

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

Vs

M/s. Shiphy International, Alleppey

Civil Appeal No. 904 (NT) of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

07.03.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted.

2. This is an appeal against the judgment and order of the High Court Kerala dated November 10, 1986. By the impugned judgment the High Court has dismissed the Tax Revision Case filed at the instance of the sales tax authority. The assessee-respondent herein had purchased fresh frog legs and after removing the skin, washing and removing dirt etc. and freezing it for the purpose of avoiding decomposition and decay, the said frog legs were exported. The assessee claimed that they were entitled to the benefit of Section 5(3) of the Central Sales Tax Act, 1956.

3. In order to appreciate the question it is necessary to refer to the findings of the Tribunal. The Tribunal found that what was purchased by the assessee was fresh frog legs and, after freezing it for the purpose of avoiding decomposition and decay, it was exported. It was, therefore held by the Tribunal that what was purchased as fresh frog legs was exported by the assessee. It was contended on behalf of the State that what was purchased was fresh frog legs and the same was not exported as such without freezing it. The Tribunal held that only frozen frog legs were exported. Therefore, it followed that what was purchased and exported was one and the same commodity. The frozen frog legs did not undergo, any material change in character. The identity of the frog legs remained unchanged as such. In that view of the matter the Tribunal held that the assessee was entitled to the benefit of Section 5(3) of the aforesaid Act. The High Court accepted this view.

4. In our opinion the question is concluded by a decision of this Court in *M/s. Sterling Foods v. State of Karnataka* ((1986) 3 SCC 469 : 1986 SCC (Tax) 609). That was rendered on July 21, 1986, a decision of a Bench of three learned Judges. There the court was concerned with shrimps, prawns and lobsters locally purchased for complying with export orders and after the process of cutting their heads and tails, peeling, deveining, cleaning, freezing and packing, exported these outside India under prior contract of sale. It was held that after such processing shrimps, prawns and lobsters retained their original identity and did not become different commodities. It was, therefore, held that the assessee was entitled to exemption from tax under Section 5(3) of the Central Sales Tax Act, 1956 in respect of purchase turnover of shrimps, prawns and lobsters, the purchases being of the same commodities which were exported. There, the question was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling deveining, cleaning and

freezing ceased to be the same commodity or became different commodity for the purpose of the Central Sales Tax Act. This Court expressed the view that the test applied for the purpose of determining whether a commodity subjected the processing retained its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade as same as the original commodity.

5. Every processing does not bring about a change in the character and identity of the commodity. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps different kinds of processing at each stage. With each process suffered, the original commodity experiences 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 commodity that it can be said that a new commodity, distinct from the original, has come into being. The test is whether in the eyes of those dealing in the commodity or in commercial parlance the processed commodity is regarded as distinct in character and identity from the original commodity. See in this connection the observations of this Court in *Deputy Commissioner of Sales Tax v. Pio Food Packers* (1980 Supp SCC 174 : 1980 3 SCR 1271 : 1980 SCC (Tax) 319 : 46 STC 63).

6. Applying that test in *M/s. Sterling Foods v. State of Karnataka* ((1986) 3 SCC 469 : 1986 SCC (Tax) 609) the court had found that processed or frozen shrimps, prawns and lobsters were commercially regarded as the same commodity as raw shrimps, prawns and lobsters. There are in common parlance known as shrimps, prawns and lobsters. There was no essential difference between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. The only difference was that processed shrimps prawns and lobsters were ready for the table while raw shrimps, prawns and lobsters were not, but still both are, in commercial parlance, shrimps, prawns and lobsters.

7. The aforesaid view also finds ample support from the decision of the Supreme Court of the United States in *East Texas Motor Freight Lines v. Frozen Food Express* (100 L ed 917, 923), where the question was whether dressed and frozen chicken was a commercially distinct article from the original chicken. The United States Supreme Court held that 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 pasteurising, homogenizing, adding vitamin concentrates, standardising and bottling.

8. Applying the aforesaid tests to the facts of this case, we are clearly of the opinion that the High Court was right on the facts found by the Tribunal in this case that frozen frog legs is same as fresh frog legs, the process was only to prevent decomposition.

9. Reliance was placed on behalf of the revenue on a decision of the same Bench of three learned Judges of this Court in the case of *Deputy Commissioner of Sales Tax v. A. B. Ismail* (1986 Supp SCC 218 : 1986 SCC (Tax) 524). This was a decision prior to the decision in *Sterling Foods* ((1986) 3 SCC 469 : 1986 SCC (Tax) 609) which as we have mentioned before was rendered on July 21, 1986 and this decision was rendered on April 15, 1986. In the subsequent decision no reference was made to the previous one because the facts were entirely different. There it was the sale of meat, hides and skin, got after slaughtering goat and sheep. It was held that it was taxable under Section 5-A(1)(a) of the Kerala General Sales Tax Act. It was further held that goat and sheep are distinct from meat, hides and skins. The process of conversion from goat and sheep into mutton, hides and

skin involves consumption and manufacturing resulting in production of goods different from the original goods. It was held that consumption was a word of wide import. It denoted the taking in of something to convert that something into another. In that case, goats and sheep underwent a process viz., slaughtering, and then came into existence meat, hides and skin. The slaughter of the animals and their conversion into meat was the consequence of consumption of goats in a legal sense. In such conversion, a process of manufacture could also be inferred. There the court considered the goat and sheep different from mutton from commercial circle and common parlance. But that is not as in the case of frozen frog legs and fresh frog legs and these are essentially the same commodity.

10. In the aforesaid view of the matter, we are of the opinion that the High Court was right in the view it took. The appeal is accordingly dismissed. There will be no order as to costs.

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