(1997) 03 AHC CK 0048

In the Allahabad High Court

Case No : C.M.W.P. No. 8053 of 1997

Anil Kumar Agrawal APPELLANT

Vs

U.P. Krishi Utpadan Mandi Parishad and Another RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Citation : (1997) 03 AHC CK 0048

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : A. Wahal and K.N. Tripathi, for the Appellant; B.D. Mandhyan and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned orders dated 31.5.95 and 21.2.97 Annexures 5 and 9 to the writ petition.

2. I have heard Sri K. N. Tripathi and Sri A. Wahal learned Counsel for the Petitioner in this case and Sri S.C. Budhwar and Sri Anil Srivastava in the connected cases and Sri Satish Mandhyan for the Respondents.

3. The facts of this case are that the Petitioner claims to be a commission agent who is supplied Khandsari manufactured by the Khandsari manufactures and he sells the same within the market area concerned. A demand of mandi fee has been made to the Petitioner by Respondent No. 2. The Petitioner filed a revision against that order which has been dismissed on 21.2.97, hence this petition.

4. The case of the Petitioner is that its principal, the Khandsari manufacturer, had entered into a lump sum agreement for payment of market fee with the concerned Mandi Samiti. This lump sum agreement was entered into in pursuance of notification dated 17.11.95 Annexure 1 to the writ petition and the subsequent clarifications dated 12.12.95 and 19.12.95.

5. The argument of the learned Counsel for the Petitioner is that since the

Petitioner''s Principal had already paid the market fee under the lump sum agreement after exercising its option in pursuance of the impugned notification dated 17.11.95, the Petitioner, being only a commission agent, cannot validly be asked to pay the mandi fee again. The submission, therefore, is that the mandi fee is being demanded twice on the same transaction, first from the Khandsari crushing unit which has paid mandi fee in lump sum, and secondly from the Petitioner which is only an agent on behalf of the Khandsari Unit. On the other hand, the case of the Respondent No. 2 is that the Petitioner purchases the Khandsari from the Khandsari Unit and then sello it on its own behalf to the customers. The controversy is, therefore, as to whether there is one sale or two sales, in other words, whether the Petitioner is a kuchcha arhatia or pueca arhatia. In the impugned order dated 21.2.97, it has been held that there was a sale to the Petitioner by the Khandsari unit and the Petitioner did not merely act as a commission agent. To reach to these findings, the revisional authority has relied on certain circumstances, firstly that the Petitioner paid the transportation charges of the goods which were sent by the Khandsari Unit to the Petitioner, and secondly the Petitioner did not charge the rent for the godown for storing the goods. In some of the connected cases, a further ground is that some amount was sent by the commission agent to the Khandsari Units as advances.

6. In my opinion, the revisional authority should have considered whether there was a trade practice in this trade whereby transportation charges are paid by the commission agent and no rental is charged by him and whether advances are paid to the Principal. It is not that merely because the Petitioner has paid transportation charges and not charged rental or that he has paid some advances that he automatically becomes a purchaser of the goods. It all depends on the trade practice prevailing in the particular business. Different businesses may have different kinds of practice. Hence, the revisional authority should have considered what was the particular trade practice in this business of sale and purchase of Khandsari, but the revisional authority has not done so. The revisional authority should also have taken into account the other relevant considerations in determining whether there was a sale by the Khandsari Unit to the Petitioner or not, but it has not done that either.

7. In the impugned revisional order dated 21.2.97, it is also observed that exemption could only have been granted if the Khandsari manufacturer had himself come to Agra or sent his authorised representative to make the first sale in the market area under Mandi Samiti, Agra. In this connection, it may be mentioned that under the notification dated 17.11.95, exemption is granted to a Khandsari unit which has entered into a lumpsum agreement from imposition of mandi fee in any market area in U.P., vide clarification dated 12.12.95, Annexure 2 to the petition. Hence, the view of the revisional authority is not correct. As long as it is a first sale anywhere in U.P., no mandi fee is payable if a lumpsum agreement has been entered into. Hence the crucial question is whether it was a first sale by the Petitioner on behalf of the Khandsari unit, or whether the Petitioner purchased the goods from the Khandsari unit and then sold them to his

purchasers.

8. In the circumstances, I hold that the impugned revisional order dated 21.2.97 is arbitrary as it has not taken into consideration the relevant considerations. Hence, I set aside the impugned order dated 21.2.97 and remand the matter to the revisional authority to pass a fresh order after giving the Petitioner opportunity to order within three months of the production of the certified copy of this order before him. If the Petitioner files the copy of this judgment within two weeks from today before Respondent No. 1 the impugned recovery shall remain stayed till the decision by the revisional authority.

The writ petition is allowed. No order as to costs.