

Commissioner of Income Tax, Trivandrum

Vs

Relish Goods

Civil Appeal No. 3255 of 1995

(S. P. Bharucha, S. M. Quadri JJ)

11.03.1999

JUDGMENT

S. P. BHARUCHA, J. -

1. The only question with which we are concerned in this appeal by the Revenue relating to Assessment year 1977-78 reads thus :

"Whether, on the facts and in the circumstances of the case :

(i) the assessee's business involves 'production' ?

(ii) the assessee is entitled to exemption under Section 80-HH of the IT Act, 1961 ?"

2. The assessee claimed the allowance under section 80-HH of the Income Tax Act, 1961 on the ground that it was an industrial undertaking that manufactured/produced articles. It would appear from the judgment of the Tribunal that the assessee bought shrimps, peeled them and froze them. There is no other material on the record which indicates what was done by the assessee and how it was done. The Income Tax Officer negatived the claim. The Commissioner of Income Tax (Appeals) and the Tribunal upheld the claim.

3. From the order of the Tribunal, the question aforementioned was referred to the High Court for its opinion. The High Court held that buying and processing of shrimps involved production and, therefore, the assessee was entitled to the allowances that it claimed. It followed its judgment in CIT v. Marwell Sea Foods ((1987) 166 ITR 624 (Ker)).

4. We find from the judgment of the Kerala High Court in the case of Marwell Sea Foods ((1987) 166 ITR 624 (Ker)) that Marwell Sea Foods had placed before the taxing authorities a detailed description of the process by which prawns were prepared for export and that the appellate authorities had understood the various stages through which the prawns passed as process involving production or manufacture. The High Court was of the view that the Tribunal having affirmed the finding of the AAC, it should be extremely slow to doubt the correctness of the finding unless it was perverse.

5. As has been pointed out, there is upon the record before us no detailed description of what the assessee does to the shrimps it buys, other than the bald statement that it peels and freezes them. We cannot accept the statement at the Bar that the process to which the assessee puts the shrimps is the

process that Marwell Sea Foods used in regard to its prawns.

6. Apart therefrom there is the judgment of this Court in *Sterling Foods v. State of Karnataka* ((1986) 3 SCC 469 : 1986 SCC (Tax) 609 : (1986) 63 STC 239) where it has been held that processed or frozen shrimps and prawns are commercially regarded as the same commodity as raw shrimps and prawns. When raw shrimps and prawns are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps and prawns and become other distinct commodities. There is no essential difference between raw shrimps and prawns and processed or frozen shrimps and prawns. In common parlance, they remain known as shrimps and prawns. This judgment in *Sterling Foods* ((1986) 3 SCC 496 : 1986 SCC (Tax) 609 : (1986) 63 STC 239) has been rightly applied by the Bombay High Court, in the case of *CIT v. Sterling Foods (Goa)* ((1995) 213 ITR 851 (Bom)) to a claim under Section 80-HH of the Income Tax Act and it has beheld that the activity of processing of prawns is not an activity of manufacture or production.

7. We are of the view that the judgment of this Court aforementioned in *Sterling Foods* ((1986) 3 SCC 469 : 1986 SCC (Tax) 609 : (1986) 63 STC 239) is apposite to the question that we have to decide and upon the material that is before us, we must reverse the view taken by the High Court in the judgment under appeal.

8. Learned counsel for the assessee submitted that the matter should be remanded to the appropriate authority to enable the assessee to lay before it evidence in detail of what the purchased shrimps were subjected to. We think it is far too late in the day for the assessee to do that in relation to the assessment year with which we are concerned.

9. The appeal is, therefore, allowed. The judgment and order under appeal is set aside to the extent it deals with the said question. The said question is answered in the negative in relation to both its parts and in favour of the Revenue.

10. No order as to costs.