
(2014) 07 UK CK 0010

In the Uttarakhand High Court

Case No : Writ Petition No. 847 (MS) of 2013

Century Pulp and Paper

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 5-A
Constitution of India, 1950 — Article 19(1)(g), 245, 246

Citation : AIR 2014 UC 49

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Pankaj Kumar Singh, P.P. Phartiyal, Manish Arora, Ramji Srivastava, Rahul Sripat, T.P.S. Takuli, Ramesh Singh and H.M. Bhatia, Advocate for the Appellant; A.S. Rawat, Learned Deputy Advocate General, Paresh Tripathi, Addl. Chief Standing Counsel, K.P. Upadhyay, Learned Chief Standing Counsel, J.C. Belwal, Vipul Sharma and N.S. Pundir, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—In this bunch of writ petitions, the petitioners have challenged the validity of an amendment in the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 (from herein after referred to as "the Act") by which now a "Mandi fee" or a "Market Fee" as well as "Development cess" is liable to be paid on agricultural produces which are brought for the first time in the market area, inter alia, for the purposes of "manufacturing". The concerned Amendment is Act No. 04 of 2013. This challenge is on a number of grounds, which will be dealt with in a while, but as of now a brief history of the case would be in order. Market legislation was enacted in almost all the States in the country, with the purposes that the farmers should get a good return for their agricultural produce in the market and better facilities be provided to the farmers who bring their produce in the market, and that they may not be exploited by middlemen. It was a farmer friendly Legislation. At the time when the State of Uttarakhand was the part of the State of U.P., the law

which was in force was known as "U.P. Krishi Utpadan Adhiniyam, 1964". Later on, when the new State of Uttarakhand was carved out of the State of U.P. and came into existence on 9th November, 2000, by an Act of Parliament (U.P. Reorganization Act), and consequently the State of Uttarakhand enacted its own legislation known as "the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011". In the new legislation of Uttarakhand, there was a new provision added to Section 27 of the Act, namely Sub-section (c) (iii), which reads as under:

"(iii) any such agricultural produce, which reaches any Market area of the State for sale, storage, processing or transaction from any other State or out of Country for the first time it shall be registered as "First Arrival" and on such produce, Market fee and Development cess shall be payable;"

2. By the aforesaid legislation, if an agricultural produce is brought in the market area "for the first time", inter alia, "for sale, storage, processing or transaction" a "Market fee" and "Development cess" was liable to be given on such agriculture produce to the Mandi Samiti.

3. This provision was challenged before this Court in an earlier round of litigation, in a bunch of writ petitions which for reasons of convenience will be referred here as the "first case". The challenge was two fold. Firstly, on legislative competence and secondly that in any case the agricultural produce is being brought in the market area by the petitioners for "manufacturing" and the charging provision did not contemplate payment of "Market Fee" if the produce is brought for the purpose of "manufacture".

4. The first contention was negated by this Court (on legislative competence), but as far as the second contention was concerned, this Court was of the opinion that in majority of the cases, which were there before this Court, the agricultural produce was being brought for "manufacturing" and since the word "manufacture" was not there in the charging Section 27(c)(iii) of the Act, no "Mandi Fee" or "Market Fee", was liable to be paid on such "agricultural produce".

5. This provision has now been amended and the word "manufacture" has also been added in Section 27(iii) of the Act, with retrospective effect.

6. Now the said amendment has been challenged by the petitioners in the present bunch of writ petitions. This time the challenge is again on legislative competence, apart from other challenges. This Court will deal with each of these challenges one by one. Each of the petitioners claim that the agricultural produce which they have brought to the market area for the first time is for the purposes of manufacturing. There is no serious dispute that the agricultural produce is being brought in the market area for the purpose other than manufacturing.

7. The first challenge is on legislative competence. The petitioners would argue that the impugned amendment was outside the legislative competence of the State Legislature as essentially the amended provision is on subject of "industry"

since it speaks of "manufacture." According to the petitioners, this is exclusively the subject of List I in the 7th Schedule at Item No. 52, which reads as follows:--

"52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

8. The petitioners also argued that the present industries where manufacturing is to be done by bringing the agricultural produce is a scheduled industry under Industries (Development and Regulation) Act, which is a Central Legislation and, hence, only the Parliament has power to legislate on the subject, being a matter of Item 52 List I of 7th Schedule.

