(1980) 06 CAL CK 0015

In the Calcutta High Court

Case No : Income-tax Reference No. 72 of 1976

Commissioner of Income Tax APPELLANT

Vs

Radha Nagar Cold Storage (P.) Ltd. RESPONDENT

Date of Decision : 04-06-1980

Acts Referred:

Finance Act, 1968 — Section 2(6)(c)
Finance Act, 1969 — Section 2(6)(d)

Citation : (1980) 18 CTR 166 : (1980) 126 ITR 66

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : Ajit Sengupta and Sunil Mukherjee, for the Appellant;D. Pal and A.K. Roy Chowdhury, for the Respondent

Judgement

This Judgment has been overruled by : Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, AIR 1991 SC 2125 : (1991) 72 CompCas 723 : (1991) 3 CompLJ 131 : (1991) 98 CTR 165 : (1991) 191 ITR 656 : (1991) 3 JT 449 : (1991) 2 SCALE 346 : (1991) 4 SCC 239 : (1991) 3 SCR 589

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee-company was engaged in the processing of goods and was accordingly an industrial company within the meaning of Section 2(6)(d) of the Finance Act, 1968, or u/s 2(6)(c) of the Finance Act, 1969 ?"

2. The assessee-company has been engaged in the business of running a cold storage plant. Its income consists of charges collected from the growers of the potato for allowing them to store their products inside the assessee''s plant in order to preserve these from perishing and keeping them in marketable condition. In this reference, we are concerned with the assessment years

1968-69 and 1969-70. For these two assessment years, the ITO had levied tax at 65% on the basis that the assessee was not an industrial company within the meaning of the relevant Finance Acts.

3. The assessee preferred appeals before the AAC. The AAC held that the assessee-company operated a cold storage plant which was used for conservation of perishable goods deposited by the customers. Such activity, according to the AAC, fell within the meaning of processing of goods. The AAC also sought support for his conclusion from the reference to Section 80J(1) and Section 80J(4) of the I.T. Act, 1961. For the aforesaid reasons, the AAC directed the ITO to treat the assessee-company as an industrial company engaged in the processing of goods and charge Income Tax at the rate of 55%.

4. Being aggrieved by the orders of the AAC, the revenue preferred appeals before the Tribunal. The Tribunal was unable to accept the point made by the AAC that support could be had from the language used in Section 80J of the I.T. Act, 1961, in construing the provisions of the Finance Acts concerned. According to the Tribunal, it was not proper, when the relevant Finance Act contains its own definition, to seek support from other Acts even though the Legislature had not tried to define the expression "processing" as such. After having held as aforesaid, the Tribunal considered the question whether the assessee-company was an industrial company. The Tribunal negatived the contention urged on behalf of the assessee that the assessee-company was also a company which came within the definition of industrial company because it generated power in the act of cold storage. The Tribunal, however, was of the view that preventing changes by storing goods in the cold storage the assessee-company was engaged in the activity of processing and as such came within the definition of an industrial company under the relevant Finance Acts. The Tribunal, therefore, on this ground dismissed the revenue''s appeal before the Tribunal. Upon this, the Tribunal has referred to this court the question as mentioned hereinbefore.

5. Before we consider the question further it may be necessary to refer to the definition of the relevant Finance Act, namely, the Finance Act, 1968. Section 2(6), Clause (d), defined "industrial company" as follows :

" ''Industrial company'' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

Explanation.--For the purposes of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any deduction under Chapter VI-A of the Income Tax Act) is not less than fifty-one per cent. of such total income."

6. Similar definition was there in the Finance Act, 1969. We need not set out that definition. We are not concerned, in view of the arguments advanced before us, with the question whether the assessee came within the ambit of the Explanation to Section 2(6)(d) of the Finance Act, 1968. The short question is, whether the assessee-company can be said to be a company which is "mainly engaged in manufacture or processing of goods". In this connection, it is important to bear in mind that the Legislature has advisedly used different expressions, namely, manufacture, processing or mining. Therefore, it is apparent that the Legislature was not treating the manufacture of goods as the same as processing of goods. This difference must be kept in mind. We are also not concerned in this reference with the construction of the expression "manufacture". It is well settled by several decisions that manufacture implies a transformation or an alteration of goods. In this light, it will be relevant to consider the meaning of cold storage. The expression "cold storage" has been defined in Webster''s Third New International Dictionary (unabridged volume 1966) at page 443 as follows: "Storage especially of food in a place kept cold often by refrigeration for preservation purposes."

