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(1997) 09 GAU CK 0048

In the Gauhati High Court

Case No : Writ Appeal No. 409 of 1995

Anjani Trading Company — APPELLANT

Vs

Assam Agricultural Marketing Board — RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:
Assam Agricultural Produce Market Act, 1972 — Section 14(vii), 14(vii)

Citation : (1997) 2 GLJ 633

Hon'ble Judges : M.Sharma, J and N.Surjamani Singh, J

Bench : Division Bench

Advocate : S.A.Laskar, N.M.Lahiri, M.Phukan, G.N.Sahewalla, A.Hazarika, Advocates appearing for Parties

Judgement

1. The judgment and order dated 29.6.95 passed by the learned Single Judge of this Court in Civil Rule No.2925 of 1993 (1995 (2) GLJ 242) is the subject matter under challenge in this writ appeal.

The present dispute relates to the question and validity of the realisation of cess by the Marketing Inspector of Srirampur Check Gate as per related provisions of law laid down under Assam Agricultural Produce Act 1972 and rules made, therein/hereinafter referred to as Act and Rules.

2. According to the writ petitioner in Civil Rule No.2925 of 1993, the appellant herein, the respondents are to establish market yards, sub yards and to provide various facilities for the purpose of transacting business of sale and purchase of agricultural produce mainly by the growers, but so far Guwahati Sub Division Market Committee is concerned, there is no principal market yard or sub yard and no facility has been provided and the office of the said Market Committee is also situated outside the Sub Division and the cess being realised against services, and as such, the respondents are not entitled to realise the same.

3. Appellant purchased various articles in different States and in those States also there are Market Committees under the related provision of similar Act and

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Rules and cess is being realised in respect of goods. The goods while coming in taicks are detained in Srirampur Check Gate and the same are not allowed to move through the said check gate without payment of cess and such check gate, namely Srirampur Check Gate falls within Kokrajhar District and there is no Market Committee and, as such, no sale takes place at the check gate, but the respondents realise cess illegally and arbitrarily.

4. As the cess being realised against services and the respondents having not provided such services, they are not entitled to realise cess. As no sale takes place at Srirampur Check Gate for the purposes of realisation of cess, such realisation of cess by the respondents at the check gate is absolutely illegal and arbitrary and violative of Articles 265. 301 and 304 of the Constitution of India and the cess has to be paid by the purchasers. This is the case of the writ petitioner, appellant herein.

5. The case of the writ petitioner was contested by the respondents by filing affidavitinopposition and. contending inter alia that the cess is being realised for the purpose of preventing evasion of cess and the check gates have been established for the same purpose and that, realisation of cess at the check gate does not result in any disadvantage to the writ petitioner as they have to pay the cess at the later stage. According to the respondents, there is an alternative remedy for the writ petitioner by filing of revision before the State Govt if the writ peritioner is really aggrieved by the action of the respondents in realising the cess.

6. After hearing the parties, the learned Single Judge rejected the contention of the respondents regarding the alternative and efficacious remedy but held that the goods are brought by the writ petitioner (appellant) for the purpose of sale and cess is levied on the goods meant for notified areas; and that the same can be levied at the said check gate. It was also further held that the traders including the petitioners who purchase goods from other States are maintaining their trading premises within the declared market areas and the traders purchase goods and are delivered within the notified areas and, as such, the levy of cess is attracted and the question of erection of check gate is concerned, such erection is permissible within the purview of section 14 (vii) of the Assam Agricultural Produce Market Act. 1972 vide impugned order dated 29.6.95 passed in Civil Rule No.2925 of 1993.

Being aggrieved by the impugned judgment and order, the writ petitioner, filed this writ appeal.

7. Shri NM Lahiri. the learned Senior Advocate assisted by Shri GN Sahewalla for the writ appellant, at the very outset contended, that the learned Single Judge erred in law in holding that as the traders, including the appellant were bringing the goods from outside the States maintaining trading premises within the declared market areas and the goods were being delivered within those market areas, the levy of cess is attracted, impliedly holding that there is sale of goods

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within the notified areas and as such, the impugned judgment and order is liable to be quashed. The appellants, having purchased the goods in other States by paying cess to the respective Market Committee in those States and as such, there cannot be any question of another purchase by the petitioner merely because goods are unloaded in their premises. There being no transaction of sale at Srirampur Check Gate and the trucks bringing goods from outside the States are passing through the check gate for the purpose of delivering the goods to the appellant''s premises at Guwahati, question of realising cess at the said check gate does not arise at all, Shri Lahiri contended.

