Supreme Court of India
Deputy Commissioner, Sales Tax ... vs Pio Food Packers on 9 May, 1980
Equivalent citations: 1980 AIR 1227, 1980 SCR (3)1271
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
DEPUTY COMMISSIONER, SALES TAX (LAW) BOARD OF REVENUE(TAXES)

Vs.

RESPONDENT:
PIO FOOD PACKERS

DATE OF JUDGMENT09/05/1980

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
BHAGWATI, P.N.
TULZAPURKAR, V.D.

CITATION:
1980 AIR 1227 1980 SCR (3)1271
CITATOR INFO :

R	1981 SC 976	(1)
RF	1981 SC1014	(5)
R	1986 SC 662	(31)
R	1986 SC1809	(5)
D	1987 SC1885	(8)
RF	1988 SC 113	(5)
R	1988 SC 992	(5)
RF	1988 SC 997	(7,11)
R	1988 SC1133	(2,3,5)
R	1988 SC2237	(6)
RF	1989 SC 516	(17,18)
RF	1991 SC2222	(22)

ACT:
Kerala General Sales Tax Act, Section 5-A(1)(a) "consumes such goods in the manufacture of other goods for sale or otherwise", meaning of-Exigibility to tax of pineapple fruit. when processed into slices for the purpose of being sold in sealed cans.

HEADNOTE:
The respondent assessee, Pio Food Packers carries on the business of manufacturing and selling canned fruit besides other products. The Pineapple purchased by the

assessee is washed and then the inedible portion, the end crown, skin and inner core are removed, thereafter the fruit is sliced and the slices are filled in cans, sugar is added as a preservative, the cans are sealed under temperature and then put in boiling water for sterilisation.

In its return for the year 1973-74 under the Kerala General Sales Tax Act, 1963 the assessee claimed that a turnover of Rs. 3,84,138-89 representing the purchase of pineapple fruit was not covered by Section 5-A(1)(b) of the Act. It was asserted that the pineapple was converted into pineapple slices, pineapple jam, pineapple squash and pineapple juice. The assessee maintained that by the conversion of pineapple fruit into its products no new commodity was created and it was erroneous to say that there was a consumption of pineapple fruit "in the manufacture of" these goods. The Sales Tax Officer did not accept the contention and completed the assessment on the finding that a manufacturing process was involved and that, therefore, the case fell within s. 5-A (1) (a). In revision before the Sales Tax Appellate Tribunal, the assessee conceded that pineapple jam and pineapple squash would be covered by s. 5-A(1)(a), and in regard to pineapple juice the Tribunal found that s. 5-1(a) was attracted. The only question which remained was whether the preparation of pineapple slices fall within s. 5-A(1)(a). On that question two members of the Tribunal found in favour of the assessee, and the third member found in favour of the Revenue. The Revenue then applied in revision to the High Court and the High Court, has by its judgment dated 24th January, 1978, maintained the order of the Tribunal.

Dismissing the appeal, by special leave, the court

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HELD : 1. When pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture within the meaning of Section 5A(1)(a) of the Kerala General Sales Tax Act, 1963 [1277 E-F]

2. Section 5-A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods.

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There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one

case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experience a 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 article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity. [1274 F-H, 1275 A-B]

In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. The pineapple slices continue to possess the same identity as the original pineapple fruit. [1275 G-H, 1276-A]

Tunghabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool, [1960] 10 S.T.C. 827 (SC); Commissioner of Sales Tax, U.P., Lucknow v. Harbilas Rai & Sons, [1968] 21 S.T.C. 17 (SC); followed.

East Texas Motor Freight Lines v. Frozen Food Express, 100 L.ed. 917; Anheuser-Busch Brewing Association v. United States, 52 L. ed. 336-338; quoted with approval.

Anwarkhan Mahboob Co. v. The State of Bombay and Ors ., [1960] 11 STC 698, A Hajee Abdul Shukoor and Co. v. The State of Madras, [1964] 15 STC 719; The State of Madras v. Swasthik Tobacco Factory, [1966] 17 STC 316 and Ganesh Trading Co. Karnal v. State of Haryana and Anr., [1973] 32 STC 623; held inapplicable.

3. The fact that the pineapple slices have a higher price in the market than the original fruit does not imply that the slices constitute a different commercial commodity. The higher price, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it a different commercial commodity. [1277 A-B]

4. The fact that the pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit does not give to the canned pineapple slices a separate identity either. The distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired.

