**(2005) 09 AHC CK 0102**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No''s. 12871 and 39605 of 2002

Jayprakash Pramod Kumar and Others APPELLANT

Vs

U.P. Raj Krishi Utpadan Mandi Parishad RESPONDENT

**Date of Decision :** 28-09-2005

**Acts Referred:**

Forest Act, 1927 — Section 2, 2(4), 2(7), 4A
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 8

**Citation :** (2006) 2 AWC 1404 : (2005) 99 RD 775 : (2005) 2 RD 775

**Hon'ble Judges :** R.K. Agrawal, J;M. Chaudhary, J

**Bench :** Division Bench

**Advocate :** Vinod Sinha and S.P. Sinha, for the Appellant; B.D. Mandhyan and S.C., for the Respondent

**Final Decision :** Dismissed

## Judgement

R.K. Agrawal, J.—In both the writ petitions, the petitioners have challenged the levy and demand of market fee on bamboos sold by the petitioners as also the direction to take out licence under the provisions of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, hereinafter referred to as the Adhiniyam.

2. Briefly stated the facts giving rise to both the writ petitions are as follows:

The petitioners are carrying on the business in the purchase and sale of bamboos. They are registered as dealer under the provisions of U.P. Trade Tax Act with the Trade Tax Department. They purchase bamboos mostly from the places outside the State of U.P. They sell it within the State of U.P. as also to places outside the State of U.P. On 11th April, 1978, the Government of U.P. issued a notification u/s 8(i)(a) of the Adhiniyam declaring that with effect from 1st May, 1978 agricultural produce mentioned in the Schedule shall be included in the list of specified agricultural produce of market areas. In the said Schedule under the heading "Forest Products", item No. 2 mentions "wood". According to the petitioners, even though wood has been specified under the heading "Forest Products" in the Schedule, since 1978 the petitioners were never required by the authorities to apply or obtain licence under the Adhiniyam for the purposes of carrying on business of bamboos nor they were required to pay any market fee on the transactions of sale and purchase of bamboos within the respective market areas. It is the case of the petitioners that throughout the State of U.P. bamboo has never been treated as an agricultural produce since the enforcement of the Adhiniyam According to the petitioners, for the first time on 10th December, 2001, the Director, Rajya Krishi Utpadan Mandi Parishad, Uttar Pradesh, Lucknow, sent a general order to all the Regional Deputy Directors (Administration), Krishi Utpadan Mandi Samiti in the State informing them that in view of the decision by this Court in the case of Atma Ram Ratan Lal and Ors. v. State of U.P. and Ors., 1979 Allahabad Law Journal 126 bamboos are covered under the definition of word "wood" and, therefore, market fee is leviable on it. The Deputy Directors(Administration) as also the Secretary, Krishi Utpadan Samiti issued consequential directions for realisation of market fee on the sale of bamboos from the petitioners and for taking out the licences.

3. We have heard Sri Vinod Sinha, learned counsel for the petitioners and Sri B.D. Mandhyan, learned Senior Counsel on behalf of the respondents.

4. Sri Vinod Sinha, learned counsel for the petitioners submitted that by any stretch of imagination bamboo cannot be treated as an item covered under the entry "wood" as given in the Schedule to the Adhiniyam. Even otherwise, according to him, the Schedule was amended in the year 1978 and the judgment of this Court in the case of Atma Ram Ratan Lal (supra) was delivered on 21st September, 1978 and for more than 24 years the respondents did not take any steps for realisation of market fee or insisting upon the traders to take out licence for dealing in the said item, which establishes that even respondents were not treating bamboo as an item covered under the entry "wood". According to him, bamboo is neither processed form of wood nor admixture of any or two more items mentioned in the Schedule. It does not possess physical and chemical properties as is possessed by the wood. It is elastic in nature and cannot be used for the purpose for which normally the wood is used. He, thus, submitted that bamboos cannot be treated to be covered under the entry wood and, therefore, there is no liability for payment of any market fee on the sale and purchase of the bamboos nor the petitioners are required to take out any licence under the Adhiniyam for dealing in the said item. He further submitted that even in the case of Atma Ram Ratan Lal (supra) this Court had not held that bamboo is a "wood". It has only held that the Schedule mentions wood, which is a generic term and its ambit cannot be cut down by technical arguments. The observation made in paragraph 33 of the reports is to be read in the context in which it was made and, therefore, reading in the context it establishes that the observation was made with respect to firewood and not in respect of bamboo. Thus, the direction issued by the Director, U.P. Rajya Krishi Utapadan Mandi Parishad, Lucknow as contained in the general order dated 10th December, 2001 is based on mis-reading of the judgment.