8. It is also submitted by the learned Senior Advocate that, there being no principal market yard and the sub yard under the Guwahati Sub Division market areas, the question of realising cess which is quidproquo cannot be realised and section 14 (vii) of the Act does not empower the respondents'' for erection of check gate and the realisation of cess there. Supporting the case of the appciiaru. Shri NM Lahiri has drawn our attention to the related provisions of law laid down under section 21 of the Act and submitted, that every Market Committee shall levy and collect cess on the agricultural produce brought or sold in the market areas at a rate not exceeding Rs. I/ for every Rs. 100/ of the aggregate amount for which a notified agricultural produce is brought or sold, whether for cash or for deferred payment or other valuable considerations, such cess shall be paid by the purchaser of the notified agricultural produce concerned. But, in the instant case, the question of sale in the market areas does not arise but the cess was realised at the aforementioned check gate from the writ appellant in violation of the provisions of law laid down under section 21 of the Act.

9. As per Rule 21 of the Assam Agricultural Produce Market Rules. 1975, the cess levied on sale and purchase of agricultural produce in a notified market area, shall be applicable only once in the same notified market area and that the agricultural produce shall be deemed to have been bought or sold in a notified area:

(i) if the agreement of sale or purchase thereof is entered into in the said area:

(ii) if in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(iii) if in pursuance of the agreement of sale or purchase, the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

These related provisions of law for the purpose of levy and collection of cess on the sale and purchase in the agricultural produces was not at all followed by the respondents while realising the cess from the writ appellant at the said check gate, Shri Lahiri argued.

10. Only when there is sale and purchase of the agricultural produce though

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within the market area was not in the market proper or market yard, fees levied by the Market Committee on such sale and purchase of the agricultural produce is valid in the eye of law and where, however, seller realises the fee from the purchaser, seller would be obliged to make it over the Market Committee in view of the decision of the Apex Court rendered in Krishi Upaj Mandi Samiti & others vs. Orient Paper & Industries Ltd reported in (1995) 1 SCC 655 and the case between Krishi Utpadan Mandi Samiti, Haldwani & others vs. Indian Wood Products Ltd & another, (1996) 3 SCC 321. But, in the instant case, no question of sale or purchase of the agricultural produce within the market area or within the market yard does not arise and as such, the realisation of cess from the writ appellant is illegal and arbitrary, Shri Lahiri contended.

11. At the hearing, Shri SA Laskar, learned counsel for the respondents submitted, that the power and authority of the Market Committee to collect cess of notified agricultural produce is provided, inter alia, under section 21 of the Act and Rule 21(7) (iii) of the rules framed thereunder and that the check gates have been established within the declared market areas of the respective Market Committee as required under the provisions of section 14 (vii) of the Act for the purpose of preventing evasion of cess due and further, two check gates have been established, one at Srirampur and another at Boxirhat (both within the declared areas) for prevention of evasion in respect of outgoing and incoming quantities of notified produce/goods on which no mandatory return is submitted by the traders including the writ appellant liable for payment of cess.

12. The said interState check gate at Srirampur is under the administrative control of the Board and cess is collected at such gates on behalf of various Market Committees on outgoing consignment of produce which have evaded assessment by the concerned Market Committee and on incoming consignment of produce where evasion is almost the regular practice and takes place in the following manner :

(i) Evasion of cess by terminating the consignment at any place prior to destination stated in the document accompanying the consignment;

(ii) evasion by splitting up the consignment into smaller consignment;

(iii) evasion by disposing of the produce at any place prior to destination;

(iv) evasion by subsequently moving the consignment by different mode of transport: and

(v) evasion by subsequently changing the name of firm to that of subsidiary, and in other like manner.

There is no levy of cess on consignment of notified produce which are found for any unnotified areas in the State or where the consignments are legitimately based in such unnotified areas and any cess levied on such consignment at the interState check gate through inadvertance, is always adjusted against future consignments. According to Shri Laskar. learned counsel for the respondents, the

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operation of the Board at Srirampur is being conducted at the joint check gate under the transport/taxation department as per Govt order No.AGA. 133/91/102 dated 29.7.93 and tfcat there is no illegality or infirmity in realising the cess from the traders, including the present appellant at Srirampur Check Gate.

13. Now. this Court is to examine as to whether the impugned judgment and order of the learned Single Judge of this Court suffers from infirmity or illegality b or irregularity and that, whether the levy of cess by the respondents from the writ appellant is permissible under the related provisions of the Act and Rules.

