(1979) 02 KL CK 0015

In the High Court Of Kerala

Case No : W.A. No''s. 107 and 336 of 1976, T.R.C. No''s. 39, 40 and 41 of 1978 and O.P. No''s. 2185 of 1974, 3892 and 6035 of 1975, 2006 and 5087 of 1976-E and 4039 of 1977-L

City Cold Storage APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 20-02-1979

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 10

Citation : (1979) 2 ILR (Ker) 234 : (1979) 44 STC 312

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;M.P. Menon, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; Government Pleader, for the Respondent

Judgement

V.P. Gopalan Nambiyar, C.J.—These appeals, tax revisions and the writ petitions raise an interesting question regarding the meaning of the expressions "frozen meat" and "fresh fish" occurring in an exemption notification issued u/s 10 of the Kerala General Sales Tax Act, 1963. We quote the said notification and the two relevant entries in the First Schedule thereto:

S.R.O. No. 342/63.--In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), the Government of Kerala having considered it necessary in the public interest so to do hereby make an exemption in respect of the tax payable under the said Act on the sale or purchase of the goods specified in Schedule I hereto appended and by persons specified in Schedule II hereto appended in regard to their turnover on the sales of goods specified therein subject to the conditions specified therein.

Schedule I

23. Fresh fish.

25. Meat except meat which is cured or frozen.

With respect to these entries extracted above, the question which arises for consideration is what is the meaning to be attributed to the terms "fresh fish" and "frozen meat". We may notice the facts with respect to T.R.C. Nos. 39 to 41 of 1978 in which the main arguments were advanced.

T.R.C. Nos. 39 to 41 of 1978

The assessment years involved in these cases are 1968-69 to 1970-71 (both inclusive). The assessee was a dealer, among other things, of meat stored in its cooler or refrigerator. The question was whether it was entitled to exemption under entry 25 of the notification quoted supra or was outside the scope of the said entry by reason of the meat being frozen meat which is excepted from the scope of the exemption. The Sales Tax Appellate Tribunal held that the meat in question was frozen meat and therefore fell outside the exemption. The aggrieved assessee has filed these tax revision cases.

2. The principle of construction to be adopted in such cases is, we should think, well-settled. The test should be: How is the commodity, "frozen meat", understood by the world of trade and commerce; what is the meaning attributed to the expression "frozen meat" in the commercial sense? As authority for the proposition that this should be the correct guideline in deciding the meaning of the term, we think, it would be enough to notice the decision of a Full Bench of this Court in Krishna Iyer Vs. State of Kerala, which has surveyed exhaustively the relevant decisions on the point. The question there arose whether "green ginger" is a vegetable or not. Dealing with the question, the Full Bench observed:

7. But it is not the dictionary meaning of the term that will invariably prevail in the construction of a statute. The rule of interpretation applicable to such cases is well-recognised. It is the rule that particular words used by the legislature in the denomination of article should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for, as stated in 9 Wheaten U.S. 435, the legislature does not suppose our merchants to be naturalists, or geologists, or botanists. In 1951 Canada Law Reports (Exchequer Court) 122 the question as to whether salted peanuts and cashew-nuts fell within the category of ''fruit'' or ''vegetable'' for the purpose of the Excise Act, Ch. 179 R.S.C. 1927, came up for consideration and the question was answered in the negative in spite of the evidence of the botanists that both the peanut and the cashew-nut are vegetables in the wider meaning of that word, that each is a fruit and that neither is a nut. The court said:

Counsel for the plaintiff suggested a test which I think apposite. Would a householder when asked to bring home fruit or vegetable for the evening meal bring home salted peanuts, cashew-nuts or nuts of any sort? The answer is obviously "No".

8. In Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, the Supreme Court had to decide whether ''betel leaves'' can be considered as vegetables. It said that it cannot be so considered and observed:

Reliance was placed on the dictionary meaning of the word "vegetable" as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

The Supreme Court referred to the Canadian decision above-mentioned as well as to the decision of the High Court of Madhya Pradesh in Madhya Pradesh Pan Merchants'' Association, Santra Market, Nagpur v. State of Madhya Pradesh [1956] 7 S.T.C. 99 (mp), wherein that court said:

In our opinion, the word "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term "vegetables" is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

The above test has been applied by the Supreme Court in two more cases, Ram Bux Chaturbhuj v. State of Rajasthan [1961] 12 S.T.C. 330 (S.C.) and Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar,

3. In Unwin v. Hanson [1891] 2 Q.B. 115 at 119, Lord Esher, M.R., stated:

Now when we have to consider the construction of words such as this occurring in Acts of Parliament we must treat the question thus: If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.

