

(2008) 05 SC CK 0195

In the Supreme Court Of India

Case No : Civil Appeal No's. 5760 and 5761 of 2005

Kesarwani Zarda Bhandar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 13, 26A, 5
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2, 6, 8

Citation : AIR 2008 SC 2733 : (2008) AIRSCW 4553 : (2009) 2 ALT 32 : (2008) 4 AWC 3497 Supp : (2008) 11 JT 50 : (2008) 105 RD 104 : (2008) 8 SCALE 674 : (2008) 8 SCC 305 : (2009) 13 STR 95 : (2008) 3 Supreme 636 : (2009) 19 VST 545

Hon'ble Judges : S. B. Sinha, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Rakesh Dwivedi, Anoop G. Chaudhary, Vijay Hansaria, S.B. Sanyal, R.G. Padia, Mathai M. Paikeday, Shobha Dikshit, K.K. Mohan, Amit Kr. Singh, Shantanu Krishna, Mukti Chowdhary, Anant Prakash, Sneha Kalita, Sanjai K. Pathak, Vivek Narayan, Ajit Kumar Pande, Sunil Roy, Madhurima Tatia, Anil Katiyar, Y.K. Verma, Shishir Pinaki, Amit Singh, P.I. Jose, Pradeep Misra, Daleep Dhayani, Gopal Singh, Anukul Raj, Manish Kr. and Chandan Kr, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Levy of market fee on Zafrani Zarda in terms of the provisions of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (for short, 'the Act') is in question in these appeals which arise out of a common judgment and order dated 21st July, 2003.

2. The Act was enacted to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefore in Uttar Pradesh.

3. Before embarking on the question, we may notice some of the relevant provisions of the Act. Section 2(a), 2(d), 6, 8, 17(iii)(b) read as under:

2(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;

2(a-1) "Board" means the State Agricultural Produce Markets Board constituted u/s 26-A;

2(d) "Central Warehousing Corporation" means the Central Warehousing Corporation established or deemed to be established under the Warehousing Corporations Act, 1962;

2(d-1)"Collector", in relation to a Committee for a Market area means the Collector of the District where the principal Market Yard of that Market Area is situated, and includes such other officer as may be authorized by him in that behalf;

6. Declaration of Market Area.- On the expiry of the period referred to in Section 5, the State Government shall consider the objections received within the said period and may thereupon declare, by notification in the Gazette, and in such other manner as may be prescribed, that the whole or any specified portion of the area mentioned in the notification u/s 5 shall be the Market Area in respect of such agricultural produce, and with effect from such date as may be specified in the declaration.

8. Alteration of Market Area and Modifications of the List of Agricultural produce.
- (1) The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification in the Gazette, and in such other manner as may be prescribed and with effect from the date specified in the notification,--

(a) include any agricultural produce in, or exclude any agricultural produce from, the list of agricultural produce specified in the notification u/s 6 ;

(b) include any area in, or exclude any area from, the Market Area specified in the notification u/s 6 ;

(c) divide a Market Area specified in the notification u/s 6 into two or more separate Market Areas ;

(d) amalgamate two or more Market Areas specified in the notification u/s 6 into one Market Area ; or

(e) declare that a Market Area specified in the notification u/s 6 shall cease to be such area:

Provided that before action under this sub-section is taken, the State Government shall invite and consider, in the prescribed manner, objections, if any, against the proposed action.

(2) When during the term of a Market Committee the limits of the Market Area for which it is established are altered under Clause (b), Clause (c) or Clause (d) of Sub-section (1), the following consequences shall, with effect from the date specified in the notification, follow:

(a) the Market Committee shall stand dissolved and its members shall vacate their offices as such members ;

(b) a new Market Committee shall be constituted for the modified or newly created Market Area in accordance with the provisions of Section 13 ;

(c) all property and assets, all rights, liabilities and obligations of the dissolved Market Committee in respect of civil or criminal proceedings, contracts, agreements or other matter or thing arising in relation to any part of the Market Area of a dissolved Market Committee shall be vested in and stand transferred to the new Market Committee having jurisdiction over that part.