 

4. Sri Vinod Sinha, learned counsel for the petitioners submitted that by any stretch of imagination bamboo cannot be treated as an item covered under the entry "wood" as given in the Schedule to the Adhiniyam. Even otherwise, according to him, the Schedule was amended in the year 1978 and the judgment of this Court in the case of Atma Ram Ratan Lal (supra) was delivered on 21 September, 1978 and for more than 24 years the respondents did not take any steps for realisation of market fee or insisting upon the traders to take out licence for dealing in the said item, which establishes that even respondents were not treating bamboo as an item covered under the entry "wood". According to him, bamboo is neither processed form of wood nor admixture of any or two more items mentioned in the Schedule. It does not possess physical and chemical properties as is possessed by the wood. It is elastic in nature and cannot be used for the purpose for which normally the wood is used. He, thus, submitted that bamboos cannot be treated to be covered under the entry wood and, therefore, there is no liability for payment of any market fee on the sale and purchase of the bamboos nor the petitioners are required to take out any licence under the Adhiniyam for dealing in the said item. He further submitted that even in the case of Atma Ram Ratan Lal (supra) this Court had not held that bamboo is a "wood". It has only held that the Schedule mentions wood, which is a generic term and its ambit cannot be cut down by technical arguments. The observation made in paragraph 33 of the reports is to be read in the context in which it was made and, therefore, reading in the context it establishes that the observation was made with respect to firewood and not in respect of bamboo. Thus, the direction issued by the Director, U.P. Rajya Krishi Utapadan Mandi Parishad, Lucknow as contained in the general order dated 10th December, 2001 is based on mis-reading of the judgment.

5. Sri B.D. Mandhyan, learned Senior Counsel on the Ors. hand submitted that bamboo is covered under the entry "wood" as given in the Schedule and being specified agricultural produce, the petitioners are required to take out licence and also to pay market fee. According to him, ''wood'' as given in the Schedule has been used in a generic term and all items of wood, which in the commercial world and common parlance are treated as wood shall be covered under the said entry. Applying the aforesaid principles, he submitted, bamboo shall be covered under the entry wood. He further submitted that merely because for 24 years no market fee was levied or demanded would not stop the respondents from levying and demanding the market fee on the sale and purchase of wood if it is otherwise leviable under the Adhiniyam. He further submitted that under the Indian Forest Act, 1927, the definitions given in Sub-Sections (4) and (7) of Section 2 bamboo is included in the term ''forest produce''.

6. He also referred to the dictionary meaning of the term given in Webster''s Third New International Dictionary, Volume I, 1966 Edition at page 169, which defines it as a large woody plant. In support of his aforesaid submission he has relied upon the following decisions:

 

1. Atma Ram Ratan Lal and Ors v. State of U.P. and Ors. 1979 ALL.L.J.126.

2. Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another,

3. Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., .

4. Suresh Lohiya Vs. State of Maharashtra and Another, .

7. Having given our anxious consideration to the various pleas raised by the learned counsel for the parties, we find that under the Adhiniyam Section 2(a) defines ''agricultural produce as follows:

"(a) "agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, 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;"

8. In the Schedule appended to the Adhiniyam under the heading ''Forest Products'' entry 2 mentions ''wood''. The question is as to whether "bamboo" would be treated as an item covered under the entry "wood" or not.

