SUPREME COURT OF INDIA

Hindustan Lever Ltd.

Vs.

Commissioner of Sales Tax

(S Bharucha, M Mukharji and G Nanavati JJ.)

26.08.1998

JUDGMENT

BHARUCHA, J.

1. This appeal by special leave from the judgment and order of a Division Bench of the High Court of Gujarat concerns the classification of cut and dried chicory roots.

2. It is the case of the appellant assessees that these chicory roots fall either under Entry 8 or Entry 23 of the First Schedule of the Gujarat Sales Tax Act, 1969, as it then stood. It is the case of the Revenue, on the other hand, that they fall under the residuary entry, Entry 13 of the Third Schedule of the said Act. Entries 8 and 23 of the First Schedule read thus:

"8. Fresh vegetables and edible tubers.

* * *

23. Flower, fruit and vegetable seed; seeds of lucerne grass (Rajka) and of sann hemp; bulbs, tubers and plants other than orchids."

3. That chicory roots are a "tuber" is not disputed. The question is whether the chicory roots, as cut and dried, are a commodity different from the tuber itself.

4. The appellants manufacture coffee. Chicory is an ingredient in the manufacture of coffee. The appellants entered into agreements in similar terms with cultivators whereunder the cultivators grew chicory and the appellants purchased the same. Clause (1) of the agreement stated that the cultivators would grow chicory in stated acreages of their farms under the supervision of the appellants' officers. The chicory that was to be grown would be subject to sample surveys by the appellants. The cultivators were required to "deliver to the Company such quantity of the chicory yields grown in the fields with the seeds supplied by the Company as will meet the Company's total demand or requirement...."

After harvesting, the cultivators were required to wash the chicory roots, cut off at least half an inch of the roots below the crown and slice the roots into lengths varying from half inch to two-and-a-half inches, as instructed by the appellants' officers. The cultivators were also required to arrange for drying of the chicory roots to the standard stipulated by the appellants.

5. Upon the basis of the agreement aforesaid, the Tribunal took the view that the chicory roots could not be said to be edible tubers which were normally used in the like manner as fresh vegetables. It also took the view that the dry chicory roots could not be said to be tubers fit for the growing of fresh plants therefrom. Therefore, the dry chicory roots fell outside the scope of both Entries 8 and 23. The High Court applied the popular parlance test and concluded that the dry chicory roots could not be said to be tubers within the meaning of the two entries.

6. Learned counsel for the appellants drew our attention to the clauses of the agreement and he submitted that the fact that the chicory roots were cut and dried by the cultivators did not change their character as chicory roots. He cited the judgment of this Court in CST v. Pio Food Packers, 1980 Supp SCC 174, 1980 SCC (Tax) 319 Learned counsel for the Revenue submitted that the character of the chicory roots did change; upon drying and cutting they lost their character as tubers and, applying the popular parlance test, could no longer be said to be such.

7. The case of Pio Food Packers aforementioned was concerned with pineapples which, after washing, were cut so that the inedible portions were removed. They were then sliced and canned in preservatives and the cans were sealed and sterilised. The question was: "Is the pineapple fruit consumed in the manufacture of pineapple slices?" This Court referred to its earlier judgments

where this principle had been applied: "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." The Court found that there was no essential difference between the pineapple fruit and the canned pineapple slices. The only difference was that the sliced pineapple was a presentation of the fruit in a more convenient form and, by reason of being canned, it was capable of storage without spoiling. The additional sweetness in the canned pineapple arose from the sugar that was added as a preservative. On a total impression, it was held that the pineapple slices possessed the same identity as the original pineapple fruit.

8. An analysis of the agreement, it seems to us, shows that what the appellants required the cultivators to grow and then sell to them were chicory roots. That, before delivery to the appellants, the cultivators were required to cut, slice and dry the roots was not of great significance. It was, clearly, only to provide convenience in delivery. The essential character of the chicory roots did not change by reason of the cutting, slicing and drying.

9. With this in mind, let us turn to the relevant entries. We will assume at the outset that Entry 8 is inapplicable because it refers to edible tubers and there is no material on record to show that dried chicory roots are edible.

10. The contention of the Revenue in regard to Entry 23 is that it refers to that which may germinate. It is said that the entry refers to the seeds of flowers, fruits, vegetables, lucerne grass and hemp; and bulbs fall in the same category. There is no doubt that this is so, but the entry also goes on to mention "tubers and plants other than orchids". Plants, as such, do not germinate. Tubers are linked to plants in the entry and must be similarly construed. Therefore, there being no dispute that chicory roots are tubers, they would, in our view, fall within the ambit of Entry 23 and must be subjected to tax accordingly.

11. The second question that arises in the appeal has not been pressed in view of the conclusions in regard to the chicory roots stated above.

12. The questions that were before the High Court shall be deemed to have been answered accordingly.

13. The appeal is allowed. The judgment and order under appeal is set aside. No order as to costs.