
Toronto
1965
Dec. 16
1966
Jan. 20

BETWEEN:

FEDERAL FARMS LIMITED ..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Income tax—Income Tax Act, R.S.C. 1952, c. 148, s. 40A(1)(2) and (3)—Production incentive—Company preparing and selling vegetables—Deduction for "manufacturing and processing corporation"—Whether preparation of fresh vegetables for market constitutes "processing".

Appellant company was in the business of preparing fresh vegetables for market and selling them. Over 50 per cent of its gross revenue was derived from handling and selling them.

The evidence showed that, in addition to the packaging of carrots and potatoes, the company's operations included such steps as washing, brushing, spraying, drying, sizing, culling and grading the vegetables.

In 1963 the company claimed a tax credit under the provisions of s. 40A, (enacted in 1962 and since repealed) on the ground that its activities constituted "processing" and that it was, therefore, a "manufacturing and processing corporation".

In the Minister's view the appellant was not a manufacturing and processing corporation within the meaning of section 40A(2) and at the most the activities of the appellant amounted to mere packaging and as such was disqualified by Section 40A(3)(*a*).

The Minister sought to confirm this view by expert testimony that there was a distinct division in the Canadian food industry between processing which was said to involve a change in the texture and structure of the product, and the growing, handling and marketing of produce.

Held: That the technical meaning attributed to the word "processing" by expert testimony should be rejected in favour of the ordinary or dictionary meaning of the word.

2. That these operations were a process or series of processes to prepare the product for the retail market.

3. That the appellant was therefore a "manufacturing and processing corporation" within the meaning of Section 40A(2).

4. Appeal allowed.

APPEAL from an assessment of the Minister of National Revenue.

W. D. Goodman for appellant.

C. R. O. Munro, Q.C. and *S. Hynes* for respondent.

CATTANACH J.:—This is an appeal from assessment to income tax levied by the Minister in respect of income for the 1963 taxation year of the appellant.

The appellant, in filing its income tax return for its 1963 taxation year, claimed a tax deduction pursuant to the provisions of section 40A of the *Income Tax Act* on the basis that it was a "manufacturing and processing corporation" within the meaning of subsection (2) of section 40A.

The Minister disallowed the appellant's claim for a tax deduction on the ground that the appellant's business activities were neither manufacturing nor processing of goods and that, consequently, the appellant was not a "manufacturing and processing corporation" within the meaning of subsection (2) of section 40A.

Section 40A was added to the provisions of the *Income Tax Act* by section 10 of chapter 8 of the Statutes of Canada, 1962, and was made applicable to any taxation year ending after March 1962. The section was repealed in 1963 by section 10(1) of chapter 21 of the statutes of that year as applicable to the 1964 and subsequent taxation years.

The provisions of section 40A pertinent to the present appeal read as follows:

> 40A. (1) There may be deducted from the tax otherwise payable for a taxation year by a manufacturing and processing corporation an amount determined by the following rules:

(The detailed rules for determining the amount of the deduction are then set out but are not reproduced here since they are not material to a consideration of the present appeal).

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(2) In this section,

(a) "manufacturing and processing corporation" means a corporation that had net sales for the taxation year in respect of which the expression is being applied from the sale of goods processed or manufactured in Canada by the corporation the amount of which was at least 50% of its gross revenue for the year, but does not include a corporation whose principal business for the year was

(i) operating a gas or oil well,

(ii) logging,

(iii) mining,

(iv) shipbuilding,

(v) construction, or

(vi) a combination of two or more of the classes set out in subparagraphs (i) to (v) inclusive;

(Paragraphs (*b*) to (*d*) are not reproduced herein).

(3) For the purpose of paragraph (*a*) of subsection (2)

(*a*) goods processed or manufactured shall be deemed not to include goods that have been packaged only; . . .

The narrow issue for determination in this appeal is whether certain activities carried on by the appellant in its 1963 taxation year from which it derived in excess of 50% of its gross revenue for that year, constituted processing or manufacturing within the meaning of section 40A as above quoted. Such activities were the preparation and sale of carrots and potatoes.

