(2015) 02 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition (M/S) Nos. 4995 of 1996 (New No. 1033 of 2007), 1459 and 1551 of 2007

Century Pulp and Paper Mill APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 141
Constitution of India, 1950 — Article 226

Citation : (2015) 3 UC 1922

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Pankaj Kumar Singh, for the Appellant; A.K. Joshi, Addl. C.S.C., Advocates for the Respondent

Judgement

Alok Singh, J—In all these writ petitions, the question involved is as to whether market fee and development cess can be recovered only from the trader (purchaser) or only from the trader (seller) of the agriculture produce? Undisputedly, vide Annexure No. 1 dated 23.02.1979, the then State of Uttar Pradesh was pleased to ensure supply of Eucalyptus wood to the petitioner company on the conditions mentioned therein; wood of Eucalyptus was sold to the petitioner through U.P. Forest Corporation by the State of Uttar Pradesh. Mandi Samiti raised impugned demand of the Mandi fee and petitioner was asked to pay Mandi fee on the wood purchased by the petitioner from the Forest Department. Feeling aggrieved, petitioner has filed present writ petitions.

2. Mr. Pankaj Kumar Singh, learned counsel for the petitioner submits that as per Section 17(iii)(b)(3) of the U.P. Krishi Utpadan Mandi Adhiniyam 1964, market fee can be recovered only from the seller and not from the petitioner, who is the purchaser. Mr. Pankaj Kumar Singh, learned counsel for the petitioner further contended that in Writ Petition (M/S) No. 1459 of 2007 and Writ Petition (M/S) No. 1551 of 2007, even if, sale is found to have taken place within the market area, even then, recovery of the market fee can be effected only against the

trader (seller) and not from the trader (purchaser)/petitioner.

3. According to Mr. J.C. Belwel, learned counsel appearing for the Mandi Samiti, as per Section 17(iii)(b)(2) of the Act, petitioner has to pay Mandi fee, since, State is producer of the Eucalyptus trees purchased by the petitioner and Sub-section (3) has no application in the present case. Mr. Belwal further contends that traders [sellers] of the writ petitions No. 1459 and 1551 are resident of other states and were never issued any licence by the Mandi therefore as per Section 17(iii)(b)(4) of the Act, Mandi fee has to be paid by the purchaser i.e. the petitioner.

4. Section 17(iii) reads as under:--

(iii) levy and collect-

(a) such fees as may be prescribed for the issue or renewal of licences and

(b) market fee which shall be payable on transaction of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than two and a half percentum of the price of the agricultural produce so sold as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agricultural produce so sold, and such fee or development cess shall be realized in the following manner:--

(1) If the produce is sold through a commission agent, the commission agent may realise the market fee and the development cess from the purchaser and shall be liable to pay the same to the Committee;

(2) 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;

(3) If the produce is purchased by a trader from another trader, the trader selling the produce may realize it from the purchaser and shall be liable to pay the market fee and development cess to the Committee;

Provided that notwithstanding anything to the contrary contained in any judgement, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the market fee to the Committee and shall not be absolved from such liability on the ground that he has not realized it from the purchaser:

Provided further that the trader selling the produce shall not be absolved from the liability to pay the development cess on the ground that he has not realized it from the purchaser;

(4) In any 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 notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the commission agent, trader or purchaser, who has obtained the licence, accept a lump sum in lieu of the amount of market fee or development cess that may be payable by him for an agricultural year in respect of such specified agricultural produce, for such period, or such terms and in such manner as the State Government may, by notified order specify:

Provided also that no market fee or development cess shall be levied on transactions of sale of specified agricultural produce on which market fee or development cess has been levied in any market area if the trader furnishes in the form and manner prescribed, a declaration or certificate that on such specified agricultural produce market fee or development cess has already been levied in any other market area.]"

5. Bare perusal of Sub-section (2) aforesaid would demonstrate that if produce is purchased directly by the trader from a producer then the trader (purchaser) shall be liable to pay the market fee and development cess to the committee, while, as per Sub-section (1) and (3) market fee and development cess shall be recovered from the trader (seller) or his commission agent, as the case may be, selling the produce and seller or commission agent may recover the market fee and development cess from the purchaser. Sub-section (3) further demonstrates that even if the trader selling the produce fails to recover the market fee and development cess from the purchaser, he (seller) shall not be absolved for the payment of the market fee and development cess to the committee.

6. Sub Section (4) says that in the cases not covered under Sub-sections (1), (2) or (3), market fee and development cess shall be payable by the purchaser. In my humble opinion, combined reading of Sub-sections (1)(3) and (4) would be if seller or his commission agent as the case may be are identifiable, market fee and development cess has to be paid by the seller or his commission agent as the case may be, however, if seller or his commission agent is not identifiable or purchaser is not able to disclose identity of the seller or his commission agent or seller or commission agent is not traceable then of course market fee and development cess may be recovered from the purchaser.

7. The constitutional Bench of the Hon''ble Apex Court in the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, AIR 1980 SC 1124 : (1980) 3 SCR 104 has held as under:--

"31. A pure and simple producer as defined in clause (p) of Section 2 is not required to take any licence for selling his agricultural produce nor is he required to pay market fee under any of the sub-clauses of Section 17(iii)(b). But if he is a producer-trader in the sense we have explained above, then he will be required to take out a licence in accordance with Section 9(2) of the Act and nobody can be permitted to carry on any trade in agricultural produce in the market area without a valid licence. Merely for his lapse of not taking out a licence he cannot escape the liability to pay the market fee. Market fee will still be chargeable from the trader, as, in Section 17(iii)(b) it is not stated that market fee can be charged only from the licensees."

