(1993) 05 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3099 of 1993

Jaswant Rai & Bros. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:

Citation : (1993) 3 LJR 327 : (1993) PLJ 563 : (1993) 3 RRR 360

Hon'ble Judges : A.L.Bahri, J and G.C.Garg, J

Advocate : O.P. Goyal, Advocate, Ashok Aggarwal, Sr. Advocate, Advocates for appearing Parties

Judgement

A.L. Bahri and G.C. Garg, JJ.,

1. Petitioners are manufacturers of carpets having their factories at Panipat. They import raw material i.e. wool from abroad and bring the same to Panipat in their factories situated within the notified market area of Market Committee, Panipat and after due process, carpets are manufactured which are exported out of India. When the petitioners bring such raw wool to Panipat, they are being subjected to levy of market fee by the Market Committee under the Punjab Agricultural Produce Markets Act, 1961 as applicable in Haryana (for short the Act''). By amendment of the Act in 1988, by Haryana State, the definition of "processing" contained in Section 2(nn) of the Act has been amended so as to include manufacturing out of an agricultural produce. On that basis, it is alleged that levy of market fee under the State Act would be hit by the provisions of Articles 246 and 286 of the Constitution as it is only the Parliament which can enact laws relating to trade and commerce with foreign countries; import and export across customs frontiers as mentioned in Entry No. 41 of List 1 of the Seventh Schedule attached to the Constitution read with Entry No. 96 of the aforesaid list providing legislation for charging fees in respect of any of the matters in that list, but not including fees taken in any Court. Further, reference has been made to Entry 26 of List II of the Seventh Schedule attached to the Constitution empowering the State to legislate on trade and commerce within the

State, subject to the provisions of Entry 33 of List 111, read with Entry 66 providing for changing of fees in respect of any of the matters in this list, but not including fees taken in any Court. The contention of learned counsel for the petitioners in this respect cannot be accepted. Section 23 of the Act as applicable to the State of Haryana, authorises the Committee to charge fee on ad valorem basis on the agricultural produce bought or sold or brought for processing by licensee in the notified area at a rate not exceeding Rs. 2/ for every hundred rupees. This charging section does not talk of any sale transaction which might have earlier taken place abroad. Incidence of charging fee is not on trade or commerce with any foreign country or import and export cross the custom barrier. At this stage, it may be pointed out that when carpets manufactured by the petitioners are exported, the Market Committee does not levy any fee. The argument is only limited to the word "import" as occurring in Entry 41 of List I of the Seventh Schedule attached to the Constitution. It may be emphasised that bringing of any agricultural produce within the market area has nothing to do with the import of goods from foreign countries. The act of trade and commerce in respect of import stands completed, the moment the goods are imported either at the airport or at the harbour. Subsequently, if the goods are taken to any market area, fees for services rendered or to be rendered by the Market Committee within that area could legitimately be levied under the provisions of the Art. The aforesaid Act does not contravene the provisions of Articles 246 and 286 of the Constitution, which and reproduced below :

"246(1) Notwithstanding anything in Clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) xxx xxx

(3) xxx xxx

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

286(1). No law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase take place

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India."

(2) xxx xxx

(3) xxx xxx"

Article 286(1) will not be attracted to the case in hand as no sale or purchase of goods is to take place outside the State or in the course of import of goods into or export of the goods out of the territory of India. By making reference to Entry41 of ListI, it may be observed that levy of market fee on the goods brought within the market area for processing has no concern or connection with the import of the goods within the territory of India. Article 246 of the Constitution will not be attracted to the case in hand. Moreover, the provisions referred to by the learned counsel relate to levy of taxe''s where as in the present case, only the market fee is being levied. The tax and fee are two different connotations known to law though both are compulsory exactions of money from the payee thereof. Fee is for the services rendered. In Kewal Krishan Puri and another v. State of Punjab and others, AIR 1980 SC 1008 : 1985 R.R.R. 173, the apex Court observed as under :

"The Constitution, therefore, clearly draws a distinction between the imposition of a tax by a Money Bill and the impost of fees by any other kind of Bill. So also in the Seventh Schedule both in List I and List II a distinction has been maintained in relation to the entries of tax and fees. In the Union List entries 82 to 92A relate to taxes and duties and entry 96 carves out the legislative fields for fees in respect of any of the matters in the said list except the fees taken in any Court. Similarly, in the State List entries relating to taxes are entries 46 to 63 and entry 66 provides for fees in respect of any of the matters in List II but not including fees taken in any Court. Entry relating to fees in List III is entry 97. Our Constitution, therefore, recognises a different and distinct connotation between taxes and fees."

2. The respondentCommittee charges fee for the services rendered in the market area. Entry 66 of List II of the Seventh Schedule attached to the Constitution authorises the State Legislature to levy fee in respect of any of the matters enumerated in this list, but not including fee taken in any Court. Entry 14 authorises the State Legislature to legislate in respect of agricultural including agricultural education and research, protection against pests and prevention of plant diseases and Entry 28 relates to market and fares. The Punjab Agricultural Produce Markets Act, 1961 has been enacted by the Legislature for better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State.

3. Somewhat similar matter came up for consideration before this Court in M/s. Sohela Mal Dayal Singh and others v. The State Agricultural Marketing Board, Punjab and another, 1973 PLJ 410. The fruits grown outside the State were brought within the market area. Being agricultural produce it was subjected to market fee. The State Legislature had completely regulated their sale/storage under section 5 of the Act. This would show that as and when any agricultural produce is brought within the market area, market fee could be levied without further considering as to whether such agricultural produce was produced within the market area or not, or the same was imported from other States. Likewise, it is immaterial, as is projected in the present case, as to whether agricultural produce was imported from abroad and brought into the market area.

In view of the above, it could not be successfully argued that the State legislation providing for levy of market fee on agricultural produce imported from foreign countries within the notified market area, is illegal or unauthorised and that it is only the Parliament which can enact laws providing for levy fee or tax in respect of such goods. In the present case as noticed above, the legislation by the state is,only for levy of market fee within the market area and in lieu of which it provides services contemplated by the various provisions of the Act. No successful challenge thus could be made to levy of market fee by the Market Committee on raw wool brought by the petitioners within the Notified Market Area for processing. The writ petition is, therefore, dismissed.