(1988) 08 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ No. 13799 of 1988 and Writ Petition No''s. 13793, 13794, 13795, 13796, 13797, 13798, 13800 and 13801 of 1988

Continental Seeds and Chemicals Ltd. APPELLANT

Vs

Director, Mandi Parishad and Others RESPONDENT

Date of Decision : 31-08-1988

Acts Referred:
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2

Citation : (1988) 2 AWC 1312

Hon'ble Judges : R.P. Singh, J;R.M. Sahai, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The short question that arises for consideration in these petitions filed by companies or persons engaged in the trade of processing certified seeds of cereals and vegetable is if seed is a specified agricultural produce, within the meaning of Clause (a) of Section 2 of U.P. Krishi Utpadan Mandi Adhiniyam 1964 and its transaction of sale attracts levy of fee u/s 17 of the Act.

2. Seed is used for sowing or germinating. In agriculture it is important in two ways-one as food stored for development of new plant which can serve as food stuff for man and animal and other for use as germinating plant at start of new crop each year. But with passage of time and emphasis on efficiency and increased production preservation and processing of seed became a trade and it was recognised as industry in 18th century. Like other countries its trade is regulated by Legislation which provides for seed certification agency entrusted with responsibility of checking the growing of seed its maturity in fields and then at processing, labeling and bagging, in the petitions it has been averred that Petitioners supply foundation seed to certified cultivators after purchasing it from agricultural universities. The growth of seed, its maturity and purity is checked by the certifying agency and it is after their approval that Petitioners purchase it

from growers, then process it render it immune from insects, treat it chemically and label and bag it under supervision of tide certifying agency. Although these allegations are not admitted, probably because of lack of verification but presumably because of the claim that seed even after processing is an item of agricultural produce. It is, therefore, necessary to extract the definition of agricultural produce which runs as under:

"agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandary or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggery.

3. The ambit and import of the definition, undoubtedly, is very wide as the first part extends it not only to the items of produce of agriculture which are popularly and commonly understood as such but others as well for instance forest. And the second and third part widens it further by including in it admixture of two or more of such items as also any such item in processed form. But the width of definition is curtailed and restricted by use of expression '' item specified in the Schedule. That is it is not every agricultural produce but only those which are specified in the Schedule to the Act shall be deemed to be agricultural produce whether as such or in processed form. In the Schedule each of the items included in the definition of agricultural produce have been sub-divided under various heads. For instance agriculture is subdivided in cereals, legumes, oil seed, Fibers, Narcotic, Spices grass and fodder and Miscellaneous. Similarly horticulture has been divided into vegetable and fruits. Each of these various sub-heads enumerates number of items having common characteristic for instance cereal includes wheat, barley, paddy, rice, Jowar, Bajra, Maize, Bajra, Mardana, Kakun, Kodo, Kutki and Sawan. Cereal or grains are cultivated for being used as human food or feed for livestock. Therefore, any of these items or their admixture or they in processed form must retain their basic characteristic of continuing to be cereal. That is fit for human or animal consumption. The processed seed which, undisputedly is treated chemically cannot be used either as food stuff or as feed for livestock. Therefore, even though seed may be covered in wider connotation of agricultural produce as agriculture is nothing but article or science of cultivation but in absence of its mention in the Schedule and processing resulting in loss of its basic characteristic of being cereal it cannot be subjected to any levy as agricultural produce. The conclusion is strengthen by taking seed of other item namely vegetable Under the main head horticulture are included vegetable and fruits. Each of these contains list of various items. But it does not include vegetable seed or fruit seed. According to learned Counsel for Mandi Samiti it was not done because seed of vegetable and fruit like cereal is nothing but the item itself, ft is the genus from which the plant germinates. It is too much simplification of the problem. Fee under Act is leviable on agriculture produce specified in the Schedule. What is specified is vegetable. Can it be said that vegetable and its seed are interchangeable. Processing apart some may

satisfy this test but other do not For instance seed of tomato, chilies, cabbage, caret, Radisson, Lady finger, pumpkin etc. may be obtained by drying the vegetable but the seed so obtained cannot be used or treated as vegetable. It can be used for growing only. The expression, ''item specified in the Schedule'' cannot by any principle of interpretation or construction be deemed to include the items specified and its seed etc. Further a perusal of the items mentioned under heading cereal shows that those seed in which the fee was intended to be levied have itself been specified. For instance Dhaincha Creed, Mahua seed, Cumin seed etc. It negatively excludes inclusion of seed only because it is agricultural produce. Therefore, even if seed in processed form is agricultural produce it being an item not specified in the Schedule it cannot be treated as agricultural produce for levying fee u/s 17 of the Act.

4. In view of these conclusions it appears unnecessary to examine if processing unit being situated outside the market area the Petitioners were not liable to pay fee or that fee having been paid on cereal or vegetable purchased no fee was leviable on processed seed.

5. For the reasons stated above all these petitions succeed and are allowed. The notices issued by opposite parties demanding fee on processed seed are quashed. Parties shall bear their own costs.