9. In Encyclopaedia Britannica (Micropaedia), Volume -1, 15th Edition at page 853. "bamboo'' has been described as follows:

"bamboo, any of the tall, treelike grasses comprising the subfamily Bambusoideae of the family poaceae. More than 75 genera and 1,000 species have been proposed in botanical literature,but many names are synonymous and thus not considered legitimate.

Bamboos are distributed in tropical and Sub-tropical to mild temperate regions, with the heaviest concentration and largest number of species in southeastern Asia and on islands of the Indian and Pacific oceans. The woody, hollow aerial stems(culms) of bamboo grow in branching clusters from a thick underground stem(rhizome). The culms often form a dense undergrowth that excludes Ors. plants. Bamboo culms range in length from 10 to 15 centimetres (about 4 to 6 inches) to more than 40 metres (about 130 feet). The foliage leaves have stalked blades and are borne on branches; leaves on young culms arise directly from the stem. Most bamboos flower only after many years of vegetative growth and reproduction.

Bamboos are used for construction material, household implements, fishing poles, plant supports and as ornamental plants and soil stabilizers. Cooked young shoots of some bamboos are eaten as vegetables. The pulp and fibre of several species, especially Dendrocalamus strictus and Bambusa arundinacea, are used in the manufacture of paper products. The nearly solid culms of D.strictus and similar species, known as male bamboos, are used locally as walking sticks and lance shafts."

 

10. In the World Book Encyclopedia, Volume 2, 1990 Edition, "mboo" has been described as follows:

"Bamboo is a giant grass noted for the usefulness of its hollow woody stem. Bamboos are distantly related to wheat oats and barley. But unlike these crop grasses, most bamboos are of giant size. Some may stand as much as 120 feet (37 meters) high and have stems 1 foot (30 centimeters) in diameter. Bamboo stems are used as fishing poles and in ornamental screens, cooking utensils, tools, baskets and building material.

Scientists rank bamboos among the most primitive of grasses. There are more than 700 species (kinds) of bamboos. Most of these plants grow naturally in tropical climates or in the warm regions of temperate climates. Two kinds of small bamboos are native to the United States. They grow in the southeastern states, in thickets known as canebrakes.

How bamboo is used. Bamboo provides many essential articles for people who live in tropical countries, especially Asian lands. Farmers may live in bamboo houses, sit on bamboo chairs and eat food prepared in bamboo containers. Their beds and covers may be bamboo mats. They wear sandals woven from bamboo strips. Bamboo cages hold chickens and pigs and a bamboo fence may enclose a yard. Bamboos provide shade and tender young bamboo sprouts are eaten as vegetables. Rafts, sails, two rope, paper and tools are also made from bamboo. Bamboo probably has more uses than any Ors. substance in tropical countries.

Bamboos have been grown in the United States mostly for ornament. The United States Department of Agriculture maintains a bamboo garden near Savannah, Ga. Here, experts grow bamboo and test it. They have found that the closely matted roots help control soil erosion and the high cellulose content of bamboo stems makes excellent pulp for paper.

Construction engineers also use bamboo. Experts who compared the strength of laminated (layered) bamboo with soft steel found that the bamboo''s breaking point nearly equaled that of the steel. The strong, light-weight bamboo makes an excellent reinforcement for concrete."

11. In the Hyper-dictionary on the internet at Website http://www.hyperdic.net/dic/bamboo.htm#n 2002, ''bamboo'' has been defined as follows:

---------------------------------------------------------------- bamboo - noun 1, plant ---------------------------------------------------------------- Meaning The hard woody stems of bamboo plants. Used in Construction and crafts and fishing poles. Substance bamboo of Broader wood ---------------------------------------------------------------- 12. In Webster''s Third New International Dictionary, Volume I, 1966 Edition the word "bamboo" has been given the following meaning:

"bam.boo\\bam:bu,-aam-\\n-s[Malay bambu, fr.Kannada or Tulu] 1: a woody or arborescent grass of Bambusa, Arundinaria, Dendrocalamus and related genera (tribe Bambuseae )widely distributed chiefly in the tropics and subtropics of both hemispheres; esp: a large woody plant (B.arundinacea) having hollow stems that attain a diameter of five or six inches and are so hard and durable as to be used for furniture, cooking utensils and structural framing, the smaller stalks being also used (as for walking sticks and flutes) and the young shoots utilized as food."

