

CRONIN v IMP

THE HIGH COURT

234

(REVENUE)

1985 No. 376R

BETWEEN

M. CRONIN (INSPECTOR OF TAXES)

APPELLANT

AND

I.M.P. MIDLETON LIMITED

RESPONDENT

Judgment of Miss Justice Carroll delivered the 31st day
of January 1986.

This Case Stated is concerned with the question whether the Respondent, I.M.P. Midleton Limited, (the "company") is entitled to relief from corporation profit tax under Section 13 (3 of the Finance (Miscellaneous Provisions) Act, 1956, (the "Act") which provides as follows:-

"(3) Where a company claims and proves as respects an accounting period -

(a) that, during the standard period in relation to the trade, no goods were, in the course of the trade, exported out of State or that the standard period is not applicable, and

(b) that, during the accounting period, goods were, in the course of the trade, exported out of the State,

corporation profits tax payable by the company for the accounting period, so far as it is referable to the profit on the sale of the goods so exported, shall be reduced by fifty per cent."

In Section 10 of the Act, the word "goods" is defined for

the purpose of Part III of the Act (which includes Section 13) as meaning

"goods manufactured within the State by the person who exports them or some of them and who in relation to the relevant basis period or the relevant accounting period is the company claiming relief under this Part of this Act, subject, however, to the proviso that, where there are two companies one of which manufactures goods and the other of which exports them and where one of the companies holds more than ninety per cent of the ordinary shares in the other company or where persons who have a controlling interest in one company hold, either directly or indirectly, more than ninety per cent. of the ordinary shares in the other company, the goods manufactured by one of the companies shall, when exported by the other company, be deemed to be manufactured by that other company".

The "goods" in this case consist of frozen meat. The company is the manufacturer and its right to relief turns on whether it is also the exporter within the meaning of Section 13.

The facts admitted or proved are set out in the Case Stated at Clause 2 as follows:-

- ii (a) The company was incorporated on 10th June, 1970 and up to August, 1975, carried on the trade of the slaughter and preparation for sale of livestock and the sale of meat products.
- (b) During the period the company sold goods (i.e. meat) to the Minister for Agriculture and Fisheries as agent in Ireland for the Intervention Agencies

of the European Economic Community. The amount realized on such sales in the period from 10th June, 1970 to 1st February, 1975, totalled £8,719,635.

- (c) The total turnover of the company for the year ended 1st February, 1975 was £13,425,151. The profits of the company for the period of twelve months ended 1st February, 1975, on which Corporation Profits Tax falls to be computed were £377,983. The Corporation Profits Tax chargeable on the profits of the company for that period was £86,548.59.
- (d) The bulk of the intervention meat was delivered by the company to a cold store called Frigoscandia, which adjoins the company's premises at Midleton, Co. Cork. Some of the meat was delivered to a cold store called Eirfreeze at Little Island, Cork. The meat was delivered to these cold stores for temporary storage pending the obtaining of cold storage in other parts of the European Economic Community.
- (e) At the time of transfer of the meat to the Irish cold stores the company raised "claims" on the Minister for Agriculture, in his capacity as intervention agent, for the value of the meat. Each consignment of meat was accompanied by a contract in the form annexed to this case stated.
- (f) The company arranged, at the request of the Minister, for the transfer of the meat from the Irish cold stores to the cold stores abroad. The company

prepared all the documentation for the export of the meat and on the Minister's instructions, described itself as the exporter of the meat. The meat was exported on foot of the company's own export licences. A copy of one of such licences is annexed to this case. The company made all the arrangements for the road and sea transport of the meat abroad, principally to Continental Europe. The company's own Community Transit Guarantee Certificate was used for the road haulage of the meat on the Continent. The transport expenses were reimbursed by the Minister to the company but not the bonding cost of the Community Transit Guarantee Certificate.

- (g) Claims in respect of defective meat by the purchasers of the meat from intervention were negotiated and paid for by the company. Whenever a foreign purchaser made a claim, the Minister took the view that the meat was the company's property and referred the matter to the company. The Minister did not take any part in the negotiations on the claim, the matter being negotiated by the company directly with the purchaser. The company accepted this and bore all losses in respect of claims. "

It should be noted that the facts relating to the sale of intervention meat relate not just to the period of twelve months ending 1st February 1975 but cover the entire period of trade between the company and the Minister which was from 10th June 1970 to August 1975. Paragraphs (d)(e) and (f).

relate to the sale of intervention meat generally and its transport abroad by the company principally to Continental Europe. Paragraph (g) relates to claims in respect of defective meat generally and does not, either necessarily or at all, relate to meat sold during the period of twelve months to the 1st of February 1975.