4. In Vimala Cold Storage Vs. State of Kerala, , our learned brother Chandrasekhara Menon, J., after noticing the relevant principles of construction of statutes and the two entries with which we are here concerned in the exemption notification, stated thus:

I think it would be far-fetched to say that ''fresh fish'' can only mean fish as it comes out from the water. More acceptable meaning as used in common parlance, according to me, would be fish, which is not stale, musty or vapid. When we say ''fresh flowers'', it means flowers not faded and not flowers immediately plucked. I certainly take note of the fact that the Sales Tax Appellate Tribunal has interpreted the meaning of the words ''fresh fish'' as fish fresh from the waters or lately come out from the sea or other waters. I do not think that by preserving fish in cold storage it ceases to be fresh fish as such. The purpose of keeping fish in cold storage is to preserve its freshness. Therefore, I agree with the contention of the petitioner that in respect of the turnover as regards fish is concerned the second respondent has acted without jurisdiction in imposing the sales tax on the said turnover.

The next question is, was the second respondent correct in imposing sales tax as regards the turnover regarding meat. According to the petitioner, he does not sell frozen meat and he has no equipment for freezing meat. It is pointed out that the lowest temperature that can be maintained in the cold storage of the petitioner is 0?C and meat cannot be frozen unless the temperature can be lowered very much lower.

The word ''freeze'', the past participle of which is ''frozen'', means in ordinary parlance ''be converted into or covered with ice, or become rigid as result of cold''. In the Random House Dictionary of the English Language, the word ''freeze'' has been given the meaning ''to subject something to freezing temperature, place something in a freezer or in the freezing compartment of a refrigerator''. It might be noted here that what is exempted under the notification concerned is unlike in the case of fish not fresh meat as such but meat which is not cured or frozen.

Mr. Varkey, the Learned Counsel for the petitioner, invited my attention to certain observations in a Russian publication ''fish curing and processing'', where the word ''frozen'' is given a technical meaning as being kept at temperature very much below 0?C. It was pointed out by him that for properly freezing fish or meat the temperature should be far below 0?C and, therefore, keeping meat in a fresh state in cold storage where the minimum temperature cannot be less than 0?C would not amount to freezing the meat and the meat kept there cannot be said to be meat frozen.

It is pointed out that the petitioner''s cold storage is not a freezing unit and, therefore, incapable of freezing ''meat'' or ''fish''. Refrigeration is the process of lowering the temperature inside an insulated enclosure by extracting heat and rejecting it to the surroundings or some other external medium of higher temperature. ''Freezing'' in the ordinary parlance, as per the meaning given by the Concise Oxford Dictionary, would take in the meaning ''preserve meat, etc., by refrigeration''. Therefore, meat kept in the cold storage where the temperature would come to a minimum of 0?C for the purpose of preserving the same by refrigeration would certainly come within the expression ''meat'', which is frozen.

The correctness of the decision has been attacked before us, and the judgment itself is the subject-matter of appeals by the assessee as well as by the State, namely, W.A. No. 107 of 1976 by the assessee, and W.A. No. 336 of 1976 by the State. We shall be dealing with those appeals and the principle of the decision separately.

5. Proceeding to examine the meaning of the expression "frozen meat" in the commercial sense of the term, our attention has been called to various treatises and authorities which have expounded the concept and the technique of freezing meat. In Encyclopedia Americana, Vol. 7, page 221, occurs the following:

Cold storage is the storage of perishable products, especially food, at temperatures sufficiently low to require refrigeration. Cold storage is also used to preserve furs, photographic film and drugs. It is customarily used for keeping food products in unfrozen condition in the range of 32? to 45?F (0? to 7.2?C). Although water freezes at 32?F, many products have sugars or salts in their cells and, thus, will not freeze at a few degrees below 32?F. Therefore, many cold storage rooms can be maintained at 28? to 31?F (--2.2? to 0.6?C) to store unfrozen products. Freezer cold storage refers to holding products in a frozen state, commonly in the range of 10? to --20?F (--12 to 29?C). Freezers should be operated at --10? to --15?F (--23? to --26?C) for good storage life of frozen foods and reasonable operating cost.

