

(1975) 03 KL CK 0006
In the High Court Of Kerala
Case No : T.R.C. No. 9 of 1973

Coastal Food Packers

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-03-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 286, 301

Citation : (1975) 36 STC 72

Hon'ble Judges : P. Govindan Nair, C.J;V. Khalid, J

Bench : Division Bench

Advocate : Chakkapan Kalliath, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—The questions of law raised for decision by this court in this tax revision case are the following:

(1) Whether, on the facts and in the circumstances of the case, the levy of purchase tax on "prawns" under item 65A of Schedule I of the Kerala General Sales Tax Act is void and unconstitutional on the ground that it infringes the petitioner's fundamental right under articles 14 19 and 301 of the Constitution of India.

(2) Whether, on the facts and in the circumstances of the case, the exemption can be claimed on the purchase of canned shrimps since the commodity purchased was not prawns, mentioned in items 69 and 65A of the Kerala General Sales Tax Act, but should be treated as "foodstuffs sold in sealed containers" mentioned in item 43 of the schedule.

(3) Whether, on the facts and in the circumstances of the case, the canned prawns can be treated as foodstuff since it is cooked before it is filled in tins.

(4) Whether, on the facts and in the circumstances of the case, the jurisdiction

under the Kerala General Sales Tax Act extends to the levy of purchase tax on prawns at multi-point.

(5) Whether, on the facts and in the circumstances of the case, the levy and collection of tax on the petitioner's purchase of prawns and canned shrimps is authorised by law.

(6) Whether, on the facts and in the circumstances of the case, the petitioner's purchase of prawns is in the course of export and thereby the levy of tax on the petitioner's total turnover of purchase of prawns is exempt under Article 286(b) of the Constitution.

(7) Whether, on the facts and in the circumstances of the case, the artificial apportionment of the turnover in the ratio of 5 : 7 for the purpose of levying tax at 2 per cent and 5 per cent respectively is legal or not, and whether it is based upon actuals and whether it is arbitrary and capricious.

2. The petitioner is a dealer in prawns. He had effected purchases of canned shrimps amounting to Rs. 90,931.02 during the relevant year, viz., 1967-68, from other dealers in prawns. The petitioner claims exemption on the above purchases contending that the commodity purchased is not prawns mentioned in item 65A of the First Schedule of the Kerala General Sales Tax Act, 1963, for short the Act, but is "foodstuffs sold in sealed containers" mentioned in item 43 of the First Schedule. The petitioner contended that raw prawns undergo a series of processing before they are canned and they convert themselves into a different commodity and therefore are different from prawns mentioned in item 65A of the First Schedule. This contention was repelled by the assessing authority, the Appellate Assistant Commissioner and the Sales Tax Appellate Tribunal, Trivandrum. Originally, the assessing authority had made an addition of 20 per cent to the conceded turnover on the ground of a possible suppression. This was confirmed by the Appellate Assistant Commissioner. But the Tribunal did not find sufficient justification for this addition. No other point was raised before the Tribunal. Therefore, out of the questions enumerated above, the only question that needs consideration by us is, in which entry the commodity in question falls. The other questions are outside the scope of Section 41 of the Act.

3. The three entries with which we are concerned here are item 43, which reads as "foodstuffs sold in sealed containers", which was deleted with effect from 1st September, 1967, the levy being at the point of first sale in the State by a dealer who is liable to tax at 5 per cent ; item 65A, which reads "prawns, lobsters, frogs and froglegs", which was introduced with effect from 1st September, 1967, the point of levy being on the point of the last purchase in the State by a dealer who is liable to tax at 5 per cent ; and item 69, which reads as "prawns and lobsters", which was deleted with effect from 1st September, 1967, the point of levy being on the point of last purchase in the State by a dealer who is liable to tax at 2 per cent. What has been done in this case is that the commodity in question was assessed at 2 per cent on the point of last purchase in the State up to 31st

August, 1967, on which date item No. 69 was deleted, and at 5 per cent at the last point of purchase from 1st September, 1967, when item 65A was introduced.

4. The contention of the petitioner's counsel is that prawns in sealed containers, with which he deals, are foodstuff coming within item 43 since it is ready for the table as, according to him, prawns mentioned in item 65A and item 69 are raw prawns. We find it difficult to accept this contention. This argument would have prevailed with us if the schedule did not contain item 65A and item 69. It cannot be disputed that prawns put in sealed containers is foodstuff and they continue to be prawns. The word "foodstuff" is more general than the word prawns. Further, within the word "foodstuff" can be included all types of edible items. Standing alone the word is wide enough to include prawns also; It is a generally accepted principle of interpretation of statutes that when a statute contains a general word and a particular and specific word to describe a thing, the latter should exclude the former. Foodstuff is a generic term which can take within its ambit all that is edible. The Oxford English Dictionary defines the word "foodstuff" as follows :

That which is taken into the system to maintain life and growth and to supply waste of tissue.

In Webster's International Dictionary the word "food" is defined as:

Nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital processes.

The same dictionary gives a special definition for legal purposes as :

As used in laws prohibiting adulteration, etc., "food" is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments, etc., and Often excluding drugs and natural water.

