STERLING FOODS, A PARTNERSHIP FIRM REPRESENTED BY ITS PARTNER SHRI RAMESH DALPATRAM

v.

THE STATE OF KARNATAKA & ANR.

JULY 21, 1986

[P.N. BHAGWATI, C.J., V. KHALID AND G.L. OZA JJ.]

Sales tax—Exigibility to tax—Whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity and becomes a different commodity for the purpose of the section 5(3) of Central Sales Tax Act, 1956 and therefore exigible to Purchase tax under section 5(3)(b) read with entry 13a of Third Schedule to the Karnataka Sales Tax Act, 1957 as amended.

The appellants are a partnership firm carrying on business as dealers in shrimps, prawns and lobsters and other sea food products. They are registered as a dealer both under the Karnataka Sales Tax Act, 1957 and the Central Sales Tax Act, 1956. The appellants in the course of their business purchase shrimps, prawns and lobsters locally for the purpose of complying with orders for export and they cut the heads and tails of the shrimps prawns and lobsters purchased by them, peel, devein and clean them and after freezing and packing them in cartons, they export them to foreign buyers outside India under prior contracts of sale. The appellants filed their statement of monthly turnover for the month of April 1982 before the Assistant Commissioner of Commercial Taxes, Mangalore and claimed total exemption from tax in respect of the purchase turn-over of shirmps, prawns and lobsters under the Karnataka Sales Tax Act, 1957. The Assistant Commissioner of Commercial Taxes rejected the said claim by his two assessment orders and issued two notices of demand for Rs.52,610.71 and Rs.44,237.88 respectively against the appellants. The appellants, thereupon, filed a writ petition in the High Court of Karnataka challenging all the said orders and notices of demand and sought appropriate direction, order or writ restraining the respondents from imposing or collecting purchase-tax on purchase turn-over of shrimps, prawns and lobsters under the Karnataka Sales Tax Act, 1957. The writ petition was dismissed by the High Court, but having regard to the importance of the question

A involved a certificate under Article 133 of the Constitution was granted by the High Court.

Allowing the appeal, the Court

B HELD: 1.1. In order to attract the applicability of sub-section (3) of section 5 of the Central Sales Tax Act, 1956, it is necessary that the goods which are purchased by an assessee for the purpose of complying with the agreement or order for or in relation to export, must be the same goods which are exported out of the territory of India. The words "those goods" in sub-section (3) are clearly referable to "any goods" mentioned in the preceding part of the sub-section and, there-
C fore, the goods purchased by the assessee and the goods exported by him must be the same. If by reason of any processing to which the goods may be subjected after purchase, they change their identity so that commercially they can no longer be regarded as the original goods, but instead become a new and different kind of goods and then they are
D exported, the purchases of original goods made by the assessee cannot be said to be purchases in the course of export.

1.2 The test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is
E 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, the same as the original commodity. It is not every processing that brings about change in the character and identity of a 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
F 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.

G

Sales Tax Board v. *PIO Food Packers* (1980) 3 SCR 1271 applied.

1.3 The shrimps, prawns and lobsters purchased by the appellants did not lose their original character and identity when they were subjected to processing for the purpose of export. So far as commercial
H parlance or popular usage is concerned, they remained the same goods.

A

The dealer and the consumer regarded both as shrimps, prawns and lobsters. The only difference is that processed shrimps, prawns and lobsters are ready for the table while raw shrimps, prawns and lobsters are not but still both are in commercial parlance, shrimps, prawns and lobsters. The fact that they undergo a certain degree of processing or B frozen for the purpose of preservation and transfer to other places including far off countries in the world makes no difference in character or identity as the original shrimps, prawns and lobsters. Hence, the purchases of raw shrimps, prawns and lobsters by the appellants must be held to be purchases in the course of export and hence exempt from liability to tax under the Karnataka Sales Tax Act, 1957 as amended. [377A-B]

C

East Taxes Motor Freight Lines v. *Frozen Food Express* (100) L.Ed. 917 quoted with approval.

1.4 Entry 13a of the Third Schedule to the Karnataka Act also makes it clear that even processed or frozen shrimps, prawns and lobsters are known commercially and in the trade as shrimps, prawns and lobsters. When the State Legislature excluded processed or frozen shrimps, prawns and lobsters from the ambit and coverage of Entry 13a, its object obviously was that the last purchases of processed or frozen shrimps, prawns and lobsters in the State should not be exigible to State Sales Tax under Entry 13a. The State Legislature was not at all E concerned with the question as to whether processed or frozen shrimps, prawns and lobsters are commercially the same commodity as raw shrimps, prawns and lobsters or are a different commodity. Merely because the State Legislature made a distinction between the two for the purpose of determining exigibility to State Sales Tax, it cannot be said that in commercial parlance or according to popular sense, processed F or frozen shrimps, prawns and lobsters are recognised as different commodity distinct from raw shrimps, prawns and lobsters. Further the question whether raw shrimps, prawns and lobsters after suffering processing retain their original character or identity or become a new commodity has to be determined not on the basis of a distinction made by the State Legislature for the purpose of exigibility to State Sales Tax G because even where the commodity is the same in the eyes of the persons dealing in it the State Legislature may make a classification for determining liability to sales tax.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 220 (NT) of 1986

H

From the Judgment and Order dated 20th November, 1985 of the Karnataka High Court in Writ Petition No. 27805 of 1982.