While the appellant handled other garden produce and engaged in other activities which might well constitute manufacturing and processing, the revenue therefrom in 1963 was much less than 50% of the appellant's gross revenue for that year. Therefore consideration herein is restricted to the appellant's sale and preparation of carrots and potatoes.

To determine whether the appellant's handling of carrots and potatoes constituted processing of goods thereby qualifying the appellant as a "manufacturing and processing corporation" entitled to a tax deduction under section 40A, it is necessary to examine the precise nature of the appellant's activities in these respects.

The appellant is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on its business at Bradford, Ontario in the heart of the Bradford marshes, a particularly productive market gardening area. The appellant's letter head describes the business of the appellant as that of "growers, packers, processers and

shippers". Of the garden produce sold by the appellant 10% was grown by it and 90% was bought, for resale, from other growers.

With respect to the potato crop, the bulk of it was prepared as table stock.

On receipt from the growers the potatoes are emptied into large hoppers. From the hoppers the potatoes are then run over a conveyor belt, about 120 feet in length, with holes in it for the purpose of selecting the potatoes as to size and uniformity of shape. After sizing, the potatoes are next passed through washers and brushes to remove the soil adhering to their surface. Following washing and brushing the potatoes are then sprayed with a chlorine solution which, the appellant's witness testified, retards bacterial action thereby preventing rot and improving their keeping quality. After the spraying with chlorine solution, the potatoes are passed through a drying laundry, being a belt about 30 feet in length, running through a receptacle heated by a furnace with fans and a large bank of infra ray electrical bulbs. (The appellant's witness attributed some additional bacterial retardent effect to this operation.)

The potatoes are then manually sorted, culled and graded by persons employed for that purpose following which they are passed to a machine which bags them in 5, 10 and 20 pound bags. They are then shipped to retail stores.

In 1963 carrots were first in volume and contributed most to the appellant's revenue in that year with potatoes in second place. In subsequent years this order has been reversed.

Carrots were handled by the appellant in the same way that it handled potatoes except that the machinery required to handle carrots is more complex due to the shape of carrots. When received from the growers, the carrots are dumped into hoppers filled with water, then passed to a drum washer, being a cylindrical vessel with high pressure sprays. The carrots are next spray washed to flush off the dirty water and then passed to a roller apparatus which sizes the carrots into four sizes. The carrots are then passed on to a conveyor belt where they are hand sorted again and, when the vagaries of growth require, some of the carrots are trimmed, that is any off-shoots are cut off. Carrots which are trimmed are classed in a special grade.

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The carrots are then passed on to further conveyor belts for spraying, brushing and drying, as was done with table stock potatoes and lastly to a belt for weighing and packaging.

The appellant's premises, in which it conducts the operations described, are 120 feet in width by 400 feet in length. About two-thirds of the floor area, being approximately 40,000 square feet, is devoted to handling vegetables in the manner described and the remaining area is devoted to receiving and shipping facilities.

The items of equipment used to handle the carrots and potatoes in the manner above described were installed at an approximate total cost of $100,000.

The Minister called two witnesses, Mr. Long and Mr. Grant, both longtime employees of the Federal Department of Agriculture who are the chiefs of the Fresh Products Inspection Section and Process Products Section respectively of that Department.

Mr. Long was familiar with the appellant's plant having visited it in the course of his duties. He expressed the view that the purpose of washing vegetables is to improve their appearance and to enable them to be adequately graded. He agreed that the use of chlorine to wash the vegetables inhibited bacterial action on the product with a consequent preservative effect. He also attributed an inhibition of bacterial action to the drying treatment but felt its effect to be insignificant.

Both Mr. Long and Mr. Grant testified that there are two divisions of the food industry in Canada, one division being fresh fruit and vegetables which comprises the growing, marketing and handling thereof and the other being the processed field in which the produce is cooked, quick frozen, dehydrated or subjected to some chemical process.

In Mr. Long's view processing constituted a treatment which materially changed the texture and structure of the product.

Both Mr. Long and Mr. Grant testified that there are two recognized national associations, the Canadian Horticultural Council, devoted to furthering the interests of those engaged in the fresh fruit and vegetable side of the industry and Canadian Food Processors Association devoted to the furtherance of the interests of those engaged in food processing.

