

Deputy Commissioner of Sales Tax and Others

Vs

A. B. Ismail and Others

With

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

Vs

Pitcha alias Syed Mohammed, Mutton Dealer, Kozhinjampara, Kerala

And

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

Vs

V. M. Moideen, Mutton Dealer, Edapal, Kerala State

And

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

Vs

Veemban Kutty, Mutton Dealer, Nada Kavu, Vithanasseri, Chittur

And

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

Vs

Karimbil Mohammood, Mutton Dealer, Market Road, Badagara, Kerala State

And

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

Vs

Abdul Kareem

Civil Appeals Nos. 1161 of 1979, 578-589, 174 to 177, 762-763, 390 to 393, 469 and 764-767 and
4159 of 1985

(CJI P. N. Bhagwati, V. Khalid, G. L. Oza JJ)

15.04.1986

JUDGMENT

KHALID, J. -

1. The short question that falls to be decided in these appeals, by certificate, against the judgment of a Division Bench of the Kerala High Court, is whether goat and sheep and the meat got after slaughtering them are the same for the purpose of sales tax in the State. The High Court, disagreeing with the Sales Tax Appellate Tribunal held them to be the same goods.

2. It is the admitted case in these appeals that the respondents purchase goat and sheep for slaughtering them and then sell the meat they get after such slaughter. It is also admitted that livestock will be goods within the meaning of the Kerala General Sales Tax Act ("the Act" for short). The respondents submitted nil returns claiming exemption on the sales turnover of meat and skin. Assessments were completed accepting these nil returns. Subsequently the assesseees were informed that the purchase turnover of goats and sheep had escaped levy of tax under Section 5-A of the Act. After necessary hearing, assessment orders were passed, holding that the assesseees converted the animals into meat by a manufacturing process, within the meaning of Section 5-A of the Act. The Appellate Officer and the Tribunal agreed with this finding of the assessing officer. The assesseees took the matter before the High Court and challenged the assessment orders. The High Court quashed the assessment orders and held that the meat got after slaughtering the animals will not be "other goods" within the meaning of Section 5-A. Hence these appeals by the State.

3. For a proper understanding of the dispute raised in these cases it is necessary to read Section 5-A (1)(a) of the Act which alone is relevant for our purpose.

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 -

(a) consumes such goods in the manufacture of other goods for sale or otherwise;

The section speaks of three ingredients, the existence of which alone, will attract levy of tax. They are : (i) consumption of the goods (ii) process of manufacture involved and (iii) production of other goods. The question before us is whether these ingredients are present when goats and sheep are slaughtered and converted into meat for sale. The assessee's contention is that he is only processing live goat or sheep into mutton by killing them and cutting them into pieces and that in this process there was neither consumption nor a manufacture nor production of "other goods".

4. Before dealing with the authorities, cited at the Bar, it would be useful to consider, unaided by authorities, the question whether "goats and sheep" and "mutton" are the same goods known to commercial circles and in common parlance. We will see how a common man understands these expressions. If a person goes to a butcher's shop and asks for mutton he will not be given goats nor will he be satisfied with goats. Equally so when he intends to purchase goats he will not be satisfied if mutton is supplied to him. This is because the two, both in commercial circles and in common parlance, are two different things having a distinct individuality of their own, one different from the other. It would therefore be wrong to assume, as the High Court has done, that these two goods are the same. What happens is that when goats and sheep are converted into meat, "other goods" within the meaning of the section come into being. It is true that to attract Section 5-A, two other

ingredients are also to be satisfied, namely consumption and manufacture. Consumption is a word of wide import. It denotes the taking in of something, to convert that something into another. Here the slaughter of the animals and their conversion into meat is the consequence of consumption of goats in a legal sense. In such conversion, a process of manufacture can also be inferred. The important ingredients of this section, of course, are the bringing into existence of other goods, after consumption and manufacture, which are distinct from the original goods. Lifeless mutton is, by any standard, "other goods" different from "goat and sheep".

5. The High Court rested its conclusion on a decision of the same High Court in *Dy. CST (Law), Board of Revenue v. Pio Food Packers*. Without a detailed discussion, the High Court, relying upon the above decision held as follows :

We have given the matter our careful attention; and we have again given careful consideration to the elaborate arguments in regard to the processes involved in the transaction and their effect in the light of the provisions of the section, especially as one of us was not a party to the earlier Division Bench ruling. We are clearly of the view that the Tribunal was not correct in the view that it took, and that it cannot be said that there was a "consumption" resulting in the "manufacture" of "other goods" within the meaning of the section.

6. The High Court then referred to a decision of the American Supreme Court reported in 207 US 556, and the decisions reported in *Joseph v. State of Kerala* and *Manager, Pulpally Devaswom v. State of Kerala*, and observed as follows :

In the commercial sense, viz. in the sense known to the commercial world, we do not think it can be said that the meat exposed for sale in the market after cutting or slaughtering goats or sheep can be said to have been "manufactured" after "consuming" the goat or sheep. The meat exposed for sale is still of goat or sheep, in the same way as dressed chicken is still chicken, or the sliced, canned and packed pineapple is still pineapple prepared from the raw fruit after the minimal process for making it marketable.