Food storage conditions.--The temperature range employed depends upon the food, the length of time it will be stored, and the acceptable diminution in quality resulting from storage. Apples can be stored from 2 to 7 months, with temperatures held in the range of 30? to 32?F (--1.1? to 0?C). Beef can be stored for 1 to 6 weeks in the range of 32? to 34?F (0? to 1.1 ?C) or for 9 to 12 months if frozen and held between --10? and 0?F (--23? to --18?C). Eggs, in their shells, can be kept 6 to 9 months at temperatures of 29? to 31?F (--1.6? to --0.6?C). Fish can be held for 5 to 15 days at 31? to 33?F (--1.7? to 0.6?C) or for 8 to 10 months when frozen and held below 0?F (--18?C). Lettuce at 32?F (0?C) can be held 3 to 4 weeks, milk at 33?F (0.6?C) for 7 days, and ice-cream at --15?F (--26?C) for 6 to 8 months. Bananas require special treatment. They are picked unripe and are allowed to ripen slowly at temperatures of slightly above 55?F (13?C).

Cold storage warehouses: The cold storage plants of large distribution systems have low-temperature rooms for freezer storage and higher-temperature rooms for non-frozen storage. The storage rooms often run to 25 feet (7.6 metres) in height. The walls, floor and ceiling of the freezer rooms are provided with heavy insulation. Fans are used to direct chilled air around the product and provisions are made to minimise the desiccation, or drying, of the food.

In the treatise on Food Microbiology by W.C. Frazier, Professor Emeritus of Bacteriology, University of Wisconsin, the following is stated:

Freezing of foods.--The rate of freezing of foods depends upon a number of factors, such as the method employed, the temperature, circulation of air or refrigerant, size and shape of package, kind of food, etc. Sharp freezing usually refers to freezing in air with only natural air circulation or at best with electric fans. The temperature is usually --10?F (--23.3?C) or lower, but may vary from 5 to -- 20?F (--15 to --29?C), and freezing may take from 3 to 72 hours. This sometimes is termed slow freezing to contrast it to quick freezing, in which the food is frozen in a relatively short time. Quick freezing is defined variously, but, in general, implies a freezing time of 30 minutes or less, and usually the freezing of small packages or units of food. Quick freezing is accomplished by one of the three general methods: (1) by direct immersion of the food or the packaged food in a refrigerant, as is done in the freezing of fish in brine or of berries in special sirups; (2) by indirect contact with the refrigerant, where the food or package is in contact with the passage through which the refrigerant at 0 to -- 50?F (--17.8 to --45.6?C) flows; or (3) by air-blast freezing, where frigid air at 0 to --30?F (--17.8 to --34.4?C) is blown across the materials being frozen. (page 116)

At page 111, reference is made to the three stages involved in low-temperature storage, namely, cooling, chilling and freezing. We quote the relevant passage:

Temperatures employed in low-temperature storage.--Many of the terms used in connection with low-temperature storage are applied rather loosely: for example, the term ''cold storage'', as commonly used, might refer to the use of temperatures above or below freezing, although the application of mechanical refrigeration is implied. For this reason, the more exact British terminology is used here in the division of low-temperature storage into three types: (1) common, or cellar storage, (2) chilling, and (3) cold storage, or freezing." In respect of freezing the following is stated at page 115: "Freezing (cold storage).--The storage of foods in the frozen condition has been an important preservative method for centuries where outdoor freezing temperatures were available. With the development of mechanical refrigeration and of the quick-freezing processes, the frozen-food industry has expanded rapidly. Even in the home, the freezing of foods has become extensive; now that home deep-freezers are readily available. Under the usual conditions of storage of frozen foods microbial growth is prevented entirely and the action of food enzymes is greatly retarded. The lower the storage temperature the slower will be any chemical or enzymatic reactions, but most of them will continue slowly at any temperature now used in storage. Therefore, it is a common practice to inactivate enzymes of vegetables by scalding or blanching prior to freezing when practicable.

