(2013) 10 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 15172 of 2012

Jitendrakumar Kantilal Gandhi APPELLANT

Vs

Joint Secretary (Appeals) and 1 RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:
Agricultural Produce Market Committee Act, 1963 — Section 28, 48

Citation : (2013) 10 GUJ CK 0048

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : V.C. Vaghela, for the Petitioners No. 1, for the Appellant; P.S. Champaneri, Advocate for the Respondent(s) No. 2 and Notice Served by D.S. for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Anjaria, J.—The petitioner herein is a trader holding a license as General Commission Agent of Wadhwan Market Yard. In the present petition, he prayed as under:

(A) Your Lordships may be pleased to issue a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ order or direction quashing and setting aside the order dated 19th October, 2012 passed by respondent No. 1 on revision application No. 182 of 2012 and also the decision of he market committee dated seizing the 320 Juvar Bags of the petitioner and further be pleased to hold that the petitioner is not liable to pay cess fees on such goods purchased by the petitioner wherein the cess fee is already paid in the order market yards;

2. A concise statement of facts concerning the controversy may be stated to comprehend the challenge. It was the case of the petitioner-trader that he was trading in foodgrains like Juvar, Bajara and Wheat, carrying out his trading activities in the town of Surendranagar and having a shop in the town. It was the

case that the petitioner used to purchase the commodities from the processed houses situated in the different cities of the State as well as from the processors, traders, packers, etc. situated outside the State of Gujarat. It was stated that upon purchasing agricultural produce, he used to sell them in the town of Surendranagar as well as outside to the retail traders.

2.1 it was petitioner''s case that the petitioner booked 320 bags of 50 Kg. each of Juvar from one Arihant Trading Company. Said Arihant Trading Company was a commission agent at Nava Moda, a place in the State of Maharashtra. Said Commission Agent delivered the goods to the petitioner under invoice No. 1990 on 25th August, 2012. The goods so delivered reached the destination of the petitioner on 27th August, 2012. At that time, Inspector of the Agricultural Produce Market Committee, Wadhwan-respondent No. 2 herein arrived and asked the petitioner to pay the Market Cess on the said agricultural produce. Market fee of Rs. 1,548/- was sought to be levied. According to the petitioner, he showed the evidence from the bill supplied by the said Commission Agent that the market fee was already paid at a place from which the product was brought. The petitioner complained in the petition that despite the said fact, the Inspector seized the said 320 bags which was illegal according to the petitioner, requiring him to make an application dated 27th August, 2012 to the Secretary of the Market Committee, and requested to release the said 320 bags of Juvar.

2.2 The seizure of said bags by the Market Committee was in exercise of powers available to it under Rule 63 of the Agricultural Produce Market Committee Rules, 1965 (hereinafter mentioned as ''the APMC Rules'') for the reason of non-payment of market fee/cess and the grounds mentioned therein. The aggrieved petitioner challenged the order of seizure dated 27th August, 2012 before the Joint Secretary (Appeals), Agricultural and Cooperation Department by filing Revision Application u/s 48 of the Agricultural Produce Market Act, 1963. (hereinafter referred to "the APMC Act")

2.3 The said Revisional Authority by his order dated 19th October, 2012 dismissed the Revision Application No. 182 of 2012 of the petitioner. The same is the order impugned in the present petition. The Revisional Authority did not accept the case of the petitioner that since the above-named Commission Agent Arihant Trading Company had paid market cess at Ambad, the market fee was not payable by the petitioner at Wahdwan. It was further observed that petitioner was habituated of not paying the market fee. It was next observed that from the brother of the petitioner named Narendra Kantilal Gandhi, amount of more than Rs. 09,00,000/- was due towards market fee and now the petitioner was deliberately disputing the levy of Rs. 1,548/-. The Revisional Authority held that under the law, only the processors, graders, exporters and value adders were entitled to exemption from the market fee and the petitioner was not falling in any such category.