9. On the contrary, it has been argued by the learned State Counsel that the impugned amendment has been made under the powers vested with the State Legislature under Item 28 read with Item 66 of List II of 7th Schedule. The two provisions of List II of the 7th Schedule reads as under:--

"28. Markets and fairs.

66. Fees in respect of any of the matters in this list, but not including fees taken in any court."

10. This aspect was dealt with in some detail in the first case as well, though the only difference here would be that the word "manufacture" was not there earlier. In substance, the argument remains the same. The fee in fact is not being charged on any industry or any industrial activity. It is being charged on an "agricultural produce" which is brought in the market area for the first time, for the purpose of "manufacture".

11. The second challenge of the petitioners is that a "market fee" on an agricultural produce can only be charged, if there is a sale and purchase of that agricultural produce. Since what has actually happened to the agricultural produce is that it is being "manufactured" into a non agricultural produce and that there being no sale and purchase in the market area no "market fee" is liable to be charged.

12. The third challenge of the petitioner is that the amendment so made in the Act amounts to setting aside a judicial verdict by way of a legislative enactment. It has been argued that this Court vide its order dated 01.01.2013, passed in Writ Petition No. 375 (MS) of 2013, and other similar connected writ petitions (the first case) had held that the petitioners are not liable to pay "market fee", and by the present amendment they have been made liable to pay the market fee which amounts to setting aside a judicial order, which is not permissible.

13. The fourth and final challenge is that in any case the amendment cannot operate retrospectively, particularly since it relates to fiscal matters.

14. As far as the first two challenges of the writ petitioner are concerned, these two have already been adequately dealt with in Writ Petition No. 673 (M/S) of 2012 and in Writ Petition No. 375 (MS) of 2013 and the other bunch of writ

petitions (which is being referred as the first case) vide order dated 01.01.2013. All the same, for reasons of convenience, arguments made then and the findings on those arguments are being reproduced. The same submissions have been repeated in the present bunch of petitions.

15. An "Agricultural produce" is defined u/s 2(i) of the Act, which reads as under:

"2. In this act, unless the context otherwise requires:--

(i) "Agricultural Produce" means all produce and commodities, whether processed or unprocessed, of agriculture, horticulture, floriculture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, forest produce, as are specified in the Schedule or declared by the State Government, by notification, from time to time and includes admixture of two or more of such products, processed in form and further includes Gur, Rab, Shakkar, Khandsari and Jaggery;"

16. It is an admitted case that what is being brought in the market area by each of the petitioners, is an "agricultural produce". The legislative competence of the State Legislature to enact laws on the subject falls under the Entry 28 of List II of 7th Schedule, which reads as under:

"28. Markets and fairs."

17. In fact even on the earlier occasion, the argument regarding the legislative competence was not argued with any degree of seriousness. In fact most of the petitioners, barring in one case, admitted that the State legislature is competent to legislate on the subject.

18. Paragraphs 7 and 8 of the first case, which recapitulates the arguments and the findings and conclusion of the Court are being reproduced as under:

"7. This argument, it must be stated, has not been contested with any degree of seriousness (by Court). Moreover, this challenge to the legislative competence comes in only Writ Petition (M/S) No. 673 of 2012 by its counsel Mr. Ramesh Singh. He too admits that the State legislature is competent to legislate on the subject of "markets". It is also admitted by the petitioners that they bring their agricultural produce inside the market area in Uttarakhand. Section 27 of the Act which is a chargeable section, and it visualizes imposition of "market fee" not only where an agricultural produce is brought inside a market area for sale and purchase but also visualizes payment of market fee on that agricultural produce if it is brought for the purposes not of sale or purchase but either of storage, processing or transaction, as we shall see in section 27(c)(iii) of the Act.