6. In the "Freezing Preservation of Foods" by Donald K. Tressler and Clifford F. Evers, Vol. I, page 80, occurs the following:

Since its inception in 1861, sharp freezing has been the most popular and widely used method of freezing. It has been of tremendous value to the world, and the industry in the United States has grown to huge proportions. In general, it consists of placing products to be frozen in a very cold room, maintained at temperatures varying from --5 to --20?F. Although the air within the room will circulate by convection, usually no provisions are made for forced circulation. The relatively still air is a poor conductor of heat and foods placed in even these low temperatures are frozen comparatively slowly, many hours or even days being required before the products are completely solidified.

Since the first products to be sharp frozen were meats, little or no provisions were made to protect them from evaporation and consequent desiccation during freezing and storage. The freezing of fish followed, and these, being smaller items, were glazed immediately after freezing. A considerable amount of boxed poultry has been and still is frozen by sharp freezing methods, although in present-day practice the freezer rooms are maintained at --10?F to --20?F or even lower in contrast to the formerly used 0?F temperature.

7. In the book on "Fish curing and processing" by Mir Publishers, Moscow (1969), at page 149, we get the following under the heading "production of frozen fish":

Perishable food products may be kept much longer by freezing, provided that two conditions are observed: (a) the product must be frozen to as low a temperature as possible; and (b) most of the fluid in the product must be converted into ice. The second factor is particularly significant for fish, since the fluid in it constitutes a solvent for many organic and mineral substances and favours the growth of micro-organisms and the development of biochemical reactions.

Freezing is a process by which the temperature of the raw fish is reduced from the initial level to between--16?C and--18?C and most of the fluid in it converted to ice.

In Random House Dictionary, the meaning of the terms "freeze" and "frozen" bring out the concepts expounded by the treatises noticed earlier. In Encyclopaedia Britannica, Vol. 15, at page 567, we get the following passage:

Cold-storage warehouses:--Cold-storage warehouses usually have rooms that store frozen food and others in which the food is only chilled. The storage life of non-frozen products is improved by keeping the temperature as close to 32?F (0?C) as possible without actually freezing. Some vegetable products can tolerate temperatures slightly below 32?F and not suffer damage; but others, such as lettuce, are extremely sensitive to freezing and must always be kept slightly above 32?F. Bananas must not be chilled below 55?F (13?C), or the ripening process stops. Cold-storage warehouses usually have a central refrigeration plant of the vapour-compression type in which the evaporator cools a salt or glycol brine; the brine is pumped to the various storage rooms, where it flows through coils to hold the room at a required temperature. Frozen-food rooms operate frequently in the range of --20? to 0?F (--29? to --18?C). It is more desirable, however, to maintain a temperature with a minimum of variation.

8. In the light of the position expounded by the treatises above referred to, it appears to us that "frozen meat" as understood in the commercial sense or as known to the world of trade and commerce, is meat frozen by keeping it at very low temperature much below the freezing point of water under conditions dealt with in the treatises. Merely because meat is kept for a short period of time in a refrigerator or a cold freezer or a cooler at the temperature at which water forms into ice, we do not think we can regard it as "frozen meat" in the commercially understood sense of the term. There is an interesting disquisition on the concept

of "frozen meat" in William Warner''s Sons and Company v. Midland Railway [1918] A.C. 616 (H.L.). Lord Finlay, L. C, said:

My Lords, the question in this case is whether salmon from Alaska and from British Columbia to this country is ''fresh fish'' for the purpose of a rate to be charged for railway carriage, and, if not, under what class it falls for the purpose of such rate.

The salmon is preserved from putrefaction by being frozen hard when taken. It is then elaborately packed and treated in the manner described in the judgment of the county court judge of Leicestershire before whom this case was first brought. When the fish reaches England it is as hard as a piece of wood, and, as the learned county court judge said, ''It is some weeks old, and, but for the preventive process which I have mentioned, decomposition would long before have set in.''

All the judges before whom the case has been--the county court judge, the Divisional Court (Lush and Bailhache, JJ.), and the Court of Appeal (Swinfen Eady, L.J., Bankes, L.J., and Bray, J.) have held that the salmon when it is so reaches England is not ''fresh fish'' for the purpose of rates for railway carriage. In my opinion, they were clearly right in so holding. Fish which has been preserved from decay by artificial means for months or years is not fresh in any ordinary sense of the term. It may be as good as when it came out of the water, but, however this may be, it is not fresh. It owes its good condition to the process to which it has been subjected. The word ''fresh'' is no doubt often used (as was pointed out by Mr. Talbot in his interesting argument) to denote meat, which, owing to extreme cold, has kept in condition for very long periods of time. But that is not the sense in which the word is used in the Midland Railway Company (Rates and Charges) Order Confirmation Act, 1891, as I read it, and I do not think that, in the ordinary use of language, meat or fish, which had been preserved from decay for so long a period as here by the artificial application of cold would be spoken of as ''fresh meat'' or ''fresh fish''.