3. In order to assail the impugned order, learned advocate for the petitioner Mr. V.C. Vaghela submitted that levy of the market cess again by the Wadhwan

Market Committee amounted to successive levy of market cess on the goods in as much as such market cess was already paid at the consignor''s place, for which there was an evidence produced in form of invoice. It was like double levy, he submitted, he next submitted that the whole object of creation of Market Committees for regulating the transactions of sale and purchase of agricultural produce was to protect the agriculturist from middlemen and to further facilitate fetching of the best available prices for the agricultural produce to the agriculturists. It was, therefore, submitted that when the market fee was levied twice on the same product, the very object was being frustrated.

3.1 Learned advocate for the petitioner next contended that in levying the market fee, the authority did not consider that the goods were purchased from a person who fall under exempted category of persons from whom the market fee was not to be charged for second time. Reliance was placed on Section 2 8 of the Agricultural Produce Market Committee Act, 1963 (hereinafter mentioned as ''the Act''), a reference of which provision is made in the paragraphs to succeed. It was contended that once the goods were purchased from the processor, which had thereafter merely changed hands, therefore, liability to pay cess fees was not attracted.

3.2 In course of the submissions, it was further sought to be contended by learned advocate for the petitioner that what was sold by him was Juvar Katta which was a cattle feed and which was a processed form and the same commodity in its nature therefore also, it did not require payment of market cess. He wanted to contend by suggesting the kind of the goods purchased to be sold at the Wadhwan Market Yard that there was no change in the commodity on which the market cess was already levied in the State of Maharashtra at the Market Yard there. It was submitted that the definition of agricultural produce means processed or not. It may be stated that the contention raised by learned advocate for the petitioner did not form part of pleading in the petition but was ingeniously developed in course of the arguments by learned advocate. In any view, it was of no avail, nor did it carry the case of the petitioner any further in as much as for sale of the agricultural produced brought at the hands of petitioner was liable to market fee.

3.3 Learned advocate for the petitioner, for supporting his various submissions relied on the Supreme Court decision in Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, and relied on observation from paragraph 12 of the judgment. Another decision of the Supreme Court relied on by him was in Kewal Krishan Puri and Others Vs. State of Punjab and Another, . He next relied on a Division Bench decision of this Court in Chhaganlal Mansukhlal and Another Vs. The Agricultural Produce Market Committee and Another, and then decision in Agricultural Produce Market Committee v. State of Gujarat [1997 (1) GLR 489] was pressed into service.

3.4 On the other hand, learned advocate Mr. Champaneri for the respondent contended that the petitioner being license holder as the general commission agent, was a trader trading in the Market Yard and was governed and bound by the provisions of the Act and the Rules. It was submitted that once he brought the agricultural produce for selling it in the market yard, he was liable to pay the prescribed market fee. He was not entitled to claim exemption on any count. It was submitted that merely because at the consignor''s place market fee was sated to have been paid, it was of no consequence. The agricultural produce in question was subjected to sale in the Wadhwan Market Yard where it would attract the market fee, he submitted. He further submitted that even the invoices produced and relied on by the petitioner contained erasers and tampering and were far from reliable.

3.5 On behalf of respondent No. 2-Authority, affidavit in reply was filed and various contentions were raised. It was contended therein inter alia that Section 28(2) of the Act would not apply, that Rule 54 and Rule 49 of the APMC Rules were relied on. It was further contended that in the invoice No. 19 90 for goods in question produced by the petitioner before the Market committee and a copy also record of petition, showed that name of the petitioner i.e. "Jitendra" was overwritten on the name "Narendra" originally figuring. It was submitted that invoice in question was forged and/or tampered with. It was stated that said Narendra was the brother of petitioner who had filed Special Civil Application No. 30143 of 2007 wherein similar issues were raised and that petition was dismissed by this Court on 28.08.2008, the Letters Patent Appeal against the said order also came to be withdrawn on 15th October, 2008. Those orders were produced along with the affidavit. The petitioner filed his rejoinder affidavit also wherein, while reiterating his contentions and denying the contents of reply affidavit, he inter alia relied on decision in Krishan Pari (supra) to contend that the market committee could not levy cess fees in respect of transactions which were from outside market area.