C.K. Viswanath Iyer, K.M.K. Nair and S.T. Desai for the Appellants

B.R.L. Iyengar, M. Veerappa for the Respoondents.

The Judgment of the Court was delivered by

BHAGWATI, C.J. The short question that arises for determination in this appeal by certificate is whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity and become a different commodity for the purpose of the Central Sales Tax Act, 1956. Can they still go under the description of shrimps, prawns and lobsters or in other words, when we use the words 'shrimps, prawns and lobsters' do they mean only raw shrimps, prawns and lobsters as caught from the sea or do they also include processed and frozen shrimps, prawns and lobsters. This question which falls for determination in the present appeal arising out of the following facts.

The appellants are a partnership firm carrying on business as dealers in shrimps, prawns and lobsters and other sea food products. The appellants are registered as a dealer both under the Karnataka Sales Tax Act, 1957 and the Central Sales Tax Act, 1956. The appellants in the course of their business purchase shrimps, prawns and lobsters locally for the purpose of complying with orders for export and they cut the heads and tails of the shrimps, prawns and lobsters purchased by them, peel, devein and clean them and after freezing and packing them in cartons, they export them to foreign buyers outside India under prior contracts of sale. The appellants filed their statement of monthly turn-over for the month of April 1982 before the Assistant Commissioner of Commercial Taxes, Mangalore and in this statement of monthly turn-over, they claimed total exemption from tax in respect of the purchase turn-over of shrimps, prawns and lobsters on the ground that the same had been purchased in the course of export. The appellants relied on sub-section (3) of section 5 of the Central Sales Tax Act, 1956 which reads as follows:

> "Notwithstanding anything contained in sub-section (1) the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the

territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

The appellants contended that since the purchases of shrimps, prawns and lobsters had been made by them for the purpose of complying with the orders for export, such purchases of shrimps, prawns and lobsters must be deemed to be in the course of export and they were accordingly not taxable under the Karnataka Sales Tax Act 1957. This contention of the appellants was rejected by the Assistant Commissioner of Commercial Taxes and on 30th July 1982 an order was made by the Assistant Commissioner of Commercial Taxes for the month of April 1982 under section 12 B (2) of the Karnataka Sales Tax 1957 assessing the appellants to purchase-tax and other incidental taxes in respect of the purchases of shrimps, prawns and lobsters made by them during the said period. The Assistant Commissioner of Commercial Taxes also passed another order dated 3rd August 1982 assessing the appellants to purchase-tax and other incidental taxes in respect of the purchases of shrimps, prawns and lobsters made by them during the month of May, 1982. These two orders made by the Assistant Commissioner of Commercial Taxes were followed by issue of notices of demand for Rs.52,610.71 and Rs.44,237.88 respectively against the appellants. The appellants thereupon filed a writ petition in the High Court of Karnataka challenging the assessment orders and the notices of demand issued against them and sought appropriate direction, order or writ restraining the respondents from imposing or collecting purchase-tax on purchase turn-over of shrimps, prawns and lobsters under the Karnataka Sales Tax Act 1957. The writ petition was dismissed by the High Court, but having regard to the importance of the question involved, a certificate under Article 133 of the Constitution was granted by the High Court and that is how the present appeal by certificate has come before us.

It is clear on a plain reading of sub-section (3) of Section 5 of the Central Sales Tax Act 1956 that in order to attract the applicability of that provision, it is necessary that the goods which are purchased by an assessee for the purpose of complying with the agreement or order for or in relation to export, must be the same goods which are exported out of the territory of India. The words "those goods" in this sub-section are clearly referable to "any goods" mentioned in the preceding part of the sub-section and it is therefore obvious that the goods

A purchased by the assessee and the goods exported by him must be the same. If by reason of any processing to which the goods may be subjected after purchase, they change their identity so that commercially they can no longer be regarded as the original goods, but instead become a new and different kind of goods and then they are exported, B the purchases of original goods made by the assessee cannot be said to be purchases in the course of export. The question which therefore arises for consideration is as to what happens when shrimps, prawns and lobsters purchased by the assessee are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing before export. Do they cease to be the original commodity and become commercially a new commodity or do they still retain their origi- C nal identity as shrimps, prawns and lobsters?