(underlined by us)

13. In Black''s Law Dictionary, Sixth Edition, at page 1604, ''woods'' has been defined as follows:

"Woods. A forest; land covered with a large and thick collection of natural forest trees. The old books say that a grant of "all his woods" (omnes boscos suos) will pass the land, as well as the trees growing upon it."

14. In Words and Phrases, Permanent Edition, Volume 45, the word "wood" has been described as follows:-

"In common parlance "wood" is the tough, hard substance of all trees and shrubs and it includes not only the hard fiber bundles of trees and shrubs in general, but also the tougher fibrous components of some herbaceous plants. It is a very broad term and includes not only material obtained from exogenous plants, but also like substances obtained from palms, from bamboo, which is giant grass and from some ferns, which are herbaceous plants. The word "wood" in Schedule D, par. 175, Tariff Act of 1913, 38 Stat.131, will be so construed. Steinhardtand Bro.v. United States, 9 Ct.Cust.App.62,63."

(underlined by us)

15. In the Hyper-dictionary on the internet at Website http://www.hyperdic.net/dic/#T "wood"has been defined as follows:

------------------------------------------------------------ wood > noun 1, substance ------------------------------------------------------------ Meaning The hard fibrous lignified substance under the bark of trees. Substance lumber, timber Of Substances lignin Broader plant material bentwood; pine; larch; fir; cedar, cedarwood; spruce; hemlock;cypress; redwood; sandarac, citronwood; kauri; yellowwoo yew; lancewood; tulipwood, true tulipwood, whitewood, white poplar, Hyellow poplar; zebrawood; cocuswood, cocpswood,nadilla wood; shittimwood; sabicu, sabicu wood; bamboo'';ulipwood; balsa, balsa wood; silver quandong; obeche; basswood, linden; beefwood; briarwood, rierwood, brier-wood; beech, beechwood; chestnut; oak; birch;alder; hazel; olive;ash; ironwood; walnut; hickory; pecan;pyinma; gumwood, gum;eucalyptus; tupelo; poon; red lauan;elm, Narrower elmwood; brazilwood; locust; logwood; rosewood; kingwood;granadilla wood; blackwood; Panama redwood, quira; ruby wood,red sandalwood; black locust; cherry; fruitwood;lemonwood;incense wood; mahogany; satinwood; orangewood;citronwood;guaiac wood, guaiacum wood; lignum vitae,guaiac,guaiacum;poplar; sandalwood; boxwood, Turkish boxwood; maple;sumac;bony; sycamore, lacewood; teak,teakwood;

 

dogwood;sapwood;heartwood, duramen; burl;brushwood; cabinet wood;driftwood;log; matchwood;matchwood,splinters; sawdust;wicker;dyewood; hardwood;softwood,deal; raw wood; knot ----------------------------------------------------------------- Adjectives woody ----------------------------------------------------------------- (underlined by us)

16. Thus, from the meanings given in various books it will be seen that even though ''bamboo'' in the scientific and botanical sense is a species belonging to the family of grass but it is also included in the term "wood"

17. The Apex Court in the case of Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, has held that entries in the Taxation Acts must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance, when the word has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." It is to be construed as understood in common language. The Apex Court was considering as to whether betel leaves are vegetables or not. It has held that the word "vegetables" in taxing statute is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table and thus betel leaves are not vegetables.

18. In the case of Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, , the Apex Court has held that sugarcane does not fall within the definition of words "green vegetables"

19. In the case of M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, , the Apex Court has held that vegetable is to be understood in common parlance sense and not in botanic sense so as to include sugarcane.