4. In order to answer the contentions raised on behalf of the petitioner, relevant statutory provisions may be considered at the outset. Section 28 of the Act deals with the power to levy fee. The provision reads as under:

28. Power to levy fee-

(1) The market committee shall, subject to the provisions of the rules and the maxima and minima from time to time prescribe levy and collect fees on the agricultural produce brought or sold in the market area:

(2) Provided that the fees so levied may be collected by the market Committee through such agents as it may appoint.

(2)(a) The market fee specified in sub-sec. (1) shall not be levied for the second time in any market area from the buyer who is a processor, grader, packer, value addition centre or exporter of an agriculture produce and market fee has already been paid on that agricultural produce in any market and the information in this context has been furnished, as prescribed, by the person concerned that the payment of market fee has already been made in other market, provided such proof as may be prescribed is furnished to the Director by the buyer who is doing processing, grading, packing, value addition or export within such period as may be prescribed by the Government.

(b) On the agricultural produce brought in the market area for commercial transaction or for processing, if the permit issued under clause (e) has not been submitted, the market fee shall be deposited by the buyer or processor, as the case may be, in the office of the market committee, within fourteen days but before sale or resale or processing or export out side the market area:

Provided that in case any agricultural produce is found to have been processed, sold or resold or dispatched outside the market area without payment or market fee payable on such produce, the market fees shall be levied and recovered on five times the market value of the processed produce or value of the agricultural produce, as the case my be.

(c) The market fee shall be payable by the buyer of the agricultural produce and shall not be deducted from the price payable to the agriculturist seller:

Provided that where the buyer of a agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area:

Provided further that in case of commercial transactions between traders in the market area, the market fee shall be collected and paid by the seller.

(d) The market functionaries, as the market committee may by bye-laws specify and in the case of market established under Chapter IVA of this Act as the Director may specify, shall maintain accounts relating to sale and purchase or processing or value addition in such manner as may be prescribed and submit to the market committee, the periodical returns, as may be prescribed.

(e) Any agricultural produce shall be removed out of the market area only in the manner and in accordance with the permit issued in such form, as may be prescribed. The vehicle carrying agricultural produce shall be accompanied by such proofs as may be prescribed:

Provided that the producer of the agricultural produce himself may remove the agricultural produce from one place to another without such permit.

4.1 Rule 54 of the Rules provides that all agricultural produce arriving into the market shall be brought into Market Yard or Sub-market Yard in the first instance and shall not, be brought or sold at any place outside such Yards. Rule 49 says that fees of agricultural produce shall be payable as soon as it is brought into the Market Yard or Sub-market yard or Market Yard proper or Market Area as may be specified in the by-laws. The term "market" is defined in Section 2(xii-a) and means market established and regulated under this Act for the notified market area and also includes a market proper, principal market yard, sub-market yard, private market, e-market and such other markets as may be declared by the Act.

The "Trader" is defined in Section 2(xxiii). A trader means any person who carries on business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes cooperative societies and other entities mentioned in the definition section. Agricultural produce is defined in Section 2(i) and means all produce whether processes or not, of agricultural, and horticulture, specified in the Schedule. The word "processing" is defined in Section 2(xvii-aa), whereas "processor" is defined in the definition.

4.2 On bare reading of Section 28 it is clear that the Market Committee is entitled to levy and collect fees on the agricultural produce brought or sold in the market area. Rule 54 speaks on the same lines. Such fees is levied and collected as prescribed under the Rules. Rule 4 8 in part VI of the Rules similarly provides that Market Committee can levy the fees on the agricultural produce brought or sold in the market area. The rates for charging of fees are specified in the said Rule. It is thus manifest from sub-section (1) of Section 28 that the agricultural produce brought or sold in the market area attracts the market fee. The trader has to pay the market fee. The petitioner-trader is a licence holder and a general commission agent.

