

(1981) 10 OHC CK 0009
In the Orissa High Court
Case No : S.J.C. No's. 75 and 76 of 1977

State of Orissa

APPELLANT

Vs

Cifoods Limited

RESPONDENT

Date of Decision : 22-10-1981

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 3B

Citation : (1982) 50 STC 152

Hon'ble Judges : R.N. Misra, C.J.; B.K. Behera, J

Bench : Division Bench

Advocate : B.K. Mohanty, Ch. P.K. Misra, R.L. Bose and K.K. Rath, for the Respondent

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, Orissa, has stated this case u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "Act"), and referred the following question for opinion of the court:

Whether, on the facts and in the circumstances of the case, the Additional Sales Tax Tribunal is correct in deciding that prawn is not included in the expression "fish" appearing in entry serial No. 1 of the schedule relating to levy of purchase tax over goods notified u/s 3-B of the Orissa Sales Tax Act ?

2. The assessee is a registered dealer and we are concerned with two years, being 1972-73 and 1973-74. With effect from 1st February, 1959, fish became taxable u/s 3-B of the Act at the purchase point, the rate prescribed being 3 per cent. From 26th December, 1967, the rate of tax was reduced to 2 per cent. The assessee took the stand that prawn was not fish and, therefore, the purchase of prawn was not exigible to tax. In second appeal this question was examined at length and it was contended that prawn was not fish and to support this submission the assessee filed affidavits of catchers, traders and middlemen. The assessee also produced lease deeds granted by the revenue officials of the State where prawn and fish were separately indicated. In fact, the same area was subjected to one lease for fish and another for prawn. In second appeal the

Tribunal referred to the dictionary meaning of "fish" and "prawn" and found that the two items were distinct from each other. Since there was no definition of the word "fish", the Additional Tribunal tried to find out the common parlance meaning of "prawn". In the case of Commissioner of Sales Tax v. Tejco Industries [1976] 38 STC 93, the court observed :

The question as to what is the meaning given to a term used in an entry in common parlance is a question of fact to be determined on evidence and in the absence of such evidence, the entries could be construed according to their dictionary meaning.

The Additional Tribunal also referred to the notification, which came into force with effect from 1st May, 1976. There serial No. 3 described the goods as "fish" excluding lobsters, shrimps, prawns and dried or canned fish, and serial No. 10 was to the effect :

Lobsters, shrimps, prawns in all its forms, i.e., dried, canned and preserved.

The State Government, therefore were aware of the fact that fish and prawn were not one commodity and the distinction was sought to be maintained by clarifying to the aforesaid effect.

3. It may be true that in certain areas prawn is also loosely said to be a kind of fish. But in this case sumptuous evidence has been placed on record coming from people in the trade, actual catchers and consumers to show that fish and prawn have always been treated as two different commodities and prawn has not been treated as one variety of fish. The finding in second appeal that prawn and fish are two different commodities and the notification of 1967 did not cover sale of prawn in the facts of the case, seems to be correct and there is no material placed before us to support the submission that prawn was a class of fish and since fish was exigible to purchase tax at the relevant time, prawn being a kind of fish was also exigible to tax. The learned standing counsel had fairly stated to us at the time of hearing that there was no decision at all one way or the other to show that prawn was either fish or not fish. As fish and prawn were absolutely two different commodities, possibly there has been no occasion for thoughts to be bestowed for determining whether prawn would be a kind of fish. Biologically, prawn and fish are two different classifications. Qualitatively, fish and prawn are two different commodities and on the evidence placed, the Additional Tribunal was justified in holding that even in the common parlance they were understood as two different items. There was no scope for one item to pass for the other. Once this is the conclusion, it must follow that the Member, Additional Sales Tax Tribunal, had come to the correct finding that when law prescribed sale of fish to be subject to purchase tax, sale of prawn could not be covered by the entry and purchase tax could not be levied on dealings in prawn. Our answer to the question referred, therefore, is against the revenue and we hold that the Member, Additional Sales Tax Tribunal, was justified in coming to the conclusion that prawn was not included in the expression "fish" appearing in the entry serial

No. 1 of the schedule relating to levy of purchase tax over goods notified u/s 3-B of the Act. The assessee would be entitled to costs of the reference which we assess at Rs. 200 (two hundred).

B.K. Behera, J.

4. I agree.