7. The cold storage, as is normally understood, is a process of mechanical refrigeration of absorbing undesirable heat from one substance and transferring this heat to the atmosphere through a cooling medium. This transfer of heat is possible and practical in a mechanical refrigeration system, because commercial refrigerants are capable of absorbing heat and holding it out to gases at very low pressure and temperatures and of giving up this heat as the gases condense to liquids at higher pressures and tempera- hires. The expression "process" has been defined both literally as well as judicially. In the case of Kilmarnock Equitable Co-operative Society Ltd. v. IRC reported in [1966] 42 TC 675, the court was considering the following expression : "Building or structure in use for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process" appearing in Section 271(1)(c) of the I.T. Act, 1952 (U.K.). There, Lord President Clyde observed (p. 679) :

"That processing of goods as contemplated by that section means an activity which falls short of manufacture. Clearly this provision contemplates that an industrial building may connote something other than a place where goods or materials are manufactured I it may include within the category of an industrial building a place where goods or materials are subjected to a process which falls short of the manufacturing of a new article."

8. Lord Guthrie observed at page 681 of the report as follows :

"The success of the appellants'' contention on the first point in this case depends on whether their building is in use for the purposes of a trade which consists in the subjection of goods or materials to any process. ''Process'' is a word which has various meanings, some wider than others. I agree with the Lord Advocate that in Section 271(1)(c) it does not have the widest significance of ''anything done to the goods or materials''."

9. Lord Migdale has observed at page 683 of the report as follows :

" ''Process'' means some course of operations."

10. Similarly, Lord Cameron observed at page 685 of the report:

"The word ''process'' in its ordinary connotation seems to me to mean no more than the application of a method of manufacture or adaptation of goods or materials towards a particular use, purpose or end, while ''to subject'' means no more than to treat in some manner or other."

11. The expression "processing or process" has been defined in the Oxford Dictionary, 1962 Edn. The word process is said to mean, inter alia, "treat (material) preserve (food) ". Webster''s New International Dictionary, 1967 Edn., gives the meaning of the word "process" as "handling or other treatment designed to effect a particular result", to put through a special process, e.g., milk by pasteurising it. In Words and Phrases Legally Defined, Vol. 4, the meaning of processing is given as "processing (in relation to fish) includes preserving or preparing fish or producing any substance or article from fish by any method for human or animal consumption". Similarly, in Encyclopaedia Britannica, Vol. 9, pp. 543 and 545, various preservation processes for food have been described as follows :

"There are several major processes for food preservation. The growth of micro-organisms (and enzyme activity) in foods may be retarded by cooling or almost entirely prevented by freezing. Since water is necessary for the growth of micro-organisms dried (dehydrated) foods will be kept for long periods. Or the enzymes and micro-organisms present, in foods may be completely or almost completely destroyed by the application of heat as a thermal processing (canning).

The only method by which fresh foods may be preserved for a considerable period in the raw state is by subjecting them to as low a temperature as possible without causing damage by freezing. Storage at temperature above freezing, in the neighbourhood of 35? F/2? C is known as cold storage. Storage at such temperature makes possible the holding in good condition of many fresh foods for considerable periods and their shipment to distant markets to consumers."

12. The act of cold storage appears to us to be an act whereby foods or products stored in the cold storage are prevented from their natural decay. The potatoes which are kept in the cold storage are preserved in the original state and their normal decay is prevented. That, in our opinion, would be processing the goods, that is to say, preservation applying a method to the goods whereby the goods are prevented from taking its normal course. Therefore, looking from a broad point of view, in the light of the definition provided in the several dictionaries to which we have referred, it appears to us, that in the context of the present statute, which has used the expression "processing" in contradistinction or differently from the expression "manufacture", the assessee-company was