Viscount Haldane said:

My Lords, the contention of the respondent-railway company is that the word ''fresh'' in the context which I have quoted is wide enough to include the case of fish which were fresh when killed and had remained free from decomposition because of the freezing process and the attendant packing and cold storage, and in that sense were fresh when ultimately received by the railway company for carriage. It makes no difference, so it is argued, to the title to regard the fish as fresh that a long time, in which under ordinary circumstances they would have become decomposed, has elapsed before they are brought for transit by rail in England. For they have remained as they were when caught. For myself I cannot regard this contention as sustainable. I think that it was quite natural that the railway company should mean to obtain a higher rate for carrying fish which, being fresh in a different and ordinary sense, would perish if there was delay in transit. They might well claim a higher charge in the classification which the statute has sanctioned for fresh fish of this kind including salmon. But in the case of the salmon in question it does not appear that the unusually rapid carriage is of importance or is demanded. The delay is of little moment. The real reason for accepting a lower rate for ''preserves'' which include fish is surely that there is no occasion to be in a hurry with fish that will not perish. In their own general classification in detail as advertised for the guidance of traders they specify ''fish preserved'' as to be carried cheaply, and refer for the meaning of the item to the ''preserves,'' inclusive of fish in boxes, described in another part of their list. I think that in so doing they show that they mean to include under ''preserves'' fish preserved from decomposition and packed in boxes, whether or not the fish are in a state resembling that in which they came out of the water.

Lord Parmoor said:

The appellants are importers and dealers in frozen fish as shipped from Alaska and British Columbia. Such fish, before being dispatched from Alaska and British Columbia, is frozen hard, and each fish, or piece of fish, is wrapped first in two pieces of grease-proof paper and then in brown paper. Each parcel of fish is then put into a thick paper bag and is packed with other similar parcels in a strong wooden box or case lined inside with bituminous card. When the fish reaches the defendants at Leicester it is still frozen and hard like wood and when struck gives a ringing note. The fish is necessarily some weeks old when it reaches Liverpool or other port for unloading, but it is frozen hard and thus preserved from decomposition....

In my opinion, frozen salmon sent from Alaska or British Columbia and packed as described would not ordinarily be designated as fresh fish. Mr. Talbot, however, argued that, in the context, ''fresh fish'' was used in contrast to fish dried or thoroughly salted or dried in class 1, or fish partially cured, smoked, or dried in class 2, and that as the classification should, prima facie, be regarded as inclusive, the context required that the frozen salmon should be regarded as fresh fish. I agree in the statement that the classification should prima facie be regarded as inclusive, but the fallacy of Mr. Talbot''s argument is that he seeks to place a narrow interpretation upon the words ''Preserves (Fish, Fruit and Provisions) in casks, boxes or cases'' in class 2 of the classification, an interpretation which has been adopted by the Court of Appeal. This interpretation is based on a contrast between the words ''preserves'' and ''preserved'', and it is contended that the word ''preserves'' is not applicable to preserved fish, but only to preserves of fish--that is to say, to an article that has gone through some treatment or process which has to some extent changed its original character. My Lords, I see no reason for this limitation. The guiding words of the classification refer primarily to the method of packing in casks, boxes, or cases which determine convenience for handling and dispatch. Where preserves are packed in crates or baskets, they are placed under class 3. Your Lordships were referred to the general railway classification of goods, which strongly supports the contention of the appellants. Under the heading ''fish'' appears the entry ''Fish, Preserved--(see Preserves)'', and under ''Preserves'' the fish may be either in glass or earthenware jars or bottles packed in casks, or directly packed in casks or boxes, again implying that the distinction is not so much in the method of preservation as in the method of packing. In my opinion the frozen salmon comes within the words ''Preserves (fish) in casks or boxes'' and are classified to be charged under class 2. There is no ground for adopting the narrow interpretation which would exclude from this class an article which has been preserved without undergoing some change in its original character.