Annexed to the Case Stated there are a number of documents intended to illustrate the course of dealing between the parties but which do not relate to the actual period in question. These are a standard form of contract, an export licence, a consignment note, an international consignment note, a community transit guarantee certificate, a specification for goods exported, correspondence concerning a complaint, and a telex concerning another complaint.

The example of the common form of contract applicable to all sales of meat provides as follows:-

Agreement for "Permanent" Intervention Buying of Meat

AGREEMENT dated the 21st day of October 1973 made between I.M.P. of Middleton hereinafter called "the Vendor" and the Department of Agriculture and Fisheries hereinafter called "the Purchaser" of the other part.

1. Whereas a common organisation of the market in beef and veal in the European Economic Community has been established and provision has been made on the fulfilment of certain conditions for intervention on the market in beef and veal with Member States in the form of buying in by intervention agencies appointed by Member States of beef and veal products to be taken over and stored at selected intervention centres.

2. Whereas the Conditions for intervention have been fulfilled and the purchaser has been appointed as intervention agency and intervention centres have been selected.
3. Now the Vendor hereby agrees to sell and the purchaser hereby agrees to buy the product specified in the First Schedule hereto at current intervention prices and subject to compliance with current intervention requirements and in particular to the conditions hereinafter appearing.
4. The quality standards of the adult bovine animals producing the types of meat listed in Annex I of Regulation EEC No. 1869/73 of the Commission of 13 July 1973 shall be as defined by national rules specified in the first part of the Second Schedule hereto.
5. The quantity of the product for delivery shall be at least the minimum quantity specified in extract from Article 5 Paragraph 1 of the said Regulation which is set out in the second part of the Second Schedule hereto.
6. The buying in price shall be the price free as specified in extract from Article 6 of the said Regulation which is set out in the third part of the Second Schedule hereto.
7. Products can be bought in only if they comply with the conditions laid down in Article 7 Paragraph 1 (b), (c), (d), (e) and (f), of the said Regulation which is specified in the Fourth Part of the Second Schedule hereto.
8. Details of the acceptance of the product or any part thereof and of the rejection of the product or any part

thereof will be furnished by the Purchaser to the Vendor.

9. The Vendor must inform the purchaser of the intervention centre to which he intends to deliver the product and where the product is located.
10. (a) The Purchaser shall determine the taking over date and communicate it to the Vendor.
(b) Meat passed for acceptance by the purchaser's authorised officer shall be held in chill and may not be removed or sold without the permission of such an officer pending delivery to the Intervention Centre.
11. If the product cannot be taken over at the intervention centre referred to in paragraph 9 the Purchaser shall select the place where the product is to be taken over from the three intervention centres nearest to which the product is located.
12. Payment for the product will be based on the weight recorded by the purchaser's officers at the intervention centre.

Signed by T. O'Connell a duly authorised officer of the Company

J.O'Regan Witness

Signed by J. O'Regan a duly authorised officer of the Department of Agriculture and Fisheries.

S. Duggan Witness

The learned Circuit Judge made the following findings set out in Clause 7 of the Case Stated:-

- (1) The Minister did not determine the taking-over date for the meat nor did he communicate this to

the company.

- (2) The Minister was acting throughout as the agent of a foreign principal, i.e., the intervention agencies of the European Economic Community.

He held that the contracts for sale of the meat were conditional contracts and the conditions concerning the determination of the take-over date and the quality standards were not fulfilled while the meat was in this country. He was of opinion that the company retained sufficient property in the meat so as to qualify it for relief under Section 13 (3) Finance (Miscellaneous Provisions) Act 1956.

While it would not be open to this Court to disturb the finding of facts if there was evidence on which they could be based, it is open to the Court to interpret the meaning of the written documents and the nature of the contract on which the decision in this Case Stated depends. Therefore, I consider it relevant to determine (1) the meaning of "taking-over date" and (2) what was the nature of the contract.

The standard form of contract derives from Regulation (E.E.C.) No. 1896/73 of the Commission of the 13th of July 1973. This regulation sets out detailed rules for the application of intervention measures on the market in beef and veal.

"Taking-over" (or "taken-over") is mentioned in the sixth recital to the regulation as follows:-

"Whereas in order to ensure equal treatment of sellers, the buying-in price and the place where the product is taken over by the intervention agency should be defined; whereas that place may as a rule be the intervention centre to which the seller intends to deliver his products; whereas it must, however, be left to the intervention

agency to appoint another place if taking over at the centre designated by the seller is not possible;".