engaged in the act of processing the goods in terms of the Finance Act at the relevant time. This view which we have taken finds support in the Bench decision of the Allahabad High Court in the case of Addl. Commissioner of Income Tax Vs. Farrukhabad Cold Storage (P.) Ltd., , where the Division Bench of the Allahabad High Court has referred to the various relevant authorities and observed that if an article like potatoes as in the present case were kept under refrigeration, their decay was prevented. The temperature in the cold storage, admittedly, was regulated by the use of machinery. Thus, the mere fact that the potatoes themselves, which were kept in the cold storage, did not undergo any transformation and remained static, did not by itself mean that they were not subjected to any process at all during the period of storage. Processing of goods need not lead to manufacture of a new article. The Allahabad High Court held that they came within the definition of Section 2(7)(d) of the Finance Acts of 1966 and 1967 and as such the assessee-company was an industrial company. The expression ;used there was similar to the expression with which we are concerned. We are in respectful agreement with the reasonings of the Division Bench of the Allahabad High Court in the aforesaid decision.

13. In the case of Om Prakash Gupta v. Commr. of Commercial Taxes [1965] 16 STC 935, Mr. Justice B. N. Banerjee of this court held that the activity contemplated by the word "process" was general, requiring only continuous and regular action or succession of actions leading to the accomplishment of some result, but it was not one of the requisites that the activity should involve some operation on some material in order to its conversion to some other stuff. Therefore, by converting camphor powder into camphor cubes, the petitioner processed camphor powder into camphor cubes and fell within the definition of "dealer" in the West Bengal Sales Tax Act, 1954. In a decision of this court in the case of Khuda Bux Vs. Manager, Caledonian Press, , the Division Bench of this court was concerned with the expression used in the Factories Act, 1934. There, at page 487, Chief Justice Chakravartti observed that handling was processing and dealt with the dictionary meaning of the expression "processing ".

14. In the case of Additional Commissioner of Income Tax, Madras-1 Vs. Chillies Export House Ltd., , the Madras High Court was concerned with a different question. There, the assessee, an exporter of chillies, purchased the chillies, sorted them, graded them as per Agmark specification, clipped and stemmed them, subjected them to fumigation under expert technical hands in order to prevent deterioration and with a view to give better polish and appearance and during that process they were treated with methyl bromide. The assessee got the fumigation done by a third party. The assessee claimed that it was an industrial company within Section 2(6)(c) of the Finance Act, 1971, and hence entitled to be taxed at the concessional rate of 55 per cent. This contention was negatived by the ITO and the AAC on the ground that the treatment given by the assessee to the chillies did not amount to processing and, even if it did, as the assessee did not do it itself but got it done by another company, it could not be considered as having been engaged in processing. The Tribunal, however, held that the

treatment given to the chillies by the assessee before export would amount to processing and as the assessee got the chillies fumigated by paying charges therefore under a contract other than purchase, it would be considered as a company engaged in the processing of goods and, therefore, fell under the definition of industrial company u/s 2(6)(c) of the Finance Act, 1971. On a reference to the High Court, the High Court held that the definition of industrial company, in the relevant Section, suggested that it was the company which should engage itself in what should be the business of the company and that company must do the processing of goods. As the assessee merely prepared or made goods lit for export market it could not be held to be mainly engaged in the continued course of activity of processing and hence the assessee could not be treated as an industrial company within the definition and hence it was not eligible for the concessional rate of tax. There, at page 77 of the report, the learned judges referred to several cases. We have mentioned the facts of that case, because significantly those are different from the facts with which we are concerned.

15. The Kerala High Court in the case of Commissioner of Income Tax Vs. Casino (Pvt.) Ltd., was concerned with the expression "industrial company" u/s 2(6)(d) of the Finance Act, 1968. There, the court was dealing with the hotel which prepared cooked food for serving its customers from raw materials like vegetables or meat. There, the court was of the opinion that a hotel was primarily a trading company and preparation of food was not manufacture of or processing of goods. But in view of the fact that the expression "manufacture" has been used in contradistinction to the expression process, as we have noticed before under the relevant section, and in view of the fact that the goods or the potatoes were preserved in the ordinary state and decay was prevented, in our opinion, in the light of the decisions and the meaning given in the dictionaries, the act of cold storage, in the facts and circumstances of the case, was an act of processing in the light of the provisions of that section.

16. In that view of the matter, we will answer this question in the affirmative and in favour of the assessee. In the facts and circumstances of the case, there will be no order as to costs.

Sudhindra Mohan Guha, J.

17. I agree.