[1277 B-C]
1273

5. Clause (1) (a) of Section 5-A of the Kerala General Sales Tax Act, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale.[1277 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2398 of 1978.

Appeal by Special Leave from the Judgment and Order dated 24-1-1978 of the Kerala High Court at Ernakulam in T.R.C. No. 2 of 1976.

M. M. Abdul Khader, V. J. Francis and M. A. Firoz for the Appellant.

S. T. Desai, P. A. Francis and Mrs. S. Gopalakrishnan for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is directed against the judgment of the Kerala High Court holding that the turnover of pineapple fruit purchased for preparing pineapple slices for sale in sealed cans is not covered by s.5-A(1)(a) of the Kerala General Sales Tax Act, 1963.

The respondent, Messrs. Pio Food Packers ("the assessee"), carries on the business of manufacturing and selling canned fruit besides other products. In its return for the year 1973-74 under the Kerala General Sales Tax Act, 1963 the assessee claimed that a turnover of Rs. 3,64,138-89 representing the purchase of pineapple fruit was not covered by s. 5-A(1)(a) of the Act. It was asserted that the pineapple was converted into pineapple slices, pineapple jam, pineapple squash and pineapple juice. Section 5-A(1)

(a) of the Act provides:

> "5-A. Levy of purchase tax-
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> (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under section 5, and either-
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> (a) consumes such goods in the manufacture of other goods for sale or otherwise; or ..... shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in section 5."

The assessee maintained that by the conversion of pineapple fruit into its products no new commodity was created and it was erroneous to say that there was a consumption of pineapple fruit "in the manufacture of" those goods. The Sales Tax Officer did not accept the contention and completed the assessment on the finding that a manufacturing process was involved and that, therefore, the case fell within s. 5-A(1)(a). In revision before the Sales Tax Appellate Tribunal, the assessee conceded that pineapple jam and pine-apple squash would be covered by s. 5-A(1)(a), and in regard to pineapple juice the Tribunal found that s. 5-1(a) was attracted. The only question which remained was whether the preparation of pineapple slices fell within s. 5-A(1)(a). On that question two members of the Tribunal found in favour of the assessee, and the third member found in favour of the Revenue, The Revenue then applied in revision to the High Court and the High Court has, by its judgment dated 24th January, 1978, maintained the order of the Tribunal.

It appears that the pineapple purchased by the assessee is washed and then the inedible portion, the end crown, skin and inner core are removed, thereafter the fruit is sliced and the slices are filled in cans, sugar is added as a preservative, the cans are sealed under temperature and then put in boiling water for sterilisation. Is the pineapple fruit consumed in the manufacture of pineapple slices ?

Section 5-A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a 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 article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

A large number of cases has been placed before us by the parties, and in each of them the same principle has been applied: Does the processing of the original commodity bring into existence a commercially different and distinct article ? Some of the cases where it was held by this Court that a different commercial article had come into existence include Anwarkhan Mehboob Co. v. The State of Bombay and Others (where raw tobacco was manufactured into bidi patti), A Hajee Abdul Shukoor and Co. v. The State of Madras (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), The State of Madras v. Swasthik Tobacco Factory (raw tobacco manufactured into chewing tobacco) and Ganesh Trading Co. Karnal v. State of Haryana and Another, (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has undergone a degree of processing it has not

lost its original identity include Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool (where hydrogenated groundnut oil was regarded as groundnut oil) and Commissioner of Sales Tax, U.P., Lucknow v. Harbilas Rai and sons (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles).

In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit.

While on the point, we may refer to East Texas Motor Freight Lines v. Frozen Food Express, where the U.S. Supreme Court held that dressed and frozen chicken was not a commercially distinct article from the original chicken. It was pointed out:

> "Killing, dressed 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, homogenizing, adding vitamin concentrates, standardising and bottling." It was also observed:
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> "..... there is hardly less difference between cotton 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 the word."
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> Referring to Antheuser-Busch Brewing Association v.

United States the Court said:

> "Manufacture implies a change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary.....There must be transformation; a new and different article must emerge, having a distinctive name, character or use."
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> And further:
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> "At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been "manufactured". The comment applies fully in the case before us.

Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a different commercial commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired.

Learned counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within s. 5-A(1) (a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale.

In the result, we hold that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture. The case does not fall within s. 5-A(1)(a) of the Kerala General Sales Tax Act. The High Court is right in the view taken by it.

The appeal fails and is dismissed with costs.

S.R. Appeal dismissed.