8. The pith and substance here would be the "market area" of Uttarakhand which is admitted and the product which is in question an agricultural produce. These two essential ingredients being met, the challenge to the legislative competence does not survive."

19. The agricultural produce is being brought for the purpose of manufacturing is

an peripheral issue, the main issue is that an "agricultural produce" is being brought in the market area. Hence, in pith and substance the State Legislature is well within its powers to legislate on the subject as it is amply come under Items 28 and 66 List II of 7th Schedule.

20. The second challenge is that there being no "sale and purchase" in the market area in Uttarakhand and that being the essential ingredient for charging "market fee" and that being missing "market fee" is not liable to be charged.

21. Section 27 of the Act, which is the main charging section, reads as under:

"27. Powers of the Committee.--A Committee shall, for the purposes of this Act, have the following power; namely--

(a).....;

(b).....;

(c) (i) to levy such fees, as may be prescribed for the issue or renewal of licenses; and

(ii) to collect Market fees, which shall be payable on transaction of sale of specified agricultural produces in the market area at such rates, being not less than one per cent and not more than two and half per cent, of the price of the Agricultural produce so sold, as the State Government may specify by notification, and to levy and collect such Development cess at such rates being not less than 1/2 per cent, and not more than 2 1/2 per cent, of the price of such deal. Such fee or development cess shall be realized in the following manner--

(A) if the produce is sold through a commission agent, the commission agent may realize the Market fee and Development cess from the purchaser and shall be liable to pay the same to the Committee;

(B) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the Market fee and Development cess to the Committee;

(C) if the produce is purchased by a trader from another trader, the trader selling the produce may realize Market fee and Development cess from the purchaser and shall be liable to pay it to the Committee;

Provided that if the purchaser is only license holder, then he shall be liable to pay Market fees and Development cess;

(D) in any other case of sale of such produce, the purchaser shall be liable to pay the Market fee and Development cess to the Committee;

Provided that no Market fee or Development cess shall be levied or collected on the retail sale of any specified agricultural produce, where such sale is made to the consumer for his domestic consumption only;

Provided further that the seller of the produce shall not be exempted from

payment of Development cess on the ground that he has not recovered the same from the purchaser,

(iii) any such agricultural produce, which reaches any Market area of the State for sale storage, processing or transaction from any other State or out of Country for the first time it shall be registered as "First Arrival" and on such produce, Market fee and Development cess shall be payable;

(iv).....;

(d) to (j).....;

22. From the comparison between Section 27(c)(ii) and Section 27(c)(iii) of the Act, the principal difference is that whereas u/s 27(c)(ii) market fee is liable to be charged on any transaction of sale or purchase of an agricultural produce which is brought in the market area, under 27(c)(iii) irrespective of sale or purchase of an agricultural produce, once such produce reaches a market area of the State for the first time for either sale, storage, processing or transaction or manufacture, from any other State or out of the country, a "market fee" and "development cess" is liable to be paid on such agricultural produce.

23. Mr. Ramesh Singh, one of the counsels appearing in the matter had relied upon a judgment of the Hon"ble Apex Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, and submitted that in the Constitution Bench judgment of the Hon"ble Apex Court, one of the essential conditions for charging of a market fee is that there must be a transaction or sale and in the present case, there is no sale or purchase but it is only a "manufacture" market fee cannot be charged.

24. The same argument was made on the earlier occasion as well i.e. at the time of hearing in the first case. While rejecting their argument, it would be worthwhile to reproduce what the Court had said earlier on these submissions. Paragraph 15 of the judgment in the first case is reproduced as under:

"15. This argument of the petitioner is liable to be rejected at the very threshold for the simple reason that the provision i.e. Section 27(c)(iii) was not there in the "U.P. Krishi Utpadan Adhiniyam, 1964" when it come up for discussion by the Hon"ble Apex Court as this provision has come for the first time in 2011 in Uttarakhand, where irrespective of a sale and purchase which may follow, if an agricultural produce is brought for the first time in a market area for defined purposes, as already referred above, a market fee is liable to be charged." This argument is hence rejected.

