(1991) 10 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12614 of 1990

Bindra Feed Mills, Farakpur — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Citation : (1994) 3 LJR 375 : (1994) PLJ 188 : (1994) 1 RRR 131

Hon'ble Judges : M.S.Liberhan, J and V.K.Jhanji, J

Advocate : Mr. J.K. Sibal, Advocate, Mr. G.C. Tangri, Advocate, Mr. Roshan Lal Batta, Senior Advocate, Advocates for appearing Parties

Judgement

M.S. Liberhan, J.—The questions raised in this writ petition No. 12614 of 1990 as well as writ petitions Nos. 7460 of 1987, 6927, 7574, 6170, 7082, 6592, 8714, 9902, 9857, 10947 of 1988, 4736, 5320, 8508, 9539, 6626 of 1989, 13054, 15193, 13220, 16187, 11840, 10159, 1306, 13056, 13055, 10200, 9557 of 1990 and 653, 4912, 8924, 6113, 571, 8768, 661, 2962, 2664, 5372 and 3214 of 1991 can be fairly regarded as common questions of law. Consequently these writ petitions are being disposed of by this common judgment.

2. The conspectus of the facts giving rise to these petitions, in order to answer the question raised; can be noticed with brevity, from the present writ petition. The respondents sought the recovery of market fee due from the petitioners for the agricultural produce brought by them for the manufacture of poultry feed. In the other connected petitioner market fee was claimed from the petitioners for the agricultural produce brought for manufacturing of other items like Dal from gram, wheat flour from wheat, besan from gram, yarn from cotton, oil from seeds, oil from mustard (saron), oil from mustard (toria) etc.

3. The petitioners are registered as small scale units with the Director of Industries for the manufacture of various items from the agricultural produce. Various processes are undertaken in order to manufacture the aforesaid items. In some of the manufactured articles only agricultural produce is used while in others after processing the agricultural produce and mixing it with some other

products or materials a new product is produced. For instance poultry feed which is manufactured, maize is one of the constituents i.e. also an agricultural produce which after processing and after mixing with various other articles of items, finally cattle feed is manufactured and sold as such. The manufactured items as a result of production are not necessarily agricultural produce.

4. The petitioners put forth the proposition that market fee is leviable only on the agricultural produce bought or sold or brought for processing and no market fees in leviable on agricultural produce brought for manufacturing nonagricultural products. Manufacturing from the agricultural produce is not leviable with the market fee under Section 23 of the Punjab Agricultural Produce Markets Act, (hereinafter referred to as the Act). Market fee can be levied on the agricultural produce, which must remain agricultural produce itself even after manufacturing or processing. Secondly, it was argued that the deeming definition of processing should be interpreted in such a manner i.e. in the contest of the earlier portion as to spell out, the inmention of the Legislature which is not to levy market fee on the manufactured articles. Thirdly, it was argued that by adopting the principle of reading the legislation in its pith and substance, the levy of market fee on the goods/agricultural produce brought not for processing but for manufacturing, though processing may be incidental amounts to levy of fee on manufacturing. Consequently, the definition of processing given in Section 2(nn) of the Act, is beyond the legislative jurisdiction of the State, being violative of Schedule 7, List I and entries Nos. 84 and 85 which being a central subject, the market fee can be levied by the Central Government on the manufacturing.

5. The matrix of the case put in defence, in short is, that though it is not disputed that various articles, as numberated by the petitioners in their respective writ petitions are manufactured either from the agricultural produce alone or by mixing it with other items, the market fee is levied only on the agricultural produce in terms of Section 23 of the Act. It was not necessary that agricultural produce brought for manufacturing or processing must result in another agricultural produce before the market fee can be levied. It was urged that giving a deeming definition of processing given in Section 2(nn) of the Act, is within the competence of the State Legislation and is not ultra vires of the Constitution.

6. Before the issues as enumerated above, can be answered, it would be expedient to advert to the object of the Act scheme of the Act and the relevant provisions under the Constitution. As interpreted in various precedents cited at the Bar, the object of the Act is better regulation of the purchase, sale, storage, processing of the agricultural produce and establishment of marketing of agricultural produce, providing better deal to the agricultural producer, saving them from exploitation from middle men, providing better market and a direct contract between the consumers and the producers so on and so forth. Section 23 is a charging Section and there is no dispute about it.

7. Section 23 after going through various amendments from time to time finally

emerged as under :

"23. A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on advalorem basis fees on the agricultural produce bought or sold or brought for processing by dealers in the notified area at a rate not exceeding three rupees for every one hundred rupees.

(Provided that except in the case of agricultural produce brought for processing).

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made.

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

Section 23A of the Act authorises passing of burden of fees by a dealer or licensee to the purchaser or add the same towards the cost of agricultural produce or the goods processed or manufactured out of it. Prior to the present charging Section, market fee was leviable only on the agricultural produce purchased or sold by the licensee.

