Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam

Vs

M/S. Pio Food Packers

Civil Appeal No. 2398 of 1978

(P. N. Bhagwati, V. D. Tulzapurkar, R. S. Pathak JJ)

09.05.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment for the Kerala High Court holding that the turnover of pineapple fruit purchased for preparing pineapple slices for sale in sealed cans is not covered by Section 5-A(1)(a) of the Kerala General Sales Tax Act, 1963.

2. The respondent, Messrs Pio Food Packers ("the assessee"), carries on the business of manufacturing and selling canned fruit besides other products. In its return for the year 1973-74 under the Kerala General representing the purchase of pineapple fruit was not covered by Section 5-A(1)(a) of the Act. It was asserted that the pineapple was converted into pineapple slices, pineapple jam, pineapple squash and pineapple juice Section 5-A(1)(a) of the Act Provides :

> 5-A. Levy of Purchase tax - (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Section 5, and either -
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> (a) consumers such goods in the manufacture of other goods for sale or otherwise; or
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> #.....##

shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on turnover relating to such purchase for the year at the rats mentioned in Section 5.

3. The assessee maintained that by the conversion of pineapple fruit into its products no new commodity was created and it was erroneous to say that there was a consumption of pineapple fruit "in the manufacture of" those goods. The Sales Tax Officer did not accept the contention and completed the assessment on the finding that a manufacturing process was involved and that, therefore, the case fell within Section 5-A(1)(a). In revision before the Sales Tax Appellate Tribunal, the assessee conceded that pineapple jam and pineapple squash would be covered by Section 5-A(1)(a), and in regard to pineapple juice the Tribunal found that Section 5-A(1)(a), was attracted. The only question which remained was whether the preparation of pineapple slices fell within Section 5-A(1)(a). On that question two members of the tribunal found in favour of the assessee, and the third member found in favour of the Revenue. The Revenue then applied in revision to the High court and the High Court has, by its judgment dated January 24, 1978,

maintained the order of the Tribunal.

4. It appears that the pineapple purchased by the assessee is washed and then the inedible portion, the end crown, skin and inner core are removed; thereafter the fruit is sliced and the slices are filled in cans, sugar is added as a preservative the cans are sealed under temperature and then put in boiling water for sterilization. Is the pineapple fruit consumed in the manufacture of pineapple slices ?

5. Section 5-A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly manufacture is the end result of one more processes through which the original commodity is made to pass. The name and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the changes, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

6. A large number of cases have been placed before us by the parties, and in each of them the same principle has been applied : Does the processing of the original commodity bring into existence a commercially different and distinct article ? some of the cases where it was held by this Court that a different commercial article held come into existence include Anwarkhan Mahboob Co. v. State of Bombay ((1960) 11 STC 698 : AIR 1961 SC 213 : (1961) 1 SCR 709) (where raw tobacco was manufactured into bidi patti). A Hajee Abdul Shakoor and Co. v. State of Madras ((1964) 15 STC 719 : AIR 1964 SC 1729 : (1964) 8 SCR 217) (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), State of Madras v. Swastik Tobacco Factory ((1966) 17 STC 316 : AIR 1966 SC 1000 : (1966) 3 SCR 79) (raw tobacco manufactured into chewing tobacco) and Ganesh Trading Co., Karnal v. State of Haryana ((1973) 32 STC 623 : (1974) 3 SCC 620 : 1974 SCC (Tax) 100), (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has undergone a degree of processing it has not lost its original identity include Tungabhadra Industries Ltd., Kurnool v. C.T.O. ((1960) 11 STC 827 : AIR 1961 SC 412 : (1961) 2 SCR 14), (where hydrogenated groundnut oil was regarded as groundnut oil) and C.S.T., U.P., Lucknow v. Harbilas Rai and Sons ((1968) 21 STC 17 (SC) (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles).

7. In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient from and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple

slices must be held to possess the same identity as the original pineapple fruit.

8. While on the point, we may refer to East Texas Motor Freight Lines v. Frozen Food Express (100 L Ed 917) where the U.S. Supreme Court held that dressed and frozen chicken was not a commercially distinct article from the original chicken. It was pointed out :

Killing, dressing and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk from pasteurizing, homogenizing, adding vitamin concentrates, standardising and bottling.

9. It was also observed :

> ..... there is hardly less difference between cotton in the field and cotton at the gin or in the bale or between cotton-seed in the field and cotton-seed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cotton-seed, as well as the dressed chicken, have gone through a processing stage. But neither has been "manufactured" in the normal sense of the word.

10. Referring to Anheuser-Bush Brewing Assn. v. United States (52 L Ed 336-338) the court said :

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

11. And further :

> At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been "manufactured."

12. The comment applies fully in the case before us. Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing, and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a commercially different commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere from in which the fruit is desired.

13. Learned counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within Section 5-A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale.

14. In the result, we hold that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture. The case does not fall within Section 5-A(1)(a) of the Kerala General Sales Tax Act. The High Court is right in the view taken by it.

15. The appeal fails and is dismissed with costs.

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