

Daffadar Bhagat Singh & Sons

Vs

The Joint Excise & Taxation Commissioner, Punjab, Patiala and Another

Civil Appeal No. 4(NT) of 1971

(H. R. Khanna, V. R. Krishna Iyer, A. C. Gupta, Syed Fazal Ali JJ)

05.09.1975

JUDGMENT

GUPTA, J. -

1. In this appeal by special leave the only question is whether 'meat on hoof' is taxable under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). This can be answered only after one is able to gather the meaning of that expression as used in this case.
2. The question arises on the following facts. The appellants are a firm of army contractors, registered as a dealer under the Act as also under the Central Sales Tax Act. Under the contract between them and the army authorities, they had to supply, among other things, meat and meat on hoof. Under Section 6 read with Entry 18 of Schedule B to the Act no tax is payable on the sale of meat, fish and eggs except when sold in tins, bottles or cartons. For the year 1965-66 the appellants were assessed on the returns filed by them, and the sale of meat to the army, whether in dressed form or as meat on hoof, was not taxed. Subsequently the Joint Excise and Taxation Commissioner, Punjab, Patiala, issued notices to the appellants seeking to reopen the assessment under Section 21 and impose penalty on the appellants under Section 10(7) of the Act. According to the Commissioner 'meat on hoof' was an army term for goat and sheep and was taxable, and did not come under Entry 18 of Schedule B. The appellants filed a writ petition in the High Court of Punjab and Haryana for quashing the said notices. A learned Single Judge of the High Court dismissed the writ petition, and on appeal a Division Bench affirmed the order of dismissal.
3. The case of the appellants will appear from paragraphs 4 and 9 of the writ petition :
4. That the terms of the contract between the petitioner and the army authorities clearly indicate that the meat could be in a dressed form or could be on hoofs. The goats or sheep (meat) would be supplied by the petitioner, and transported by the army to such destinations as it desired and petitioner was paid the price on the basis of the weight of the material supplied. The sheep or the goats were not valued as such, but the value was calculated on the basis of the weight.
9. That the contract between the petitioner and the army authorities clearly indicated that it related to the supply of meat, and it was for the army authorities to decide whether to receive the same in the dressed form or on hoofs. Of course, when the supply was made on hoofs for the calculation of value 50% of the weight of the animal was considered to be dressed meat and paid for accordingly.

In answer to the allegations made in these two paragraphs, the counter affidavit filed on

behalf of the respondents, Joint Excise and Taxation Commissioner, Punjab, Patiala, and the State of Punjab, stated that the terms of the contract between the dealer and the army authorities were not relevant and that the goods supplied were taxable.

4. In the High Court, before the Single Judge as also the Division Bench, two contentions were raised on behalf of the appellants before us; first, that even assuming meat on hoof meant live sheep and goats, no sales tax would still be payable as the definition of goods in Section 2(e) of the Act did not include animals; and secondly, that what was sold under the contract was really meat and not live sheep and goats. The trial Court negatived both the contentions. As the first contention raised in the High Court was given up before us by Mr. S. T. Desai, appearing for the appellants, we are concerned only with the other contention that what was sold under the contract was meat, not live animals. On this question this is what the learned Single Judge held :

The question that arises for decision is whether "meat on hoofs" as termed by the petitioner is exempt from the payments of sales tax. Meat is made or comes into being after the animal is slaughtered and till then the meat of the animal is encased in its natural packing, the skin, and is preserved as such till the animal is slaughtered. Meat sold in tins, bottles or cartons is not exempt from the payment of sales tax under Entry No. 18 in Schedule B to the Act which leads to the conclusion that meat in preserved form is not exempt. Meat on hoofs is also preserved meat, the preservation being in the natural carton consisting of the skin of the animal. I, therefore, hold that "meat on hoofs" is not exempt from the levy of sales tax under Entry No. 18 in Schedule 'B' to the Act.

The Division Bench hearing the Letters Patent appeal found no reason to differ from the finding of the learned Single Judge on this point.

5. Before us it was argued as was done before the High Court, that on a correct reading of the contract between the appellants and the army authorities it would be clear that by meat on hoof what was meant was only the meat content of the animals. This would be clear, it was submitted, from the fact that the price paid by the buyer was on the basis of the meat content of the animal, that 50 per cent of the weight of the animal was taken as the amount of dressed meat. It was pointed out that the learned Single Judge had noted in his judgment that this position was not disputed.

6. We find it difficult to appreciate the view taken by the learned Single Judge which has been affirmed by the Division Bench that "meat on hoof is preserved meat, the preservation being the natural carton consisting of the skin of the animal". The skin covering the flesh of the animal preserves its life; to think that the skin is a carton for the flesh which can be used for food after the animal is slaughtered, in our opinion, goes against common sense. Counsel for the respondents submitted that 'meat on hoof' in army vocabulary meant the live animal. Whether what was sold by the appellants to the army authorities as meat on hoof was really meat, or it was live animals that were sold, would depend on a correct reading of the contract between the parties. The contract was not annexed to the writ petition and the Division Bench of the High Court has observed that it was not shown to the learned Judges at the hearing of the appeal; it is however not clear whether the learned Judges asked for a copy of the contract which the appellants failed to produce. On behalf of the appellants extracts from the contract were handed up to us, but the Counsel for the respondents seemed to think that there were other terms in the contract, regarding skins for instance, which have a bearing on what was sold. We are therefore not in a position to decide for ourselves what exactly was the contract between the parties. In a way the respondents are also responsible for this state of affairs having taken up the stand in the counter affidavit filed in the High Court that the terms of the

contract were not relevant. As we feel that the question can be answered only on proper appreciation of the terms of the agreement between the appellants and the army authorities the case must go back to the High Court for disposal of the matter according to law on a consideration of the relevant contract; the appellants will file copy of the contract, supported by an affidavit, before the hearing of the matter in the High Court.

7. The appeal is allowed, the judgment of the Single Judge and that of the Division Bench are set aside, and the case is remitted to the learned Single Judge for disposal according to the direction given above and in accordance with law. There will be no order as to costs.

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