Before we proceed to consider this question, it is necessary to refer to certain provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the 'Karnataka Act') which came into force D on 1st October 1957. Section 5 of the Karnataka Act which enacts the charging section provides for levy of tax on sales and purchases of various commodities described in the Schedules to the Act. The Third Schedule to the Karnataka Act, as originally enacted, enumerated the commodities on which a single-point tax was leviable under subsection 3(b) of section 5 and there were 13 entries in this Schedule. E None of these 13 entries included shrimps, prawns and lobsters with the result that the purchases of shrimps, prawns and lobsters were not exigible to purchase tax. This position continued right from the time of the original enactment until 31st March 1973 when the Karnataka Sales Tax (Amendment) Act, 1973 introduced a new Entry '13a' in the Third Schedule with effect from 1st April 1973. This entry included F "shrimps, prawns and lobsters" in the Third Schedule. There was another amendment made in the Karnataka Act in 1978 by the Karnataka Sales Tax (Amendment) Act, 1978 and section 9 of this Amending Act made certain amendments in Entry 13a with retrospective effect, so that from 1st April 1973 Entry 13a included in the Third Schedule "shrimps, prawns and lobsters other than processed or fro- G zen shrimps, prawns and lobsters" and the Explanation to Entry 13a provided that "processing" shall include "all or any of the following, namely, cutting of head or tail, peeling, deveining, cleaning or freezing". But, Entry 13a in this form continued only up to 31st August 1978 and with effect from 1st September, 1978, a further amendment was made by the Karnataka Taxation and Certain Other Laws H (Amendment) Act, 1982 and after this amendment which was made

with retrospective effect from 1st September 1978, Entry 13a read: "Shrimps, prawns and lobsters other than frozen shrimps, prawns and lobsters". The amendment made by the 1982 Amendment Act excluded from the scope and ambit of Entry 13a, frozen shrimps, prawns and lobsters and brought within the net of taxation only purchases of shrimps, prawns and lobsters other than frozen shrimps, prawns and lobsters, provided they were last purchases within the State.

It is in the context of these provisions of the Karnataka Act that we have to consider whether shrimps, prawns and lobsters, when subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, retain their original character and identity or become another distinct commodity. The test which has to be applied for the purpose of determining whether a commodity subjected to processing retains 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, the same as the original commodity. It is necessary to point out that it is not every processing that brings about change in the character and identity of a 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 vide *Sales Tax Board* v. *PIO Food Packers* [1980] 3 SCR 1271.

It is clear on an application of this test that processed or frozen shrimps, prawns and lobsters are commercially regarded the same commodity as raw shrimps, prawns and lobsters. When raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps, prawns and lobsters and become another distinct commodity. They are in common parlance known as shrimps, prawns and lobsters. There is no essential difference between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters.

A The dealer and the consumer regard both as shrimps, prawns and lobsters. The only difference is that processed shrimps, prawns and lobsters are ready for the table while raw shrimps, prawns and lobsters are not, but still both are, in commercial parlance, shrimps, prawns and lobsters. It is undoubtedly true that processed shrimps, prawns B and lobsters are the result of subjecting raw shrimps, prawns and lobsters to a certain degree of processing but even so they continue to possess their original character and identity as shrimps, prawns and lobsters, notwithstanding the removal of heads and tails, peeling, deveining and cleaning which are necessary for making them fit for the table. Equally it makes no difference in character or identity when shrimps, prawns and lobsters are frozen for the purpose of preserva- C tion and transfer to other places including far off countries in the world. There can therefore be no doubt that processed or frozen shrimps, prawns and lobsters are not a new and distinct commodity but they retain the same character and identity as the original shrimps, prawns and lobsters.

D

This view 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, where the question was whether dressed and frozen chicken was a commercially distinct article from the original chicken. The Supreme Court held that it was not a commercially E distinct article but was commercially and in common parlance the same article as chicken. The Supreme Court pointed out:

> "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 pasturising, F homogenizing, adding vitamin concentrates, standardising and bottling".

and proceeded to add in words clear and explicit:

> ".....there is hardly less difference between cotton G in the field and cotton at the gin or in the bale or between cottonseed in the field and cottonseed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cottonseed, as well as the dressed chicken, have gone through a processing stage. But neither has been "manufactured" in the normal sense of H the word."

If dressed and frozen chicken is not a commercially distinct article from the original chicken, it must follow on a process of analogical reasoning that processed and frozen shrimps, prawns and lobsters cannot be regarded as commercially distinct commodity from raw shrimps, prawns and lobsters.