8. As per the dictum of the Apex Court, a pure and simple producer is not required to take any licence for selling his agricultural produce nor is he required to pay market fee under any of the Sub-sections of Section 17(ii)(b), however, if such producer is found to be producer cum trader, then of course he has to pay the market fee irrespective of the fact that he has or has not obtained the licence as per Section 9(2) of the Act.

9. Mr. A.K. Joshi, learned Addl. C.S.C. appearing for the State, in all fairness, for which he is known at the Bar, fairly submits that State Government and its instrumentalities i.e. Forest Corporation are engaged in selling the forest produces. Sometime auction is held and sometime for the development of a particular industry allotment is made of the forest/agricultural produce.

10. Since, State Government is engaged in selling of the forest produce, therefore, State Government cannot be said to be simplicitor producer and shall fall within the definition of the "producer cum trader" and as per the dictum of the Apex Court in the case of Ram Chandra Kailash Kumar (supra) shall be liable to pay market fee. Since, State Government and Forest Corporation are traders as well, therefore, market fee has to be recovered from them for selling the produce within the market area irrespective of the fact as to whether same was recovered from the purchaser i.e. petitioner or not. Therefore, in my humble opinion, present case falls within the four corners of Sub-section (3) of Section 17(iii)(b) of the Act.

11. In Writ Petition No. 1459 of 2007 and Writ Petition No. 1551 of 2007, although case of the petitioner is that petitioner company has purchased the products from the traders of the other State, therefore, no market fee is recoverable for the sale took place outside the Mandi area. However, fact remains that petitioner has given complete details of the traders wherefrom petitioner has purchased the agriculture produce. Mandi Samiti does not dispute the identity of the traders (sellers) as furnished by the petitioner company, however, case of the Mandi Samiti is that sale has taken place within the market area, therefore, market fee is payable thereon.

12. In my humble opinion, if market fee is held to be recoverable as stated by the Mandi Samiti then question comes who is liable to pay the same?

13. As discussed hereinbefore if identity of the seller or his commission agent is not in dispute same shall be recovered from the seller or his commission agent, as the case may be, and Sub-section (4) cannot be pressed in service. In the Writ Petition No. 1459 of 2007 and 1551 of 2007, list of sellers provided by the petitioner to the Mandi Samiti has never been doubted or disputed, therefore, recovery could have been made against the sellers. No recovery is permitted against the petitioner purchaser, if identity of seller is known.

14. Mr. J.C. Belwal, learned counsel appearing for the Mandi Samiti, at this stage, has vehemently argued that petitioner has earlier filed previous writ petition being Civil Misc. Writ Petition No. 1067 of 1993 before the Division Bench of the Allahabad High Court challenging the demand of the market fee on the working charges of the Forest Corporation as well. Division Bench of the Allahabad High Court in its judgment dated 06.10.1994 has held as under:--

"It appears that the petitioner has intentionally withheld from the Court the agreement/agreements entered with the State/U.P. Forest Corporation for the purchase of Eucalyptus wood which clearly calls for a presumption against the case of the petitioner to hold that the sale price of the wood included the working charges of the Forest Corporation as well and that the respondent-Mandi Samiti could legally demand market fee on the total sale price of the Eucalyptus wood sold to the petitioner including the working charges of the Forest Corporation.

In view of what has been stated above, there is no merit in this writ petition and the same is dismissed."

15. Mr. Belwal further contends that in view of the findings of Allahabad High Court, present petitions are not maintainable and are barred by principle of res judicata and Order 2 Rule 2 C.P.C.

16. Section 141 of C.P.C. reads as under:

"141. Miscellaneous proceedings- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

[Explanation:--In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.]"

17. As per Section 141 C.P.C., the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction and as per explanation of Section 141 of C.P.C. proceedings under Article 226 of the Constitution of India do not fall within the expression "proceedings" mentioned in Section 141 C.P.C.

18. Although rigid provisions of C.P.C. are not made applicable in a writ petition, however, broad principles of C.P.C. are always made applicable in the writ petition filed under Article 226 of the Constitution of India.

19. Order II Rule 2 of C.P.C. reads as under:--

"2. Suit to include the whole claim-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim-Where a plaintiff omits to sue in respect of or

intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may se for all or any of such reliefs; but it he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

20. Bare reading of Sub-rule (1) of Rule 2 of Order II of C.P.C. would demonstrate that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of cause of action and as per Sub-rule (3) of Rule 2 if a person is entitled to more than one reliefs in respect of the same cause of action he may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

21. The only question involved in the previous writ petition was as to whether the working charges of the Forest Corporation can be included in the cost of the goods sold for the purpose of assessing the market fee. As to whether market fee could be recovered from the purchaser or from the seller was not in question at all in the previous writ petition. Therefore, any finding, if any, in the judgment passed in previous writ petition pertaining to the liability to pay the market fee is obiter dicta. Moreover, plea of liability to pay market fee is a pure legal question, therefore, it was not required to be taken in the previous writ petition. Therefore, present writ petitions are very well maintainable. Since question of liability to pay market fee was neither raised nor decided in the previous writ petition, therefore, plea of res-judicata is not available to the respondents. In view of the discussion made hereinbefore writ petitions succeed and are hereby allowed and it is held that no market fee can be recovered from the petitioner/purchaser in view of Section 17(iii)(b)(3) of the Act and Mandi Samiti, if so advised, may proceed to recover the same from the seller of the goods in all the writ petitions. Market fee already paid by the petitioner pursuant to the impugned demand shall be refunded to the petitioner within four weeks from today alongwith interest @ 6% per annum. No costs.