8. A Division Bench of this Court in Parkash Woollen Industries, Panipat v. The State of Haryana and others, 1980 PLR 54 observed that no market fee is leviable on the agricultural produce brought for manufacturing. It was observed that converting gram into dal or producing poultry feed by processing or conversion of maize after mixing it with other articles amounts to manufacturing and bringing the agricultural produce in the market fee for conversion into a manufactured articles, cannot amount to processing of agricultural produce in terms of Section 23 of the Act.

9. Keeping in view of the defect pointed out, the legislature amended the definition of `Processing''. The amended definition runs as under :

"Processing means giving treatment or series of treatments to an agricultural produce in order to make it fit for use of consumption and includes manufacturing out of an agricultural produce."

Thus the Legislation hurriedly gave more flexible approach and a wider definition to the word `processing'' to levy market fee on the agricultural produce by enlarging the scope of the word `processing'' by giving it a deemed meaning for the purpose of the Act. The charging section i.e. Section 23 of the Act levies market fee on the agricultural produce. The necessary concomitants for the levy of market fee are (i) it should be an agricultural produce (ii) it should be either brought or sold or it should be brought for processing by the dealers in the notified market area. The exception or the exemption from the market fee covered (carved ?) out by a proviso is only on the agricultural produce bought or sold in which actual delivery of the agricultural produce bought or sold in fact does not take place. The Section further declares the liability to the market fee as that of the parties to the transaction in which delivery is actually made. It also authorises the dealer or licensee to pass on the burden of the market.

Learned counsel for the parties, in support of their respective contentions, placed reliance upon Deputy Commissioner of Sales Tax (Law Board of Revenue (Taxes) Ernakulam v. Coco Fibres, AIR 378 SC, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., AIR 1987 SC 1023, South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat, AIR 1977 SC 90, Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791, Nabha Rice and Oil Mills, Nabha v. State of Punjab, AIR 1963 Punjab 549, Ram Raj Tabacco Trading Co. by its partner D.K. Narayanan v. Assistant Commercial Tax Officer, Attur and others, AIR 1957 Madras 325 and Kunwar Murli Manohar v. State of Uttar Pradesh, AIR 1957 Allahabad 159.

10. Against the background of the decided cases the relevant dicta for interpretation of the statute both on principle and precedents emerges, to the effect (i) the fiscal laws must be strictly construed, words must say that they mean, (ii) Nothing should be presumed or assumed. The statute must say so even with respect to any assumption or presumption is to be made. Thus, the true test must always be with the language used. Benefits, loss or hardship may be resulting from plain reading of the Section which imposes the impost. Neither the loss of benefits nor the hardship would influence the course on the construction of the statute. The question of finding out the intention of legislature arises only if two meanings are equally possible and an interpretator feels doubtful on an involved construction as to meaning of the enactment. The question of interpretation is to be decided after taking into consideration that the doubt is real. As has been usually observed, difficulties do not make doubt. Doubts cannot be created by hair spliting or undue recondite arguments. One of the criteria which should be taken into consideration while dealing with the construction of the statute is what an ordinary man with an ordinary prudence, who is to follow or abide by law, understands by it. One must read the words in the context of the Act as a whole. One should put oneself into the shoes of the law maker and take into consideration the relevant facts known to him. Since the Act is addressed to the licensee''s dealers and rural public at large, it would be wrong to take into account anything which would not be in public knowledge or public opinion, which can be presumed to have in the mind of the Legislature. It is important to see and consider what mischief was apparently intended to be remedied. While interpreting and finding the intention of the Legislature, one must keep in mind the position before the amendment and what was the mischief to be sought to be remedied. Then an attempt should be made to rationalise it.

11. The Court should not review the wisdom or advisability or expediency of the law and it is no concern of the Court that the policy of the Legislature was wrong. The definition being inclusive it has a wider connotation. An attempt should be made to implement the intention of the Legislature and the charging Section must be construed in a manner to give effect to it particularly when the law

creates a legal fiction, such a fiction should be carried to its logical end.

12. While construing the entries of the Constitution to judge, whether the provisions of Section 2(nn) of the Act, read with Section 23 of the Act are within the competence of the State Legislature, one must bear in mind that the Constitution has to be construed as a machinery by which laws are made, though rules of interpretation of other statutes equally apply to the interpretation of the Constitution. The entries must be construed liberally and broadly. The construction which would oust the Legislative competence should be avoided and eschewed.

13. In order to determine the competence of the Legislature with respect to a particular legislation, the Court would invoke the principle of pith and substance of the legislation. Mere nomenclature of the Act is not conclusive for determining its true character. The entries in the schedule of the Constitution only demarcate the fields of legislative authority with respect to which it can legislate. It does not confer legislative powers as such. One cannot lose sight of one of the axiomatic rules of interpretation that construction which would avoid or defeat the purpose of the Act has to be avoided. Attempt should be made to preserve its workability and efficacy with a further attempt to plug the leakage and to prevent evasion. It is envisaged that fiscal laws must be strictly construed.

14. One must say what the words mean. Nothing should be presumed or assumed or applied. What the words say is the true test.

15. I have heard the arguments of the learned Counsel for the parties and have gone through the records.

16. The perusal of Section 23 of the Act which is a charging Section read with Section 2(nn) of the Act, the incidents of levy of market fee is firstly the fee is charged on the agricultural produce only. Secondly, it would be charged and if any of the incident with respect to agricultural produce happens i.e. either it is bought or sold or the dealer brings it in the notified market fee for the purpose of processing.