14. For better appreciation in the matter, we are to refer to section 14 (vii). section 21 of the Act and Rule 21(1) and (vii) and the sartie are quoted one after another as hereunder:

"14. The functions of a Market Committee shall be as follows :

(vii) to do such other things as may be required for the purpose of achieving the objects and requirements of the Act and the rules and byelaws framed thereunder."

"21. (1) Every Market Committee shall levy and collect a cess on the agricultural produce bought or sold in the market area at a rate not exceeding one rupee for every one hundred rupees of the aggregate amount for which a notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations:

Provided that no cess will be levied on goods manufactured from the agricultural produce on which cess is proposed to be levied and which aremltimately exported out of the country.

Explanation 1. For the purpose of this subsection all notified agricultural produces taken out or proposed to be taken out of a market area shall unless the contrary is proved, be presumed to be bought or sold within such area.

Explanation 2. The cess referred to in section 12 shall be paid by the purchaser of the notified agricultural .produce concerned."

15. On perusal of the available materials on record, it is established that the object of the Assam Agricultural Produce Market Act, 1972, in short, the Act is to provide for better regulation of buying and selling of agricultural produce and establishment of markets for agricultural produce in Assam. In pursuance of the aforesaid object, it was necessary to arrange for the declaration of market areas by the State Govt and the simultaneous declaratidh of the required market areas in the State, being neither possible nor acceptable to the Govt as such, the same was undertaken on a phased manner. Since its inception, the Board has undertaken the surveys of important areas of agricultural produce in the State and based on such surveys and also in consideration of appeals made by the local agriculturists and traders, have submitted phasewise proposal to the Govt from time to time. On the basis of which the Govt has so far declared 15 Nos of

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market areas in the State under a Market Committee in each case and these are, at present functioning. Since declaration of market is phasedwise, there still remains under declared areas in the State which are outside the purview of the Act. but in respect of which proposals have already been submitted to the Govt by the Board for consideration.

16. On bare perusal of the provisions of law laid down under section 14 (vii) of the Act. it has been revealed that, a Market Committee has ample power and jurisdiction to do such other things as may be required for the purpose of achieving the objects and the requirements of the Act and Riles and byelaws framed thereunder. For the purpose of achieving the object of the Act. the construction of check gate at Srirampur and Boxirhat for realisation of cess is quite reasonable and permissible within the purview of section 14 (vii) of the Act and, as such, the erection of such check gates is not illegal and without authority. In this regard, the learned Single Judge of this Court made a reasoned order and accordingly, the same is affirmed.

17. On further perusal of the available materials on record and also the impugned judgment and order, we are of the view that the learned Single Judge had dealt with the matter exhaustively regarding the validity of the realisation of cess from the traders including the present writ appellant. The relevant findings and observations of the learned Single Judge finds its place at para 13 and 14 of the impugned judgment and order and the same is quoted below :

"13. In the instant case, it is found from the writ application itself that in para 3 it is admitted that the goods are purchased by the petitioners and brought into State for the purpose of sale. So it will come within the definition of sale as provided under the Act. It is not the case of the petitioners that the goods brought are not sold within the market area as will be evident from the affidavitinopposition filed on behalf of the respondents. It is the further case of the respondents in their affidavit in para 6 as follows :

"That there is no levy of cess on consignment of notified produce which are bound for any unnotified areas in the State or where the consignments is legitimately based in such unnotified areas. Any cess levied on such consignment at the interState chcckgate inadvertently is always refundable forthwith to the consignee."

14. So, the cess is levied only on goods brought to the notified areas and as will be evident from the provisions of the Act, the cess can be levied on the notified areas in case of notified goods. It is the further case of the respondents that the collection of cess of consignment of notified agricultural produce is conducted at the Srirampur Checkgate by the staff of the Board where the purchasers of the produce to whom the consignment is being delivered is shown by the documents accompanying the consignment to be based and maintaining trading premises, within a declared market areas of any Market Committee under the Board. In such a case the trader is a purchaser as shown by the document accompanying

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the consignment and the goods are delivered within the notified area (within the declared market area) the levy of cess shall be attracted under the provisions of the Act and the Rules. The respondents have denied the detention of trucks as alleged by the petitioners. It is further stated that the petitioner did not obtain the necessary licenses for conducting the operation of sale or purchase within the declared market areas from the Market Committee. Annexure IV to the affidavitinopposition shows as follows:

"With reference to the subject and letter quoted above, this is to inform you as follows :

The cess is being levied on transactions of notified agril. produce coming into the market areas of the State at the rate of 1% per Rs. 100/ worth of such produce and the Srirampur Checkgate under the Board, as per provisions of section 21 and Rule 21 (7) (iii) of the Assam Agricultural Produce Market Act and Rules. In this connection, the Rule No. 21 (7) (iii) of Assam Agricultural Produce Market (G) Rules, 1975 states as hereunder :

"For the purpose of this rule the transaction of sale and purchase of any agricultural produce should be declared to have taken place, in a notified area if;

(iii) in pursuance of any agreement of sale and purchase delivery of the agricultural produce to the purchaser or to some other person on behalf of the purchase takes place in the notified market area."