(3) Where a Market Area ceases to be such area under Clause (e) of Sub-section (1), the following consequences shall, with effect from the date specified in the notification, follow:

(a) the Market Committee shall stand dissolved and its members shall vacate their offices as such members ;

(b) the Principal Market Yard and Sub- Market Yards, if any, established therein shall cease to be such ;

(c) the unspent balances of the Market Committee Fund and other assets and liabilities of the Market Committee shall vest in the State Government:

Provided that the liability of the State Government shall not extend beyond the assets so vested.

17. Powers of the Committee.--A Committee shall, for the purposes of this Act, have the power to--

(i) & (ii) ...

(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 transactions of sale of specific 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 realize 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 judgment, 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 other 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 no such specified agricultural produce market fee or development cess has already been levied in any other market area.

4. In the Schedule appended to the Act, tobacco is mentioned at Item No. V.

The question which arises for consideration is as to whether Zafrani Zarda is a processed form or manufactured form prepared from the raw material tobacco.

The process undertaken to manufacture Zafrani Zarda is admitted. It was stated by the appellant in their writ petition to be as under:

7. That the petitioner used to purchase the raw tobacco/processed tobacco outside the Mandi Samiti Allahabad. However, it is stated that the Zafrani Zarda or Zafrani Patti is used for chewing which is prepared from the raw tobacco. The

Jaggery Juice is sprinkled on the raw Tobacco and then it is cut into small pieces by shearing machine. The resulting tobacco is called as "nice tobacco". The "Nice Tobacco" is allowed to dry for few days and then flavouring essence are being sprinkled on it and at this stage, this tobacco is known as "Chewing tobacco". Then, thereafter, menthol, Geru, Lime and spices etc. are being homogeneously mixed with the same, either from electric machine or by the manually operated machine. These items get un- separately mixed with the processed tobacco and the resulting tobacco is called as "Zafrani Zarda" and "Zafrani patti" In this way, the raw tobacco loses its original identity and its physical and chemical properties are changed. It is a different commodity in the commercial world as well as amongst the consumers. The quality, cost and liking amongst the consumers are vary according to the material mixed with it.

5. Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the appellant, would submit that the question, i.e., it is a manufactured form as agricultural produce, is no longer res integra in view of several decisions of this Court.

6. On the other hand, Ms. Shobha Dikshit, learned senior counsel appearing on behalf of the respondents, submits that Zafrani Zarda is a processed form of tobacco.

7. It is not in dispute that having regard to the definition of 'agricultural produce' as contained in Section 2(a) of the Act as also Section 2(d) therein, market fee would be leviable only in the event Zafrani Zarda is held to be a processed form of tobacco and not the manufactured form.

8. The question came up for consideration before this Court in State of Madras Vs. Swastik Tobacco Factory, Vedaranyam, wherein, upon taking into consideration the provisions of Section 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, it was held that Zafrani Zarda is a manufactured form of tobacco.

9. The issue apparently is directly covered by a decision of this Court in Prabhat Zarda case in relation to the definition of 'agricultural produce' as contained in Bihar Agricultural Produce Markets Act, 1960, which is pari materia with the definition of 'agricultural produce' under 2(a) of the Act, which reads:

Agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry, and forest specified in the Schedule." Later, however, the said definition was amended by the Amending Act of 1982 effective from April 30, 1982, the English rendering of which is as under:

Agricultural produce' means all produce whether processed or non- processed, manufactured or not, product of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, livestock or poultry, as specified in the Schedule.

10. This Court clearly affirmed the finding of the Patna High Court that 'Zarda' is

a variety of manufactured tobacco and not in its processed or non-processed form.

