

1946

Present : Nagalingam A.J.

THIRUGNANAM, Appellant, and WEERASINGHE, TEA CONTROL INSPECTOR, Respondent.

392—M. C. Colombo, 11,792.

Defence (Control of Tea Sales) Regulations 1943, Regulation 6A—Possession of packeted tea—Meaning of verb “to packet”.

Where the accused was convicted of having had in his possession or under his control 42 two-pound boxes and 4 five-pound boxes of made tea other than tea packeted by the Tea Commissioner, in contravention of Regulation 6A of the Defence (Control of Tea Sales) Regulations 1943—

Held, that the circumstance that the tea had been put into wooden boxes did not remove it from the category of “packeted tea” within the meaning of Regulation 6A.

A PPEAL against a conviction from the Magistrate’s Court, Colombo.

E. F. N. Gratiaen (with him *G. E. Chitty*), for the accused, appellant.

E. B. Wikramanayake, for the complainant, respondent.

Cur. adv. vult.

December 6, 1946. **NAGALINGAM A.J.—**

The accused in this case has been convicted of having had in his possession or under his control “42 two-pound boxes and four five-pound boxes of made tea other than tea packeted by the Tea Commissioner in contravention of Regulation 6A of the Defence (Control of Tea Sales) Regulations, 1943” and has been sentenced to pay a fine of Rs. 500. The facts which give rise to this prosecution are not in dispute. It would appear that the accused who is an authorised dealer within the meaning of the Regulations had been supplied by the Tea Commissioner with what has been described as broken mixed tea in lead-lined wooden chests containing 80 pounds of tea. The accused had packed this tea in wooden boxes in quantities of two pounds and five pounds and had them exposed for sale in his shop. The boxes had lids which were nailed with two, four or six nails but loosely to facilitate ready inspection of the tea if one so desired.

The prosecution contends that under the Regulation 6A an authorised dealer cannot have in his possession any packeted tea other than tea packeted in lead foil by the Commissioner and that as the accused had made packages of tea in two-pound and five-pound boxes he had in his possession packeted tea which had not been packeted by the Tea Commissioner in lead foil and that the accused had thereby committed an offence. It is in evidence that the Tea Commissioner has put on the market three grades of tea one of which is called broken orange pekoe which is supplied by him in packets of lead foil and two other grades which are called broken mixed tea which are supplied in chests of 80 pounds.

The first contention on behalf of the accused is that the boxes of two pounds and five pounds of tea cannot be said to be packeted tea as it is said that tea packed in wooden boxes are not packeted but at best they are boxed. To packet goods means to wrap or to make up articles into packets or small packages. The main idea conveyed by the verb "to packet" is not so much the method employed or the manner adopted to produce a parcel or package as the making up of the goods into small parcels or packages. A packet of cigarettes, as one knows, is a small quantity of cigarettes enclosed in a carton or card-board box. A packet of candles is again a small quantity of candles wrapped in paper or even merely tied up with a string without any wrapping. It is true that articles of everyday use which are packeted or made into small parcels are not ordinarily packed in wooden boxes but it does not therefore necessarily follow that when a small quantity of an article is put together into a wooden box it ceases to be packeted. The term "packeted tea" in the Regulation, I think, means no more than tea made up into a small package whether put into wooden boxes or wrapped in paper or lead foil or made into a small package by any other means whatsoever. The prohibition is against an authorised dealer having in his possession any tea made up into packets other than tea made into packets in lead foil by the Commissioner. I am therefore of opinion that the circumstance that the tea has been put into wooden boxes does not remove it from the category of "packeted tea" or tea made up into packets.

The second point urged was that the tea that was in the possession of the accused in the two-pound and five-pound boxes made up by him was in fact tea that had been supplied by the Tea Commissioner in packets of eighty pounds and therefore it was tea packeted by the Tea Commissioner himself. But the answer to this is firstly that such a large quantity as eighty pounds cannot be deemed to be a packet and cannot therefore be said to have been packeted. The term "packeted" also involves a notion of a parcel essentially small in size. Obviously it will be impossible to describe a motor car put into a wooden crate as a packet. The tea supplied by the Tea Commissioner in quantities of eighty pounds can be described as tea in chests but I do not think it would be correct to call an eighty-pound chest a packet of tea or tea that has been packeted. Secondly, the tea supplied by the Commissioner in chests of eighty pounds is not supplied in lead foil although the chests are lead-lined or more properly zinc-lined. The tea, therefore, which the accused had

made up into two-pound and five-pound boxes was not tea that had been packeted in lead foil by the Tea Commissioner.

A third point was also put forward, namely, that there would be no confusion between the tea packeted by the Tea Commissioner and the tea packeted by the accused in these two-pound and five-pound boxes as it is said that the Regulations aim at preventing packages of tea being passed off as those issued by the Tea Commissioner. The object of the Regulations is not so much to secure that there is no colourable imitation of the tea packeted by the Tea Commissioner but to ensure that tea that is not packeted by the Tea Commissioner does not leave the shores of the Island. The accused admits that numbers of people from board ship buy tea from him as packed in these boxes. As stated earlier, the quality of this tea is different from that of the tea sold by the Commissioner in lead foiled packets which is the grade known as broken orange pekoe and which is superior in quality to the tea that is not packeted by the Commissioner. By the sale of tea in his wooden boxes the accused actively assists in sending out of the country a lower grade of tea which was never intended to reach consumers beyond the limits of the Island.

The view I reach, therefore, is that the learned Magistrate was right in convicting the accused. The appeal is dismissed.

Appeal dismissed.
