisions? It is common ground that the juice contains no additive. It is the respondent's case that to extract the juice the oranges are subjected to a process of grinding. The Oxford Concise Dictionary defines the word "grind" as (1) to reduce to small particles or powder by crushing between mill-stones, teeth etc. Significantly, in all the processes mentioned in (ii) the nature of the product is not changed, that is, to say neither slicing, mincing, dicing or chopping has the effect of transforming the product into juice. I am of the view that if the legislature had intended the juice to be zero rated it would simply have included juicing as one of the processes. In effect, although the manufacturers have labelled the process as grinding, the process is really one of juicing and is, therefore, not within the ambit of the section.

Group 10 of the First Schedule of Part II zero rates the following activities:

> "Agricultural production, including stock farming, forestry cultivation and fresh water fish farming."

The question, therefore, arises whether or not the production of orange juice is within the term "agricultural production".

The learned judge of the Revenue Court, in the resolution of the issue, opined:

> "...because the object of agricultural production from a commonsense point of view must inherently involve the disposal of the crop harvested."

He found support for this proposition in **W & J B Eastwood Ltd. v. Herrod** [1970] 1 All E.R. 774 at page 778G per Lord Reid:

> "It was argued for the valuation officer that the words 'used ...in connection with' agricultural operations should be strictly and narrowly construed so as to exclude buildings used to deal with the products of these operations. I observe that in the reported argument before the Lands Tribunal in **Thompson v Milk Marketing Board** it was submitted with regard to a dairy farm that what happened to the milk after it had been 'husbanded' was in no sense an agricultural operation. One might pour it down the drain or use it in this way or that, but that had nothing to do with the agricultural operations on the land. The ultimate decision of the Court of Appeal in that case is not surprising if that was the kind of far-fetched argument submitted by the valuation officer."
> 'And here is the passage on which I wish to put more emphasis:'
> "The whole object of producing a crop on the agricultural land is to market it in one form or another, and I think that anything done in the farm buildings, including storage and treatment, must be held to be done in connection with the agricultural operations on the land."

Mr. Alder for the appellant submitted that the learned judge erred in relying on the decision as the statute which was being interpreted therein, the Rating and Valuation (Apportionment) Act, 1928, is not in pari materia with the General Consumption Tax Act and further the issue to be decided therein was whether buildings were "used solely in connection with agricultural operations."

Mr. Wood for the respondent countered that the decision was most relevant as it also understood that agricultural operations does not cease when a crop is harvested but includes operations reasonably necessary to market the crop. He further submitted that the dictum of Roche, J. in **Re Prior** [1927] 43 T.L.R. 784 at page 785 supports the proposition:

> "Persons are employed in agriculture and horticulture when employed upon any operation done about the production, preparation, or transfer of the products of farm or garden or orchard in the best saleable condition to a first buyer or to a salesman or agent for sale if one be employed, or to a distinct business under one proprietorship....But if the industrial status and occupations of the employed persons are such that, though they are working about or in connection with a farm garden or orchard, they may properly be said to be essentially pursuing their own special occupation, they are not employed in agriculture or horticulture within the meaning of this rule."

I find the conclusion arrived at by the learned judge and the arguments of Mr. Wood flawed. In the instant case the issue is whether or not the manufacturing of orange juice is agricultural production. In **Eastwood's** case (supra) the issue was whether or not buildings used to store agricultural products on a farm were used solely in connection with agricultural operations. In **Eastwood's** case (supra) the question answered itself. Surely a building used for the storage of crops on farm is being used in agricultural operations. The marketing of the oranges in their natural state would, in my view, be an agricultural production activity but certainly not the manufacturing of orange juice.

Secondly, transforming the oranges into orange juice is not an operation which is reasonably necessary to market the oranges. Orange juice is, in my view, the creation of a completely new product.

Prior's case (supra) is singularly unhelpful in resolving the issue. In **Prior's** case the court was concerned with whether or not, for purposes of the Unemployment Insurance Act, 1920, U.K., persons engaged to a farmer in processes forming a part of the marketing of products and not their culture or production were engaged in agriculture. One has to look at the specific question which was referred to Roche, J. for consideration. The question was:

> "Whether persons employed in one case as foreman and in the other cases as regular or seasonal workers, in preparing the produce of nurserymen and market gardeners for transport (eg. by trimming and bunching cut flowers, grading fruit, and packaging) were 'employed in horticulture' within the meaning of exception (a) of Part II of the First Schedule to the Unemployment Insurance Act, 1920."

It is in the context of the specific question that the dictum of Roche, J. must be understood.

In **W & J B Eastwood Ltd. v. Herrod** (supra) Lord Reid recognised the fact that the phrase agricultural operations, for which one could substitute agricultural production, was not unrestricted in its meaning. The noble and learned Lord said at page 778 letter j:

> "But here again there must be a limit. Everything is saleable at a price, so even storage for a time or very simple treatment is not strictly necessary. One must have regard to ordinary and reasonable practice. But there comes a stage when further operations cannot reasonably be said to be consequential on the agricultural operations of producing crops."

In **Assessor for Perth and Kenross v. Scottish Milk Marketing Board** [1963] S.C. 95 at 104 Lord Sorn said:

> "If a farmer set up a butcher's shop on his farm to sell his fat stock as meat no one would suggest that it should be derated for the shop would be used for an independent purpose distinct from the farming operations."

By the same token, if a farmer sets up an operation to transform oranges into orange juice this cannot be said to be consequential on the agricultural operations of producing crops, neither can it be regarded as an agricultural production activity.

For the reasons which I have endeavoured to set out herein, I am of the view that Marsh, J. erred when he concluded that the orange juice ought to be zero rated under Group 10 of the First Schedule Part II of the General Consumption Tax Act, 1991.

I would, therefore, allow the appeal and set aside the judgment of the Judge of the Revenue Court and order that the

orange juice is not entitled to be zero rated pursuant to the provisions of the General Consumption Tax Act and, therefore, attracts General Consumption Tax.

The cross-appeal is dismissed. Costs here and below to the appellant to be taxed if not agreed.