17. The levy of market fee on the agricultural produce brought for processing cannot be understood in its dictionary meaning inasmuch as the legislature in its wisdom has given a deeming meaning to the word processing i.e. giving of treatment or a series of treatments to the agricultural produce with an intention to make it fit for human consumption. It further enlarged its meaning that though processing cannot be equated with manufacturing, however, if manufacturing takes place out of an agricultural produce it would be deemed to be processing of an agricultural produce. By no stretch of interpretation by reading the scheme of the Act, it can be assumed that manufactured goods out of agricultural produce must be an agricultural produce, before market fees can be levied on it. The instance of levy of market fee is not an event of manufacturing. The event for levy of market fee is the agricultural produce brought for processing by a dealer or licensee and not by a consumer. Thus, in

our considered view, it is not a manufactured article on which market fee is levied. It is the agricultural produce brought to the notified market area on which market fee is levied.

18. Processing may not include manufacturing but manufacturing does include processing. There is no gainsaying that in the process of manufacture, agricultural produce is processed at various stages before ending up in a final manufactured article. Once the agricultural produce is brought and it is subject to any process though at intermediatory stage of manufacturing a final item, the deemed meaning of processing or giving treatment will come into operation and agricultural produce would be liable for the levy of market fee.

19. The intention of the Legislature is further writ large from the fact that an attempt has been made to remove the lacuna pointed out in Parkash Woollen Industries'' case (supra) wherein it was observed that expression processing in the context has been used, unless the Act deliberately gives a specific meaning, as it does when it defines `agricultural produce'', manufacturing of a commodity i.e. turning the original commodity into new aritlce for different use and with a new marketable character is not liable for market fee and market fee was only leviable if the agricultural produce so processed results into another agricultural produce. Criticism made by the Court in course of its judgment has been attempted to be met with, by the legislature by its legislative powers. The curative measures to remove the lacuna has been enacted by amending the definition and granting it validity in exercise of legislative competent. It is ushering in a valid law.

20. Thus, in our considered view one an agricultural produce is brought and is subjected to processing though ultimately used for manufacturing of some other item, it incurs the liability of market fee.

21. It would be further obvious and discernible by reading Section 23A of the Act, which empowers the dealer or licensee to add market fee in the cost of processing and manufacturing of the articles and pass on the burden to the subsequent purchaser. Thus, the deeming definition of processing if given effect to, the agricultural produce used for manufacture of the above mentioned articles, would be liable for levy of market fee.

22. The deeming definition has been obviously given against the background of the decision of a case by this Court by which the agricultural produce brought for processing though given a technical name of manufacturing resulted in unjust result. Its further consequences were revision of market fee. The matrix of the case shows that levy of market fee is on the agricultural produce and not on the manufacturing. The petitioners used `manufacturing'' as a ploy to evade the market fee. Accepting the interpretation as suggested by the learned Counsel for the petitioners and holding that market fee has been levied on manufacturing would amount to rendering the provisions of the Act as nugatory. It would further frustrate the very object of the amendment and the deeming meaning given by

the legislation to the word `processing'' other than the dictionary meaning. The only conclusion that can be reached is that the market fee levied by Section 23 read with Section 2(nn) is not a levy on manufacturing. Thus, it does not fall within the entries of Sch. 7, List 1, viz., entries 84 and 85.

23. By reading the entries Act in its true prospective, it cannot be said that the levy is on the manufacturing process. By viewing so, it would impede the object of leaving the market fee, the Act and the public interest particularly when the object of the Act is for providing development of rural India. The petitioners have been making conscious efforts to evade the payment of market fee on one pretext or the other. The argument advanced that the market fee is a levy on manufacturing, is an obvious attempt to rendering the legislative meaning totally obscure. The irresistible conclusion is that the levy of market fee does not fall within the entries of 7th Schedule, entries 84 or 96. It is fee on the agricultural produce which falls within the four corners of the State Legislative competence. Resultantly, Section 2(nn) of the act is intra vires.

24. Even otherwise by adopting the principle of reading pith and substance of the Act, the levy of market fee is on the goods brought for processing though the processing is at an interim stage of manufacturing. Undoubtedly, processing of agricultural produce would result in producing articles to the price of which the burden of the fee levied may be passed. Levy of market fees on agricultural produce stored for processing is within the competence of State Legislation.

25. So far civil writ 661 of 1991 is concerned, the additional point raised that under the Haryana Rural Development Act, 1980, points for collection of development funds cannot be fixed, is noticed to be rejected. Nothing has been pointed out to show that the exercise of jurisdiction by the authorities for fixing the points of collection of development funds is erroneous or is contrary to any law. No reason what to say of good reasons have been advanced to hold that the authorities cannot fix the points for collection of fees.

26. For the reasons recorded above, we find no force in the writ petitions and the same are hereby dismissed with costs. Costs are assessed at Rs. 100/ in each petition.

Petitions dismissed.