7. We are constrained to hold that the approach of the High Court to the facts of the case was incorrect and reliance on the decisions referred to above was wrong. In the above American case the question was whether chicken killed and dressed after plucking its feathers and throwing out its entrails and kept in cold storage was manufactured product, different from chicken. The court there held that a chicken killed and dressed is still a chicken. We respectfully agree with this conclusion. A chicken killed and a dressed chicken are both chicken and both are known to the ordinary man as well as commercial world as chicken. By removal of the feathers and entrails the dressed chicken is made ready for the table. There is no process of manufacture and bringing into being an item different from the original goods. In *Joseph v. State of Kerala* the court had to deal with prawn pulp made out of raw prawns. The court held that there was neither consumption nor manufacture involved in making the prawn pulp and that in the process of conversion, goods distinct from raw prawn was not produced when prawn pulp came into being. In *Dy. CST (Law), Board of Revenue v. Pio Food Packers* the goods involved were pineapple and sliced pieces of pineapple. They are clearly the same goods. This Court approved this finding when the State took the matter in appeal before this Court.

8. This Court held in *Anwarkhan Mahboob Co. v. State of Bombay*, that conversion of raw tobacco

into bidis by removing stem and dust which in turn is required for the manufacture of bidis amounted to consumption of raw tobacco attracting tax liability. More or less similar is the case before us. There is clearly a process of consumption in converting goats into mutton by which goods different from the original goods are produced.

9. The Karnataka High Court had to consider an identical question as the one now raised before us, in *K. Cheyyabba v. State of Karnataka*, with reference to Section 6 of the Karnataka Sales Tax Act, 1957. The court held that dealers in that case who purchased sheep and goat in the course of their business under circumstances in which no tax was leviable under Section 5 of that Act, were liable to pay tax on the purchase price under Section 6 of the Act, as they consumed the goats and sheep by way of slaughtering them to produce mutton, hides and skins, as part of their business activities. We approve the conclusion in this case.

10. The respondents relied upon the decision of this Court in the case of *Deputy Commissioner, Sales Tax (Law), Board of Revenue (Taxes) v. Pio Food Packers*. In that case this Court upheld the assessee's plea that raw pineapple, when converted into slices, did not change its identity so as to attract liability to tax on the plea that raw pineapple was consumed in manufacturing sliced pineapple. While upholding the plea of the assessee, this Court laid down the tests in such cases as follows : (SCC pp. 176-77, paras 5 & 6)

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 or more processes through which the original commodity is made to pass. The nature 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 suffers, the original commodity experiences a change. But it is only when the change, 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 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.

A large number of cases has been 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 and come into existence include *Anwarkhan Mahboob Co. v. State of Bombay* (where raw tobacco was manufactured into bidi patti), *A. Hajee Abdul Shakoor and Co. v. State of Madras* (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), *State of Madras v. Swastik Tobacco Factory* (raw tobacco manufactured into chewing tobacco) and *Ganesh Trading Co. v. State of Haryana* (paddy dehusked into rice).

11. It cannot be doubted that pineapple fruit when converted into slices does not lose its identity or becomes a new product. Both of them are known as pineapple in the commercial circle as also in common parlance. That is not the case here.

12. Considerable support was sought by the respondents from a decision of this Court in *Chiranjit Lal Anand v. State of Assam*. That case related to an item called "meat on hoof". In that case the

dealer had submitted a tender to supply among others "meat on hoof" to the Central Reserve Police Units within the State of Assam. In that case, the dealer was assessed for the purchase of meat on hoof which is a name used mainly by the military for a "live goat". The contention of the dealer was that since meat was exempted from sales tax by the Assam Act, "meat on hoof" should also be exempted from assessment. This Court after considering the contention in the peculiar facts of that case, held that meat on hoof would also come within the exemption and set aside the assessment, disagreeing with the High Court. In our view, the principle enunciated in that decision has to be applied only to the facts of that case because the goods involved in that case were "meat on hoof" and meat was exempt from assessment under the Act. It would not, therefore, be proper to rely upon the said decision decided purely on the facts of that case in deciding the present cases. Here goats and sheep undergo a process viz., slaughtering and then comes into existence meat, hides and skin by consuming the goat in the said process, the end product being something entirely different from the original goods. The High Court was, therefore, in error in holding that goat and meat are the same and that no consumption was involved in converting goats into meat. The High Court confused the issue when it said that "the meat exposed for sale is still of the goat and sheep". Nobody disputes that the meat is of the goat and of the sheep. What is to be seen is whether meat and goat are the same. The High Court fell in an error when it used the expression "meat of the goat" while discussing the facts of the case.

13. In the result, we set aside the judgment of the High Court, allow these appeals, restore the order of the Tribunal, but in the circumstances of the case with no order as to costs.

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