The phrase is also mentioned in Article 4 (1) as follows:-

"Intervention centres shall be selected by member states with a view to ensuring the efficiency of intervention measures and so that taking-over, slaughtering if necessary and freezing are effected under satisfactory technical conditions."

It is also mentioned in Article 8 as follows:-

- "(1) The seller must inform the intervention agency of the intervention centre to which he intends to deliver the product and where the product is located.
- (2) The intervention agency shall determine the taking-over date and communicate it to the seller.
- (3) If the product cannot be taken over at the intervention centre referred to in paragraph (1), the intervention agency shall select the place where the product is to be taken over from the three intervention centres nearest to where the product is located."

Regulation No. 1896/73 of the 13th of July, 1973 is clearly referred to in the contract, even though the number is wrongly quoted as No. 1869/73. Clause 3 of the contract refers specifically to the agreement being subject to compliance with current intervention requirements and in particular to the conditions thereafter appearing. The current intervention requirements are those contained in Regulation No. 1896/73. "Taking-over date" in the contract cannot have a different meaning to "taking-over date" in the regulation.

It seems clear to me that "taken-over" or "taking-over" means the physical delivery to and acceptance by an intervention centre selected by the vendor at a time designated by the purchaser. If the vendor's choice is not available, the purchaser selects one of three intervention centres nearest to where the product is located.

Clause 12 of the contract provides that payment for the product will be based on the weight recorded by the purchaser's officer at the intervention centre. The buying-in price under Clause 6 of the contract is the price free as specified in the extract from Article 6 of the regulation which provides (inter alia) that the buying-in price of meat shall be the price free at the intervention centre's refrigeration plant and that unloading charges shall be borne by the seller.

As appears from the Case Stated (Clause 2 (e)) at the time of transfer of the meat to the Irish cold stores, the company raised "claims" on the Minister for Agriculture as intervention agent for the value of the meat.

To me it is an inescapable conclusion of fact that the meat was taken-over and the weight was recorded at the Irish intervention centres and this weight formed the basis of the "claims" raised.

The fact that the meat was taken into the Irish intervention centres must mean that there was agreement on the date of delivery and acceptance.

Whether the company asked the intervention centre would they accept delivery on a particular day (and was told yes) or the intervention centre asked the company to deliver on a certain day (which it did) is sufficient compliance with the terms of the contract that the Purchaser would determine the

take-over date and communicate this to the vendor.

Given the interpretation which I believe must be given to the words "taken-over" or "taking-over", then in my opinion there is no basis for the finding by the learned Circuit Judge (a) that the Minister did not determine the taking-over date for the meat nor did he communicate this to the company or, (b) that the conditions concerning the determination of the take-over date were not fulfilled while the meat was in this country.

The next matter to be considered is the nature of the contract. The learned Circuit Judge held that the contracts for sale of the meat were conditional contracts and that conditions concerning the determination of the quality standards were not fulfilled while the meat was in this country.

The word conditional when applied to contracts can have different meanings. The contract may be subject to a condition which is an essential stipulation of the contract which one party guarantees as true or promises will be fulfilled, (see Chitty on Contracts, 24th Edition paragraph 691 at page 319). This type of condition is referred to in Chitty as a promissory condition, the breach of which entitles the aggrieved party to treat the contract as discharged and to sue for damages.

A promissory condition is to be contrasted with a contingent condition, that is a provision that on the happening of an uncertain event an obligation shall come into force. If the event does not happen, no obligations arise.

Therefore, if a contract is subject to a contingent condition precedent then (depending on the wording used) either no contract comes into existence until the condition is fulfilled or the operation of the contract is suspended until the condition

is fulfilled. But if a contract is subject to a condition which is an essential term, (i.e. a promissory condition) the contract comes into existence when it is made, but on discovery of breach of the condition the aggrieved party is entitled to treat the contract as discharged.

In my opinion the standard form of contract in this case, is a contract which contains promissory conditions. Clauses 3, 4, 5, and 7 effectively mean that the vendor agrees to sell meat which complies with the intervention requirements as to quality and quantity, at the price provided in Clause 6.