25. The third argument of the petitioners that the amendment renders an earlier decision of this Court ineffective and, thus, amounts to encroachment on judicial powers. This argument of the petitioners is totally misconceived, and alien to the settled legal position.

26. The Legislature has plenary powers conferred on it under Articles 245 and

246 of the Constitution of India read with 7th Schedule to pass laws on the subjects assigned to it by the Constitution of India. It includes power of rendering a judicial decision ineffective, however, it can only be done by enacting a valid law. Of course, such powers are subject to the legislative competence and other constitutional limitations. The Hon''ble Apex Court in Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa, had held that "The rendering ineffective of judgments or orders of competent courts by changing their basis by legislatively enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power."

27. In one of its earlier decisions by the Hon''ble Apex Court, which came up before the Hon''ble Court in Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, the petitioners had earlier challenged the validity of Section 3-AB of U.P. Sales Tax Act, 1948 on various grounds including the grounds that said amendment (Section 3) has been incorporated to defeat a judicial decision. The Hon''ble Apex Court has rejected these contentions and dismissed the writ petition. In appeal while upholding the decision of the Hon''ble Allahabad High Court, the Hon''ble Apex Court has said as under:--

"The Legislature has not purported either directly or by necessary implication to overrule the decision of the Krishna Brick Field Vs. The State Of Uttar Pradesh and Others, On the other hand it has accepted the decision as correct but has sought to remove the basis of the decision by retrospectively changing the law. This court has pointed out in several cases the distinction between encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits. In the instant case what the Legislature had done is to amend the law retrospectively and thereby remove the basis of the decision rendered by the High Court. Such a course cannot be considered as an encroachment on the judicial power."

28. In a recent judgment, the Hon''ble Apex Court had reiterated the same legal position while deciding a similar controversy in the case of R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others,

29. Now let us examine what has been rendered in the earlier judgment (first case) which is alleged to now have been overruled by a legislative feat. As already referred above in the first bunch of writ petitions, the challenge before this Court was on various grounds including "legislative competence" etc. Most of these grounds were rejected and the Court was of the opinion that the State Legislature was competent to enact a law as it did. In short, a "market fee" can be charged on an agricultural produce which is brought in the market area for the first time. These writ petitions, however, were allowed on the ground that the charging section only allow the "Mandi Samiti" to charge a "market fee" if such an agricultural produce was brought for either sale, storage, processing or transaction but not for "manufacture", as the word "manufacture" was missing in

this provision. It was for this reason that this Court came to the conclusion that it was not the legislative intent to charge a "market fee" if such an agricultural produce was brought for the purpose of "manufacture", as it was established by the petitioners that such a produce was being brought for "manufacture". Now by the impugned amendment the word "manufacture" has been incorporated into such provision. It has been done by a valid legislation. It has already been held that the legislature has powers to legislate on the subject. In terms of the clear judicial verdict and settled legal position on the subject, this third contention of the petitioner also fails.

30. Coming finally to the last contention of the petitioners that this could not have been done retrospectively, we would again revert to the subject of legislative competence. The fact that Legislature is competent to enact a law on the subject in question is not in doubt. Once this is so, the powers to legislate include powers to legislate prospectively or even retrospectively. It is true that normally legislative enactments are prospective in nature but in case the Legislature intends to enforce some provisions retrospectively, it must be clearly stated in the statute.

31. In *R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others*, , this aspect has been dealt elaborately and we would discuss this in some detail.

