

PETITIONER:
DEPUTY COMMISSIONER OF SALES-TAX (LAW), BOARD OF REVENUE(TAX

Vs.

RESPONDENT:
SHIPHY INTERNATIONAL, ALLEPPEY

DATE OF JUDGMENT 07/03/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 992 1988 SCR (3) 98
1988 SCC Supl. 439 JT 1988 (1) 566
1988 SCALE (1) 531

ACT:
Central Sales Tax Act, 1956-Section 5(3)-Export of fresh frog legs after freezing to avoid decomposition and decay-Whether assessee entitled to benefit of the Section-Test to be applied in determination of character of commodity.

HEADNOTE:
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The respondent-assessee 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 exported the said frog legs and claimed entitlement to benefit of s. 5(3) of the Central Sales Tax Act, 1956.

It was contended on behalf of the State that what was purchased as fresh legs was not exported as such, without freezing them and, therefore, the assessee was not entitled to the benefit of the section.

The Sales Tax Tribunal held that the fresh frog legs purchased by the assessee and exported after freezing for the purpose of avoiding decomposition and decay, were one and the same commodity and the frozen legs did not undergo any material change in character and the identity of the frog legs remained unchanged as such, and, therefore, the assessee was entitled to the benefit of s. 5(3) of the Act. The High Court upheld the view of the Tribunal.

Dismissing the State's appeal,

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HELD: 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.

In the instant case, the High Court was right in holding, on the facts found by the Tribunal, that frozen frog legs are same as fresh frog legs, and the process was only to prevent decomposition.

M/s. Sterling foods. v. State of Karnataka and another, [1986] SCC 469 and Deputy Commissioner of Sales Tax v. Pio Food Packers, [1980] 3 SCR 1271 . relied on.

East Texas Motor Freight Lines v. Frozen Food Express, (100 L Ed. 917 at 923) referred to.

Deputy Commissioner of Sales Tax and others v. A.B. Ismail and others, [1986] Suppl. SCC 218 distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 904 (NT) of 1988

From the Judgment and Order dated 10.11.1986 of the Kerala High Court in T.R.C. No. 162 of 1986

V.J. Francis for the Appellant.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted.

This is an appeal against the judgment and order of the High Court of Kerala dated 10th of November, 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.

In order to appreciate the question it is necessary to refer to the findings of the Tribunal. The Tribunal found that what was purchased

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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, if 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.

In our opinion the question is concluded by a decision of this Court in M/s. Sterling Foods v. State of Karnataka and another, [1986] 3 S.C.C. 469. That was a decision of a Bench of three learned Judges rendered on 21st July, 1986. 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 become 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 to 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.

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

101 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] 3 S.C.R. 1271.

Applying that test in M/s. Sterling Foods v. State of Karnataka & Anr. (supra) 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. These 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.

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 at 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 it was not a commercially distinct article but was commercially and in common parlance the same article as 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.

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.

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

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Commissioner of Sales Tax and another v. A.B. Ismail and others, [1986] Suppl. S.C.C. 218. This was a decision prior to the decision in Sterling Foods, (supra) which as we have mentioned before was rendered on 21st July, 1986 and this decision was rendered on 15th April, 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 5A(1)(a) of the Kerala General Sales Tax Act. It was further held that goats and sheeps are distinct from meat, hides and skins. The process of conversion from goat and sheep into mutton, hides and skin involves consumption and manufacture 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 sheeps 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.

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.

N.P.V.

Appeal dismissed.

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