While there is provision in the contract for inspection and passing for acceptance by an officer of the purchaser at a place other than the intervention centre, this does not necessarily have to be done, therefore the actual identity of the meat which relates to any given contract is ascertained at the intervention centre when it is delivered, accepted and weighed. If any meat does not conform to quality or quantity requirements at that stage, it can be rejected at the centre and only the meat which prima facie meets with the intervention requirements will be weighed and form the basis for a claim for payment. If after the meat is sold out of intervention, it is discovered (e.g. on deboning) that the meat had not in fact met the requirements at the time it was sold into intervention, then there has been a breach of the condition and the purchaser is entitled to repudiate in respect of that meat.

It appears to me that this is exactly how the parties have treated the contracts. Where a fault was found in meat (as illustrated in the correspondence concerning a complaint annexed to the Case Stated and in the telex), the Minister by notifying the company and leaving it to them to negotiate the best salvage arrangements, was repudiating the

contract in relation to that meat.

While it is not mentioned in the case to advise, it is common case that a very large running account operated between the Minister and the company and in a case where meat was subsequently found not to be up to quality, its value was entered as a debit on the running account. But if such a running account did not exist, the Minister would have had to sue for damages.

If my view of the contract is correct, namely, that it is a contract subject to promissory conditions, then in my opinion the learned Circuit Judge was not justified in holding that the conditions concerning the quality standards were not fulfilled while the meat was in this country.

The meat either fulfilled the quality standards when it was delivered to the Irish intervention centre or it did not. To my mind it cannot be the case that the meat was not of the correct standard in this country and was of the correct standard abroad. The buying-in price was ascertained in this country, otherwise the company could not have raised the claims referred to at Clause 2 (e). The meat must have fulfilled quality standards both on inspection when taken over and in the longterm (as all this occurred ten years ago) otherwise there would have been no payment by the Minister and there would have been no profits. The profits can only relate to meat which fulfilled the quality standards at the time of delivery.

The learned Circuit Judge held that the company retained sufficient property in the meat so as to qualify it for relief under Section 13 (3) of the Finance (Miscellaneous Provisions) Act, 1956. He obviously took that view following the decision of Judge Sheridan in The Amalgamated Meat Packers Limited case which is annexed to the Case Stated, that in

order to qualify for export relief it was necessary for the company to retain property in the meat.

In order to ascertain when the property in the meat passed to the Minister it is necessary to consider the provisions of the Sale of Goods Act 1893. The sections referred to (which were also referred to in the case before Judge Sheridan), were Section 17

"(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intended it to be transferred.

"(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case." and,

Section 18 (Rule 1):-

"Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery, or both, be postponed".

In my opinion, Section 18 (Rule 1) does not apply as it was not an unconditional contract (it was subject to promissory conditions), and the goods were not specific (the contract was for the sale of meat, not necessarily for the sale of particular identifiable pieces of meat), therefore property did not pass when the contract was made (i.e. a time predating the delivery of the meat).

Applying Section 17, it seems to me that the goods (i.e. the actual meat sold) were ascertained at the time of delivery,

and the price was ascertained at the time of delivery. After that it was entirely a matter for the Minister as to what happened the meat. It seems to me that the intention of the parties was that property would pass once the meat was delivered and accepted. The company could then claim the buying-in price of the entire quantity of meat but would be subject to a possible claim for the value of any meat found subsequently not to be of the required quality. Therefore, in my opinion the company had no title in the goods at the time the meat was exported abroad.

The learned Circuit Judge's decision that the company was entitled to relief from Corporation Profits Tax was based on his findings that the company retained title in the goods until after they were exported. However, Mr. McCann made the alternative argument that it was not necessary to retain title in the goods exported in order to claim relief. This point was not argued in the Circuit Court. Mr. McCann said there were no additional facts relevant to this argument and asked the Court to decide this point on the facts as set out in the Case Stated. Mr. Cook had no objection to this course.

The facts which appear to me to be particularly relevant to this argument are

- (1) The goods were exported under export licences granted to the company;
- (2) The company made all arrangements for the transport abroad, i.e., there were no steps which the Minister had to take other than request the company to carry out the transfer.
- (3) The transport expenses were reimbursed (but not the bonding cost of the community transit guarantee

certificate). Therefore, no profit was made on the operation.

- (4) During the period June 1970 to August 1975 all the meat was delivered for temporary storage to cold stores in Middleton and Littleisland and all was transferred abroad, principally to Continental Europe.

It also seems to me to be relevant that the Inspector of Taxes contended in the Circuit Court (Clause 6 (f)) that there were many good and compelling reasons why the company would have agreed to remove the goods on behalf of the Minister.