In these tax revision cases, the counsel had formulated the following questions of law in the memorandum of revisions:

(a) Whether, on the facts and in the circumstances of the case, the Tribunal''s decision that the meat sold by the petitioner is ''frozen meat'' is correct ?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal erred in disallowing the petition filed by the petitioner to adduce additional evidence before the Tribunal ?

(c) Whether the decision of this Court reported in 38 S.T.C. 217 Vimala Cold Storage v. State of Kerala referred to in the order of the Tribunal holding that meat kept in cold storage where the temperature would come to a minimum of 0?C would come within the expression ''frozen meat'' is wrong and requires reconsideration ?

(d) Is there any evidence in the case to establish that the meat sold by the petitioner is frozen meat or that the cold storage of the petitioner is a freezer cold storage ?

9. We answer the questions as follows: Question (a)--in the negative, i.e., in favour of the assessee and against the revenue; question (b)--not answered in view of our conclusion; question (c)--in the affirmative, i.e., in favour of the assessee and against the revenue; and question (d)--not answered, in view of our conclusion.

10. In the result, we allow these tax revision cases, and reverse the order of the Tribunal, but in the circumstances without costs.

W.A. Nos. 107 and 336 of 1976

In W.A. No. 107 of 1976, the assessee is the appellant; and in W.A. No. 336 of 1976, the State is the appellant. Both arise out of the same proceedings and the same order of the Tribunal and the same judgment of a learned Judge of this Court. The appeals are directed against the decision of Chandrasekhara Menon, J., in Vimala Cold Storage v. State of Kerala 1976 KLT 624. The assessee is a registered dealer under the Sales Tax Act and holds a licence from the Central Government for running a cold storage. The temperature at the cold storage is maintained at a level not less than 0?C by means of a cooling machine. The assessments in 1971-72 and 1973-74 were originally completed u/s 17 of the Act allowing exemption on the turnover of frozen meat. By exhibits P1(a) to P1(d) notices dated 18th November, 1974, the assessee was asked to show cause for recalling the exemption thus granted and bringing to tax the turnover in respect of "frozen meat". For the year 1974-75, exhibit Pl(e) notice was issued, to the effect that in his provisional assessment for that year, the turnover of frozen meat was wrongly exempted, proposing to revise his provisional assessment for that year and inviting objections. Exhibit P2 is a copy of the objection filed by the assessee to the notice, in respect of the assessment year 1973-74. To quash these notices, the writ petition was filed. Pending O.P. assessment orders, exhibits P5 to P5(e), were issued. By the amendment carried out in the original petition, these orders were sought to be quashed.

2. The learned Judge allowed the writ petition in part, holding that the assessee was entitled to exemption in respect of "fresh fish" kept in cold storage, but not in respect of "frozen meat" also kept in cold storage.

3. The appellant''s counsel in W.A. No. 107 of 1976 associated himself with the argument of the revision petitioners in Tax Revision Cases Nos. 39 to 41 of 1978. Besides the cases cited by the counsel for the revision petitioners in the tax revision cases, in support of the interpretation of the terms in the commercial sense, counsel also placed reliance on the decisions of the Supreme Court in Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another, at 2441, para 3, Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, at 170, para 6 and Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, at 1456, para 4. Our attention was also called to Ashrae: Guide and Data Book 1962, at page 435, Chapter 40--"Frozen Fishery Products", where we get the following:

At temperatures below freezing, bacterial activity as a cause of spoilage is somewhat limited. However, certain chemical and physical changes do occur which may eventually cause deterioration of the product. The magnitude of these changes and their effect on product quality depends upon the initial quality of the fish being frozen, the composition of the fish, the freezing method, and the frozen storage environment or combination thereof. These considerations are reflected in the four principal phases of frozen fish production and handling; namely, packaging, freezing, cold storage and transportation, described in this chapter.

At page 440, under the heading of "Storage of Frozen Fish" is to be found the following:

Fishery products may undergo undesirable changes in flavor, odor, appearance, and texture during frozen storage. These changes are attributable to dehydration (moisture loss from the fish), oxidation of the oils or pigments and enzyme activity in the flesh. The rate at which these changes occur depends on (1) the composition of the particular species of fish; (2) the level and constancy of storage room temperature and humidity; and (3) the protection afforded to the product through the use of suitable packaging materials and glazing compounds.