4.3 The exemption from market fee payable under sub-section (1) of Section 28 is contemplated only for the categories mentioned in sub-section (2) quoted above. It provides that the market fee shall not be levied for the second time in any market area from the buyer who is a processor, grader, packer, value tradition centre or exporter of an agriculture produce and market fee has already been paid on such agricultural produce in any market. The petitioner herein does not fall in any of the said categories which are the exempted class mentioned sub-section (2) of Section 28. The petitioner is neither processor, grader, packer, exporter or value adder. He is thus not entitled to claim exemption from payment of market fee on the ground that the levy could not have been twice.

5. Decisions relied on by learned advocate for the petitioner may now be considered. Jan Mohammad Bagban (supra) was a case wherein the Apex Court held that Section 5 of the Act authorising the director for regulating purchase and sale of agricultural produce in the specified area to be declared as market area did not amount to unreasonable restriction on right to carry on trade under Article 19(1)(g). It was wholly unfathomable as to how the law laid down could be connected with the issue involved in the present case. Decision in Kewal Krishnan (supra) is also besides the point. The next decision in Chhaganlal Mansukhlal (supra) dealt with the challenge to vires of Rule 48 and 54 of the APMC Rules. Holding that definition of "agricultural produce" does not make distinction between agricultural produce grown inside the market area or outside the market area. It further held that fee charged by the market committee was not tax, and that the fee could be levied only once at initial stage of entry of agricultural produce in the market and levy of fee on successive transactions is not permissible and is ultra vires Section 28. This decision also does not apply because there is no issue of fee being charged in respect of successive

transaction in the Wadhwan market area. On the contrary, it lends support to the position emerging from Section 28(1) of the Act that initial entry of agricultural produce attracts levy of market fee.

6. Heavy reliance was placed by learned advocate for the petitioner on Agricultural Produce Market Committee (supra) to contend that the ratio of that decision was directly applicable to the case on hand. The question considered was whether rice is agricultural produce covered by item paddy (husked and unhusked) under the Schedule, so as to entitle the petitioner Market Committee to levy fee on the transaction of sale and purchase of rice. The contention of the petitioner Market Committee was that in view of definition of "agricultural produce" in Section 2(i) of the Act which meant all produce, whether processed or not, the paddy (husked and unhusked) was attracting the market fee as it was nothing but rice. It was held that market list of regulated items contained only paddy and did not include rice I as such that being a converted agricultural produce. It was sought to be contended by learned advocate for the petitioner that he brought Juvar in the processed form which was Juvar Katta. Considered from any angle, the agricultural produce in question brought by the petitioner to the market area concerned was liable to payment of market fee, even if it was in processed form as claimed, because, in the hands of the petitioner it was liable to market fee as the petitioner was not a processor or value adder.

7. Decision of this Court being oral order dated 2 8th August, 2 008 in Narendrakumar Kantilal Gandhi v. State of Gujarat in Special Civil Application No. 30143 of 2007 dealt with the similar issue and it was held that u/s 28 read with Rule 48, Market Committee is entitled to levy market fee, subject to maximum and minimum prescribed under the Rules. In that case, the petitioner was selling agricultural produce brought from outside the market area and was held liable to pay market fee. The very contention as raised in the present case was raised and the Court held that he being not falling in any of the exempted categories under sub-section (2) of Section 28, was liable to pay the market fee. Similar was the proposition affirmed in Narendrakumar Kantilal Gandhi v. State of Gujarat [2012 GCD 1328].

8. To summarise, the market fee is attracted on the happening of the statutory event in terms of Section 28(1) and the relevant Rule. The Market Committee was justified in charging market fee on that basis. When statutory provision provides for levy of market fee and the petitioner trader who is a licence holder as commission agent wanted to brought his agricultural produce in the market area for sale, and he was not falling under the exempted categories under sub-section (2) of Section 28, there is no escape from the conclusion that market fee was payable on said agricultural produce. The contention was entirely misconceived in law that the petitioner was not required to pay market fee simply because elsewhere in the another market area the consignor has paid said fee as claimed by the petitioner. For the aforesaid reasons and discussion, there is no merit in the petition and the same stands dismissed. Rule stands

discharged. Interim relief, if any, shall stand vacated.