11. Similar reasonings have been adopted by this Court in *Dharampal Satyapal Vs. Commissioner of Central Excise, Delhi-I, New Delhi*, wherein in relation to levy of central excise, it was held:

19. Applying the above tests to the facts of this case, we find that sada kimam was bought by the assessee as a raw material which was then blended with saffron, perfumes, menthol, etc. to form a compound which was then packed in "balties" and cleared to the above three licensed units at Okhla Industrial Estate, Phase II, New Delhi, Noida (U.P.) and Barotiwala (H.P.), where Tulsi Zafrani Zarda was manufactured. That, the assessee used to buy a similar compound (Lucknowi kimam) from the market from time to time and use it in the manufacture of their final product. That, the compound (kimam) prepared by the assessee at 96, Okhla Industrial Estate, Phase III, New Delhi and at E-1, Maharani Bagh, New Delhi, in the highly concentrated form, was cleared therefrom and taken to the above three licensed factories where it was diluted and used in the manufacture of Tulsi Zafrani Zarda. In their reply to the show-cause notice, the assessee admitted that the said "compound" was not capable of being used for any purpose, other than for manufacture of branded chewing tobacco. This statement of the assessee in reply to the show-cause notice establishes that the said compound (kimam) was not edible, it was not capable of consumption as such, however, it was used as preparation in the manufacture of Tulsi Zafrani Zarda which was a branded chewing tobacco manufactured in the licensed factories of the assessee at Okhla Industrial Estate, Phase II, New Delhi, Noida (U.P.) and Barotiwala (H.P.). Further, from time to time, the assessee herein bought from the market a similar compound (Lucknowi kimam) and used it in the manufacture of the final product which indicated that on blending of sada kimam with saffron, spices, menthol, etc., the compound in question (kimam) which emerged was a distinct, identifiable product, known to the market as kimam. Hence, we do not find any infirmity in the impugned judgment of the Tribunal which has held that the said compound (kimam) was marketable and classifiable as chewing tobacco or a preparation for chewing tobacco under Chapter Sub-Headings 2404.49/2404.40.

12. Indisputably an agricultural produce has to be a specified one for the purpose of levy of market fee. [See *State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another*, *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, and *Krishi Utpadan Mandi Samiti and Others Vs. Pillibhit Pantnagar Beej Ltd. and Another*, .

13. Ms. Shobha Dikshit, however, relied upon the decision of this Court in *Park Leather (P) Ltd. v. State of U.P. and Ors.* (2001) 3 SCC 135 wherein a Division Bench opined that leather is only a processed form of hides and skins. Process undertaken for making leather from hides and skins has been noticed therein.

14. It is not in dispute that when a new form comes into being and in the market parlance it is considered to be a new product; the same would be deemed to be manufactured goods as contradistinguished from processed goods.

15. Market fee is leviable on specified agricultural produce, not on agricultural produce simpliciter. Zarda is not a specified agricultural produce. It can be subjected to payment of market fee provided it is held to be 'tobacco'. Zafrani Zarda, as an agricultural produce for the purpose of market fee must answer the description of 'specified agricultural produce' as defined in Section 2(a) of the Act. If it is held that Zafrani Zarda is merely a processed form of tobacco, it would be subjected to levy of market fee, but if it is manufactured, it would not.

16. In this case, Zafrani Zarda, in view of the decision of this Court in Prabhat Zarda (supra), must be held to be a manufactured product.

17. The distinction between 'manufactured' and 'processed' may not in all situation depend upon the nature of the Statute involved. It must pass the requisite test, namely, as to whether it is a completely new item. Raw material of a manufactured product has to be distinguished from the manufactured product.

The distinction between 'processing' and 'manufacturing' is well known. When a new thing comes into being, the steps which are taken for manufacture may be relevant but may not be decisive. {[See Commissioner of Central Excise, Tamil Nadu v. Vinayaga Body Building Industries Ltd. (2008) 3 SCC 666]}.

18. Zafrani Zarda being a 'manufactured tobacco' would not answer the description of processed tobacco. It is used by a class of consumers.

It is used for a specific purpose. Tobacco as a processed form is used for many purposes, by many persons and in many ways. Tobacco in raw form or in any other processed form is not commercially known as Zarda.

The common parlance test may have to be applied for the purpose of finding out as to whether the product in question is manufactured goods or not.

19. The High Court, unfortunately, had not considered this aspect of the matter. The impugned judgment cannot, thus, be sustained. It is set aside accordingly. The appeals are allowed. In the facts and circumstances of the case, there shall be no order as to costs.