The word "foodstuff" is defined in that dictionary as :

1. Anything used as food;
2. Any substance of food value as protein, fat, etc., entering into the composition of a food.

5. The Supreme Court had to consider the expression "foodstuff" in The State of Bombay Vs. Virkumar Gulabchand Shah, , in another context. There the Supreme Court was considering the violation of Clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with Section 2 (a) of the Essential Supplies (Temporary Powers) Act, 1946, to find out whether turmeric can be included within the expression "foodstuff". We extract below paragraph 10 in the judgment to highlight the view that we take that in dealing with a case like this, the problem posed has to be viewed in relation to the context:

Much learned judicial thought has been expended upon this problem-what is and what is not food and what is and what is not a foodstuff; and the only conclusion I can draw from a careful consideration of all the available material is that the term "foodstuff is ambiguous. In one sense, it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context....

6. If the interpretation that the petitioner seeks to put in this case is to be accepted, then very many items appearing in the schedule will have to be brought within item No. 43. By way of illustration, item 36 ?-manufactured tea, item 37-coffee, item 57-foodgrains, item 58- pepper, item 59-green and dried ginger, item 59A-sugarcane, etc., will come within the definition of the term "foodstuff". This will be doing violence to the statute which has enumerated various items particularly, although they can be included in the generic expression "foodstuff". We have no hesitation to hold that the taxation authorities were right in repelling the contention that the commodity in question will fall within entry 43 of the First Schedule.

7. This court had to deal with a similar contention in Deputy Commissioner of Agricultural Income Tax and Sales Tax v. E.V. Industries [1974] 33 S.T.C. 308. There, a Division Bench of this Court, to which one of us was a party, was considering the term "furniture" made of iron and steel occurring in item 17 of the First Schedule of the Act. There, the controversy was that the expression "furniture made of iron and steel" in the popular sense of those words meant furniture used for household purposes and not for hospital purposes. The furniture in question related to furniture used for hospital. In paragraph 6 of the judgment, the court observed :

It is significant that the word "furniture" is not qualified in item 17 of the First Schedule to the Act by the words "household" or in any other way. Further we consider that the words must be understood also in the light and in the context of the words preceding "furniture made of iron and steel" in that item. Those words are "safes" and "almirahs" and we conceive that the words "made of iron and steel" will apply to "safes" and "almirahs" as well. So safes and almirahs are within the entry. It is well-known that safes and almirahs made of iron and steel are commonly in use in offices, at any rate, more in offices than in dwelling houses. There will, therefore, be no justification in limiting the item in the schedule to household furniture alone. Context plays an important part....

"It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collocation, and the object of such words relating to such a matter,

and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances" : Rein v. Lane and Ors. 36 L.J.Q.B. 81.

8. It cannot be disputed that in fiscal statutes words used must be understood according to the popular sense. The dictionary meaning of the word need not necessarily be applied invariably. These principles cannot be seriously controverted and, viewed thus, it cannot be disputed that the expression "prawns" has a special popular meaning and it cannot, without straining the language, be included in the expression "foodstuff".

9. In *Ilatlam Bone & Fertilizer Co. v. State of Madhya Pradesh* [1975] 35 S.T.C. 132, a Full Bench of the Madhya Pradesh High Court had to consider two items in the Madhya Pradesh General Sales Tax Act, 1958 : "fertilizer" and "powdered bones". It was contended that bone-meal is fertilizer in Schedule I and sale of bone-meal is exempt from taxation u/s 10, since fertilizers are exempt from taxation. In paragraph 7, the court observed :

The word "fertilizer" is more general than the expression "powdered bones". Within the word "fertilizer" comes all types of manures, natural and artificial, and standing alone the word is wide enough to include powdered bones. But as "powdered bones" have been separately mentioned in Schedules II and III showing clear intention that their sales are liable to tax, the word "fertilizer" in entry No. 22 in Schedule I must be construed to mean manures other than powdered bones. It is in this way that effect can be given to entries of "powdered bones" in Schedules II and III as also to the entry of "fertilizer" in Schedule I. It is true that a more careful draftsman would have excluded powdered bones from the entry of fertilizer just as oil-cakes have been excluded. But even in the absence of any specific exclusion of powdered bones from the entry of fertilizer, we reach the same result by applying the rule of harmonious construction. The argument that by so restricting the meaning of fertilizer we will be reading some words in entry No. 22 of Schedule I which are not there and this cannot be done must be rejected. Whenever the scope of a general word or provision is restricted because of some specific provision made elsewhere in the Act, by applying the rule of harmonious construction, it may appear as if the court has read an exception in the general provision not specifically made in it by the legislature. But this is not really so. The exception is made by the legislature itself in enacting the specific provision and all that the court does is to read the general and the specific provisions together so as to avoid any apparent conflict and to give meaning to both the provisions.

The above observation is apposite to the case on hand and we are in respectful agreement with it. As in that case, here also we have the general expression "foodstuff" and the special expression "prawns". The two have to co-exist and a harmonious construction is possible only if we allow "prawns" to exist independent of foodstuff in item 43.

10. In *Joseph v. State of Kerala* [1967] 20 S.T.C. 261, this court considered whether prawn pulp came within the expression "prawns". Menon, C. J., held that prawns after drying are still prawns and would therefore come within the expression "prawns". This decision of a Division Bench of this Court, with which we respectfully agree, is directly in point. The court held in that case that prawn pulp was nothing other than prawn cured by sun-drying, the traditional method for preservation adopted in earlier days. It is observed there that with the adoption of modern methods of preservation and quick-freezing a new chapter has opened in the history of Indian seafood industry. That is what has happened in this case also. Instead of the old method, modern methods have been adopted and raw prawns have been canned and kept in sealed containers ready for the table. Except for canning, the commodity has kept its character.

We therefore hold that the taxation authorities were right in rejecting the contentions of the petitioner. In the result, we dismiss the tax revision case. No costs.