32. What had happened in the case before the Hon"ble Apex Court was that an exemption was granted by the Central Government to new industries by a notification dated 08.07.1999, which was issued u/s 5-A of the Central Excise Act, 1944. Inter alia, by the said notification cigarette manufacturing companies were granted excise holiday or exemption if they set up their industries in the North Eastern Region of the country. The exemption was for a period of 10 years. The exemption was reintroduced on 17.02.2000 by another notification. The Excise Authorities, however, did not allow this exemption to some companies and the matter reached to Hon"ble Gauhati High Court. While the favourable orders were passed in favour of the companies and the matter was pending before the Division Bench of the Gauhati High Court, the Parliament enacted Section 154 of the Finance Act, 2003. The net result of the above enactment by Parliament was that irrespective of any Court order or decree or any notification, including benefits given under notification u/s 5-A of the Central Excise Act, the excise duties were now liable to be paid by such companies and if not paid, liable to be recovered. These matters went before the Hon"ble Apex Court, inter alia, since the rescinding of the notification etc. was done "retrospectively." The principal challenge, was regarding the retrospectivity of the legislation. The Hon"ble Apex Court while rejecting the claim of the cigarette companies and upholding the validity of the retrospectivity of the legislation held that a law cannot be held to be unreasonable merely because it operates retrospectively.

33. In the aforesaid case [*R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others*, while upholding the validity of a legislation which sought

to withdraw fiscal benefits to the companies with retrospective effect, the Hon"ble Apex Court held that a challenge to a statutory enactment does not lie simply because it is retrospective. It has to be elsewhere, the Hon"ble Apex Court has stated as under:

"When a statute is interpreted by a court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms."

34. In the same judgment the Hon"ble Apex Court had relied upon its earlier judgment, namely, *Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa*, (from herein after referred to as the "Orissa case"). In the Orissa case, the State Government of Orissa had issued an exemption notification u/s 6 of the Orissa Sales Tax Act, 1947, by which gold ornaments were exempted from sales tax, in the event "when the manufacturer selling them charges separately for the value of gold and the cost of manufacture." Certain traders in gold ornaments who got gold ornaments manufactured from artisans and thereafter sold them to the customers sought benefit of the said provision. The Sales Tax Department denied this exemption and, therefore, the traders filed a writ petition before the Hon"ble Orissa High Court who ruled in favour of the traders that such a benefit ought to be given to them. However, after the said decision, on 01.08.1961, the Orissa Sales Tax Validation Act, 1961 was passed which provided that notwithstanding anything contained in any judgment, decree or order of any court, the word "manufacturer" meant and was always to be deemed to have meant a person who by his own labour produces the ornaments or a person who owns or runs manufactories for that purpose. After this clarification/validation the petitioner who did not fall under this category of manufacturer challenged the 1961 Act on three grounds. Inter alia, that retrospective operation of the impugned section was unconstitutional because it imposed an unreasonable restriction on the petitioners' fundamental rights under Article 19(1)(g) of the Constitution. While disposing of these claims and arguments, the Constitution Bench of the Hon"ble Apex Court stated as under:--

"What the legislature has purported to do by Section 2 of the impugned Act is to make the intention of the notification clear. Section 2 in substance declares that the intention of the delegate in issuing the notification granting exemption was to confine the benefit of the said exemption only to persons who, actually produce gold ornaments or employ artisans for that purpose. We do not see how any question of legislative incompetence can come in the present discussion. And, if the State Government was given the power either to grant or withdraw the exemption that cannot possibly affect the legislature's competency to make any provision in that behalf either prospectively or retrospectively."

35. If we compare the facts of present case, with the case just seen i.e. Orissa case, a clear similarity can be detected. The earlier bunch of writ petitions (first case) were allowed on a limited point that the Legislature had not included the word "manufacture" in the charging section. Now by the impugned amendment, it has done so, albeit retrospectively. Thus, validating the said Act retrospectively and now under the new legal position such grounds as were available to the petitioner in the first case stand removed and are not available to them. Consequently the challenge of retrospectivity also fails.

36. This Court has also examined as to whether the amended provision would cast any unreasonable or undue hardship to the petitioners, considering the intent of the Legislature as it stands now and also the fact that the length of time which is involved in the present case is maximum 2 to 3 years, this Court does not find that any undue hardships will cast to the petitioners.

37. The same logic and reasonings, as are applicable for payment of "market fee" shall also applicable for "development cess" and the finding given above shall equally be applicable in the case of "development cess", as far as its payment to the concerned Mandi Samiti is concerned. The writ petitions fail on all counts. All the writ petitions are hereby dismissed. No order as to costs.