In view of the above, the payment of cess on consignments of notified agricultural produce as rice, wheat, etc is mandatory as your firm/trading premises is located within a declared market area in the State, to which premises the produce is being declared. However, where such firm/trader''s premises is located in an unnotified area within the State and the produce is coming in from any area outside the State, no cess shall be levied. Where collection of cess has inadvertently been made, on consignments of notified produce delivered to an unnotified area, the amounts collected shall be adjusted against future consignments of the same firm on due application by such firm.

The above is conveyed to you for your information and valued cooperation in implementation of the Assam Agricultural produce Market Act and the Rules."

18. The writ appellant in para 3 specificuuy mentioned that various articles which are produced in the States of Bihar, Bengal and UP are purchased by him and are brought into the State of Assam for purpose of sale (emphasis laid). Therefore, those goods and articles were purchased by the writ appellant and brought into the State of Assam for purpose of sale and not for sale within the market area and therefore, the cess can be levied on the notified areas in case of notified goods. The authority concerned conducted the collection of cess of consignment of notified agricultural produce at Srirampur Checkgate where the purchasers of the produce to whom the consignment is being delivered, is shown by the documents accompanying the consignment to be based and maintaining trading

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premises within a declared market areas of any Market Committee under the Board. The learned Single Judge held, that in such a case the trader is a purchaser as shown by the document accompanying the consignment and the goods are delivered within the notified areas (within the declared market area) the levy of cess shall be attracted under the provisions of the Act and the rules. We are of the view that the payment of cess on consignments of notified agricultural produce like rice, wheat etc is mandatory in respect of the present writ appellant, as his firm or trading premises is located within the declared market areas in the

State, to which premises the produce is being declared as seen in the document marked as Annexure I to the affidavitinopposition of the respondents.

19. Now. we hereby recall the decision of the Apex Court rendered in Krishi Upaj Mandi Samiti & others vs. Orient Paper & Industries Ltd reported in (1995) 1 SCC 655 (supra), in which the Apex Court held, that fees levied by the Market Committee on sale and purchase of bamboos is valid, as the benefits, may be direct or indirect are made available by the Market Committee to the buyers and sellers of all the agricultural produce within the market area and the respondents in the case was also a beneficiary and. as such, the sale though within the market area, was not in the market proper or market yard area, is immaterial. In our considered view, this decision of the Apex Court rendered in the said case does not help the case of the respondents. Similarly, the decision of the Apex Court rendered in Krishi Utpadan Mandi Samiti, Haldwani & others vs. Indian Wood Products Ltd & another (supra), also support the case of the respondents but not in favour of the writ appellant.

20. It is also an admitted position that the impugned judgment and order is a common judgment in respect of three cases namely Civil Rule No.2925 of 1993, Civil Rule No.3071 of 1993 and Civil Rule No.3096 of 1993. In the present case, being Civil Rule 2925 of 1993, the writ petitioner/appellant challenged the validity of the realisation of cess by the Marketing Inspector of Srirampur Checkgate. In the other case, being Civil Rule No.3071 of 1993, the writ petitioners challenged the validity of the notices issued by the Gouripur Market Committee notifying the petitioners that the said committee is going to collect cess on notified agricultural commodities and also the realisation of cess by the Marketing Inspector, Dhubri Checkgate and Assistant Secretary Chagoli Checkgate. In the third case, namely Civil Rule No.3096 of 1993. the writ petitioner had challenged the validity of the realisation of cess by the Marketing Inspector. Srirampur Checkgate. These civil rules were disposed of on 29.6.95 by the learned Single Judge of this Court under a common judgment namely, the impugned judgment and order. Those writ petitioners in Civil Rule No.3071 of 1993 and 3096 of 1993 did not challenge the validity of the common judgment and order dated 29.6.95.

Considering the existing facts and circumstances of the case and also after proper application of our mind in this matter, we are of the view that the present

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writ appellant could not make out a case to justify the interference of the impugned judgment and order.

In the result, this writ appeal is devoid of merit and accordingly, the same stands dismissed, thus affirming the impugned judgment and order of the learned Single Judge of this Court. Considering the facts and circumstances of the case, the parties shall bear their own respective costs.

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