This conclusion on principle was not disputed by the High Court in its judgment and the High Court conceded that even after processing such as cutting of heads and tails, peeling, deveining, cleaning and freezing, shrimps, prawns and lobsters subjected to such processing continued in common parlance to be called 'shrimps, prawns and lobsters'. But the High Court took the view that Entry 13a after the amendment effected in it with retrospective effect from 1st September, 1978, made a distinction between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. In view of this distinction made in Entry 13a, it was not possible to hold that processed or frozen shrimps, prawns and lobsters were the same commodity as raw shrimps, prawns and lobsters. The argument was that when the State Legislature itself made a distinction between these categories of commodities by making purchases of one category amenable to sales tax under Entry 13a and leaving out of the scope of taxation under Entry 13a the other category, how could it be said that both these categories represent the same commodity and there is no difference in character and identity between the two. This argument, we are afraid, is not well-founded. It is based on a total misapprehension in regard to the true object and intendment of Entry 13a and it erroneously seeks to project that Entry in the interpretation and application of Section 5 sub-section (3) of the Central Sales Tax Act. In fact Entry 13a as amended, supports the argument that even processed or frozen shrimps, prawns and lobsters are known commercially and in the trade as 'shrimps, prawns and lobsters'. It is because Entry 13a as it stood prior to its amendment, would have, on the plain natural meaning of the expression 'shrimps, prawns and lobsters' included processed and frozen shrimps, prawns and lobsters, that it became necessary for the State Legislature to amend Entry 13a with retrospective effect so as to exclude from the scope and ambit of that entry processed or frozen shrimps, prawns and lobsters. Now when the State Legislature excluded processed or frozen shrimps, prawns and lobsters from the ambit and coverage of Entry 13a, its object obviously was that the last purchases of processed or frozen shrimps, prawns and lobsters in the State should not be exigible to State Sales Tax under Entry 13a. The State Legislature was not at all concerned with the question as to

whether processed or frozen shrimps, prawns and lobsters are commercially the same commodity as raw shrimps, prawns and lobsters or are a different commodity and merely because the State Legislature made a distinction between the two for the purpose of determining exigibility to State Sales Tax, it cannot be said that in commercial parlance or according to popular sense, processed or frozen shrimps, prawns and lobsters are recognised as different commodity distinct from raw shrimps, prawns and lobsters. The question whether raw shrimps, prawns and lobsters after suffering processing retain their original character or identity or become a new commodity has to be determined not on the basis of a distinction made by the State Legislature for the purpose of exigibility to State Sales Tax because even where the commodity is the same in the eyes of the persons dealing in it the State Legislature may make a classification for determining liability to sales tax. This question, for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognised in commercial parlance. If in commercial parlance and according to what is understood in the trade by the dealer and the consumer, processed or frozen shrimps, prawns and lobsters retain their original character and identity as shrimps, prawns and lobsters and do not become a new distinct commodity and are as much 'shrimps, prawns and lobsters', as raw shrimps, prawns and lobsters, sub-section (3) of section 5 of the Central Sales Tax Act would be attracted and if with a view to fulfilling the existing contracts for export, the assessee purchases raw shrimps, prawns and lobsters and processes and freezes them, such purchases of raw shrimps, prawns and lobsters would be deemed to be in course of export so as to be exempt from liability to State Sales Tax.

Here in the present case, it was not disputed on behalf of Revenue that the purchases of raw shrimps, prawns and lobsters were made by the appellants for the purpose of fulfilling existing contracts for export and after making such purchases the appellants subjected raw shrimps, prawns and lobsters purchased by them to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing and exported such processed and frozen shrimps, prawns and lobsters in fulfilment of the contracts for export. The only argument raised on behalf of Revenue was that the goods which were exported were not the same as the goods purchased by the appellants because raw shrimps, prawns and lobsters after processings ceased to be the same commodity and became a new distinct commodity. But, for reasons which we have already discussed, this argument cannot be sustained.

The shrimps, prawns and lobsters purchased by the appellants did not lose their original character and identity when they were subjected to processing for the purpose of export. So far as commercial parlance or popular usage is concerned, they remained the same goods and hence the purchases of raw shrimps, prawns and lobsters by the appellants must be held to be purchases in the course of export and hence exempt from liability to tax under the Karnataka Sales Tax Act.

We, accordingly, allow the appeal, set aside the judgment of the High Court as also the Orders made by the Assistant Commissioner of Commercial Taxes and direct that the purchases of raw shrimps, prawns and lobsters made by the appellants for the purpose of fulfilling the existing contracts for export shall not be included in the taxable turnover of the appellants. The respondents will pay the costs of the appeal to the appellants.

S.R. Appeal allowed.