- (1) A shortage of cold storage space in the State.
- (2) The Department's lack of resources in terms of plant and machinery and manpower to transport the goods abroad.
- (3) The dependence by the company on sales to intervention.
- (4) The company's concern if intervention buying ceased.
- (5) The acceptance of goods into intervention at an earlier time if space were available in local intervention stores resulting in earlier payment for the goods.

The entitlement to relief under Section 13 (3) depends on whether the company can prove that during the relevant period "goods were in the course of the trade exported out of the State". The company's trade is the slaughter and preparation for sale of livestock and the sale of meat products (see Clause 2(a)). Therefore, it must be in the course of that trade that the export occurred.

Accordingly there are two elements to be

considered (a) did the export occur in the course of the trade carried on by the company and, (b) must the exporter be the owner of the goods in order to qualify for relief.

In the ordinary case a manufacturer sells goods to a foreign buyer and delivers the goods abroad, all as part of the one transaction. Here the situation is not quite as clear-cut. The Minister was the buyer. He is based in this country and he made the decision when each load of meat was to be transported abroad. But he acted in his capacity as intervention agent for a supranational body (the E.E.C.), therefore his role is not as Minister but as agent for a foreign principal (See Clause 7 (2) of the Case Stated). Also here there was an interval of time between the completion of the contract for sale and the transfer of the goods. It was not part of the contract that the goods would be transported abroad. The company were not obliged to accede to the Minister's request.

But if the company declined to transport the meat, what would the effect have been? According to the inspector's own submissions in the Circuit Court, it was clearly to the commercial advantage of the company to transport the goods. It left space available in the Irish intervention centres so that fresh sales could be carried out and the company would earn more money. The action of the company in arranging the transport abroad was not just to oblige the Minister and it was not to make a profit on that activity. It was referable to increasing the amount of sales into intervention or enabling earlier sales to be made.

Therefore in my opinion the transfer of the meat abroad while not part of the contract for sale, was made for the purpose of facilitating future sales and was therefore made in the course of the company's trade.

The last remaining question is whether the exporter must be the owner of the goods in order to qualify for relief.

Mr. McCann cited an example of a manufacturer who sold goods which he had manufactured to a foreign buyer and title to the goods passed in this country. He submitted that if the manufacturer delivered those goods abroad he was the exporter (and entitled to claim relief as such) even though he was not the owner of the goods at the time of the export. He said it did not matter whether it was part of the contract that delivery would be abroad or whether the manufacturer agreed after the contract had been concluded to effect delivery abroad. Mr. Cook, on the other hand, contended that in order to be an exporter, the manufacturer must still retain property in the goods and that the exporter must be the principal and not someone acting as his agent.

I am inclined to agree with the proposition put forward by Mr. McCann. If goods manufactured here are sold and delivered abroad by the manufacturer, I very much doubt that the Revenue Commissioners enter into an inspection of each contract for sale to determine when property passes, so that if property passed in this country relief could not be claimed, whereas if it passed abroad, relief could be claimed. It seems to me the aim of the relief is to encourage the export of manufactured goods, therefore if goods are sold and exported, it should not concern the Revenue Commissioners whether the manufacturer had retained title or not.

The specific documentation annexed to the Case Stated supports the view that the company acted as actual exporter and not merely as a transport agent or carrier. The company used export licences granted by the Minister for Agriculture

and Fisheries under Section 43 of the Agricultural Produce (Fresh Meat) Act 1930 and the Agricultural and Fishery Products (Regulation of Export) Act 1947. According to the specimen annexed, the licence authorised the company to export a specified consignment of meat from specified premises in this country to a specified destination abroad. There is nothing in the Statutes mentioned which requires that an exporter must be the owner of the goods.

In the Irish consignment note, the goods are described as "Ex a/c of I.M.P. Limited Midleton".

In the international consignment note, I.M.P. Midleton Limited is described as the sender, and the consignee is the Department of Agriculture and Fisheries at an address in Holland. It should be noted that in this case the carrier used was Pattinson Transport.

In the specification for goods exported, I.M.P. Midleton Limited is again described as consignor and the Department of Agriculture and Fisheries as consignee at an address in Holland.

Therefore, in my opinion the fact that the company were not owners of the meat at the time of export, did not prevent them being "exporters" within the meaning of Section 13 (3). They were not just carriers, or transport agents. They carried out in their own name all the acts necessary to export the meat and since they were also the manufacturers they are therefore entitled to claim the relief sought.

Therefore the question for the decision of the Court in the Case Stated is to be answered in the affirmative.

Melle Canoll

approved 7-2-86.