It is the golden rule of interpretation that words used in a statute are used in their ordinary sense unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the statute in which event the ordinary sense of the words used may be modified so as to avoid that absurdity or inconsistency, but no farther. I think it is sound to say that in the absence of a clear expression to the contrary words in the *Income Tax Act* should receive their ordinary meaning, but if it appears from the context in which they are used that they have a special technical meaning then they should be read with such meaning.

Here it is plain that section 40A of the *Income Tax Act* is dealing with manufacturing and processing corporations generally and that the words, "manufacturing" and "processing" as used in subsection 2(*a*) of section 40A are used in their ordinary unrestricted senses. If this were not the case and the words were not intended to be used in their unrestricted senses then it was obviously unnecessary to make a specific enumeration of those types of businesses in which certain corporations are engaged as being excluded from the meaning of the words, "manufacturing and processing corporation".

Section 40A of the *Income Tax Act* is dealing with matters affecting manufacturing and processing corporations generally. The section is not one passed with reference to a particular trade or business from which it follows that the words in question are to be construed in their common or ordinary meaning and not as having a particular meaning as understood by persons conversant with a particular trade or business. For this reason I do not accept the definition put forward by Mr. Long that processing connotes a material change being made in the texture and structure of the product.

While I am aware that dictionaries are not to be taken, in all instances, as authoritative exponents of the meaning of words as used in Acts of Parliament, nevertheless when words are used in their ordinary sense (as I have concluded they are in the section under which the present appeal is made) it is then appropriate that resort be had to recognized dictionaries for it is in these books that the ordinary meaning of a word is ordinarily to be found.

The word "process" is defined in the Shorter Oxford English Dictionary, Third Edition, as "To treat by a

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special process; e.g. to reproduce (a drawing, etc.) by a mechanical or photographic process".

In Webster's Third New International Dictionary published in 1964 the word "process" is defined as follows, "to subject to a particular method, system or technique of preparation, handling or other treatment designed to effect a particular result: put through a special process as (1) to prepare for market, manufacture or other commercial use by subjecting to some process (– ing cattle by slaughtering them) (– ed milk by pasteurizing it) (– ing grain by milling) (– ing cotton by spinning):

In Webster's Second New International Dictionary published in 1959 the following definition of the word "process" appears, "to subject (especially raw material) to a process of manufacturing, development, preparation for market, etc.; to convert into marketable form as live stock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking".

Other standard works consulted define "process" as "to treat, prepare, or handle by some special method".

The evidence of the appellant as to its operations convinces me that those operations were a process or series of processes to prepare the product for the retail market. There is no doubt that quite apart from the grading of the vegetables, a clean and attractive appearance is an important factor in marketing vegetables and especially so in the present day methods of retail marketing. Although the product sold remains a vegetable, nevertheless, it is not a vegetable as it came from the ground but rather one that has been cleaned, with improved keeping qualities and thereby rendered more attractive and convenient to the consumer.

The potatoes and carrots were, therefore, "processed" by the appellant within the ordinary and common meaning of the word "process" which I have concluded must be applicable in the present instance and within the meaning of the dictionary definitions of that word which are quoted above and which I have accepted as being the ordinary and common meaning of the word.

I do not consider that the operations of the appellant constitute packaging only and so precluded the appellant

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from qualifying as a manufacturing and processing corporation by reason of subsection 3(*a*) of section 40A. To my mind the term "packaging" applies to the appellant's ultimate operation in placing the vegetables in bag containers, but not to the antecedent steps of washing, brushing, spraying, drying, sizing, culling and grading.

In view of the conclusion which I have reached that more than 50% of the appellant's gross revenue in its 1963 taxation year resulted from the sale of carrots and potatoes processed by it in Canada, it follows that the appellant was a "manufacturing and processing corporation" within the meaning of subsection 2 of section 40A of the *Income Tax Act* and that the appellant was accordingly entitled to the tax deduction claimed by it pursuant to section 40A for its 1963 taxation year.

The appeal is, therefore, allowed with costs and the assessment is referred back to the Minister for reconsideration and reassessment in accordance with these reasons.