At page 485 we get a table giving the storage requirements and properties of perishable products. In regard to fish, the storage temperature for fresh fish is indicated as 33 to 35?F; for frozen fish, the temperature range is --10 to 0?F. This brings out again, clearly, the concept of "freezing" and of "frozen fish" as expounded in the treatises noticed while dealing with T.R.C. Nos. 39 to 41 of 1978. Before finally pronouncing, we shall deal with the appeal preferred by the State.

W.A. No. 336 of 1976

The State''s appeal is against the exemption granted by the Tribunal in respect of the turnover of "fresh fish". The contention of the learned Government Pleader for the appellant is that fish kept in cold storage or in refrigerator is not "fresh fish" and would not therefore be eligible to the exemption covered by entry 23 of the exemption notification. The learned Government Pleader argued that, u/s 5 of the Sales Tax Act, liability for sales tax is on the turnover of the sales and it is immaterial whether the dealer has not collected sales tax or cannot recover the same from the customers. In support of the proposition, he placed reliance on Rai Ramkrishna and Others Vs. The State of Bihar, . The proposition is well-settled and need not detain us long. But that does not carry the matter any far.

4. It was contended that the expression "frozen meat" and "fresh fish" must be understood as in common parlance, and not in any commercial sense. In the light of the authorities cited and which we have noticed already, we cannot accept this position. It was further contended that, even accepting the commercial sense, a refrigerator consists of a freezer and a cooling plant and that meat kept for preservation in the freezer or cooling plant must be regarded as "frozen meat"; and fish kept therein must be regarded as other than "fresh fish". In the light of the treatises which have discussed the process and the techniques of freezing of fish and meat, we are unable to accept this contention of the learned Government Pleader. Our attention was called to Volume 15 of Encyclopaedia Britannica, page 563. Under the title "Refrigeration equipment", we get the following:

Foodstuffs deteriorate less rapidly as the storage temperature is lowered; and, at temperatures below 40?F (4?C), many food products can be kept for days or even weeks without serious loss in quality and appearance. If perishable products must be kept for long periods, it may be possible to freeze them with little loss in character and maintain their quality for periods of six months or longer. The most important causes of food deterioration are the destructive action of bacteria, yeast, and molds, the growth of which is inhibited by low temperature. Refrigeration has made it possible for such meat-producing nations as Australia and Argentina to export much of their output to Britain and Western Europe, usually in frozen form.

At page 567, under the heading "Household refrigerators and freezers", we get the following:

The evaporators of most units are also equipped to freeze water into ice cubes. Many domestic units also provide, in the evaporator section, a low-temperature storage compartment for holding foods in frozen condition, with the temperature controlled between --10? and 20?F (--23? and --7?C).

Domestic home freezers are usually designed to maintain a temperature range of--10? to 10?F (--23? to --12?C), a range in which foodstuffs remain in a frozen state and can be kept for extended periods. The home freezer usually employs a vapour-compression system, with a compressor delivering the refrigerant to an air-cooled condenser.

5. In the light of the treatises and authorities rioted and discussed herein and in T.R.C. Nos. 39 to 41 of 1978, we allow W.A. No. 107 of 1976 and hold that the turnover from meat kept in refrigerator or cold storage in this case is not "frozen meat" and is not assessable to tax; we dismiss W.A. No. 336 of 1976 and hold that the turnover from fish kept in refrigerator is exempt from tax as "fresh fish" under the notification noticed. There will be no order as to costs in these appeals.

O.P. Nos. 2185 of 1974, 3892 and 6035 of 1975 and 2006 and 5087 of 1976-E and 4039 of 1977-L

These writ petitions assail the provisional assessments. Exhibit P1 is the provisional assessment order for 1970-71. Exemption was claimed in respect of the turnover from frozen meat and fish kept in cold storage. The final assessments are pending in these cases and the counter-affidavit has pointed out that so far no assessment orders have been passed against the petitioners and that the questions raised are purely hypothetical and academic at this stage. The final assessments are pending and the counter-affidavit has assured that they will be passed according to law. As we have laid down the position in the other cases, we do not see any ground to interfere in these writ petitions at this stage. We dismiss these writ petitions with no order as to costs.