20. In the case of Atma, Ram Ratan Lal (supra), this Court was considering the question as to whether ''bamboo'' is covered under the Act and the notification issued in relation thereto is ultra vires as noted in Sub-paragraph (6) of the paragraph 2A of reports which is reproduced below:

"(6), Commodities like wood, bamboo, hides and skins, dairy products, ghee, zeera, tobacco, tendu leaves, Rab, Bhusa, rice, etc. are not covered by the Act and so the notification in relation thereto is ultra vires."

21. In para 33 of the reports this Court has held as follows:

"...The commodities mentioned in the Schedule are statutorily agricultural produce. The first part of the definition of agricultural produce has been given only to provide guidance to the State Government if it acts u/s 4-A to amend the Schedule. When the Schedule mentions wood, which is a generic term, its ambit cannot be cut down by technical arguments. Firewood, timber etc. obtained from whatever source whether forests, or groves, or orchards, or plantations or bamboo, are wood and so within the Act. In this view the submission that the word "forest" should be read as coloured by the preceding terms, like agriculture, horticulture, viticulture etc. is of no avail in courts. Such a submission may be beneficial if and when the State Government thinks of amending the Schedule."

(underlined by us)

22. We find that in the case of Paharpur Cooling Tower Ltd. Vs. Krishi Utpadan Mandi Samiti, Ghaziabad, , a Division Bench of this Court has followed its earlier decision in the case of Atma Ram Ratan Lal (supra) and held that "wood'' is a generic term and its ambit cannot be curtailed by hyper-technical arguments. It has been held that cuttings and trimmings of wood called waste of wood are also comprehended within the entry "wood".

23. We are in respectful agreement with the view expressed by this Court in the two decisions, namely, Atma Ram Ratan Lal (supra) and Paharpur Cooling Tower Ltd.(supra) that ''wood'' is a generic term and its meaning cannot be restricted to only wood obtained from trees grown in the forest. We also find that this Court as far back as in the year 1978 in the case of Atma Ram Ratan Lal (supra) has held that bamboo is wood.

24. Thus, applying the principle regarding interpretation of an entry in taxing statutes viz. the meaning ascribed to it as to how it is being understood by the people dealing in it, i.e. in common parlance the term "bamboo" falls under the entry ''wood''.

25. Sri Mandhyan is not right in submitting that as under the Forest Act, bamboo is treated as a tree and therefore a forest produce, the same definition as given u/s 2(4) and 2(7) of the said Act be applied here also inasmuch as under Sub-section (7) of Section 2, bamboo has been specifically included in the definition of tree whereas under the Adhiniyam there is no such definition of forest product or wood and, therefore, the common parlance meaning has to be taken.

26. In the case of Ram Chandra Kailash Kumar and Co. (supra) the Apex Court was not called upon to decide as to whether bamboo is covered under the entry "wood" or not. In paragraph 24 of the reports which have been relied upon by Sri Mandhyan, the question, which was up for consideration, was as to whether the paper mill is liable to pay market fee on wood cut from the jungle or not. Likewise, in the case of Upaj Mandi Samiti and Ors. (supra) there was no controversy before the Apex Court as to whether bamboo is an agricultural produce under the M.P.Krishi Upaj Mandi Adhiniyam, 1973 or not as ''bamboo'' has been specified as agricultural produce in the M.P. Act.

27. In the case of Suresh Lohiya (supra), the Apex Court was considering the question as to whether bamboo mat produced from the bamboos would be a forest produce in the eye of the Indian Forest Act, 1927 or not. The Apex Court has held that bamboo mats would not be covered.

28. In view of the foregoing discussion, we are of the considered opinion that the bamboos in which the petitioners deal is an item covered under the entry "wood"

 

as given in the Schedule to the Adhiniyam and, therefore, they are liable to take out licence and to pay market fee on the sale/purchase.

29. In the result, we do not find any merit in both the writ petitions. They are dismissed with costs, which we assess at Rs. 2000/- payable by each of the petitioners individually to the respondents.