

(2016) 06 MP CK 0029

In the Madhya Pradesh High Court

Case No : W.A. Nos. 973 and 974 of 2015

Krishi Upaj Mandi Samiti and others

APPELLANT

Vs

Ashutosh Daga

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Krishi Upaj Mandi Adhiniyam, 1972 — Section 19, 2(1)(a)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)

Citation : (2016) 3 MPLJ 141

Hon'ble Judges : Rajendra Menon, Actg. C.J. and Anurag Shrivastava, J.

Bench : Division Bench

Advocate : Samdarshi Tiwari, Additional Advocate General, for the Appellant;
Jaideep Sirpurkar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. As both these appeals filed under section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, seek exception to orders dated 17-7-2015 identical in nature passed in W.P. No. 6962 of 2010 (Ashutosh Doga v. State of M.P. and others) and W.P. No. 6964 of 2010 (Om Prakash Daga v. State of M.P. and ors.) and as the facts and questions of law involved in both these appeals are common, they are being disposed of by this common order. For the sake of convenience pleadings, documents and other materials available in the record of W.A. No. 973/2015 is being referred to in the order.

2. Respondent is a property firm and is a license holder registered with the Krishi Upaj Mandi Samiti in question for the purpose of carrying out the business of sale and purchase of various kinds of agricultural products in the market yard/area. In the agricultural season 2009-2010 respondents-petitioners are said to have purchased various quantity of "Amchur" from different agriculturist and traders in the market yard of Krishi Upaj Mandi Samiti on payment of consideration. However, it is the case of the respondents/petitioners that for the purpose of sale

of "Amchur" in the market yard, respondents-petitioners are not liable to pay any market fee. According to the respondents-petitioners market fee can be levied by the Market Committee of the Krishi Upaj Mandi Samiti under section 19 of the Krishi Upaj Mandi Adhiniyam, 1972 and said fee can be levied only on notified agricultural produce which is brought into the market area for sale etc. as contemplated under section 19 of the Krishi Upaj Mandi Adhiniyam, According to the respondents-petitioners in the notified agricultural produce as are contemplated under the definition of "agricultural produce" and "notified agricultural produce" defined under section 2(1)(a) and 2(1)(m) of the Krishi Upaj Mandi Adhiniyam, 1972 in the scheduled notification in part 7 under the heading "Fruits" the only notified agricultural produce was Mango. "Amchur" is not a notified agricultural produce and as "Amchur" is not a agricultural produce it is said that the Krishi Upaj Mandi Samiti has no authority to levy market fee on the sale of "Amchur" which is not a notified agricultural produce. When the Krishi Upaj Mandi Samiti was levying the market fee the writ petitions were filed and the writ petitions having been allowed by the learned Writ Court on account of the fact that "Amchur" is not a notified agricultural produce, these appeals have been filed by the Krishi Upaj Mandi Samiti.

3. Shri Samdarshi Tiwari, learned counsel for the appellants took us through the provisions of section 2(1)(a) defining a "agricultural produce", section 2(1)(m) defines "notified agriculture produce", meaning of terra "processing" as provided under section 2(1)(mmm), the charging provision for market fee as contained in section 19(1) particularly, the provisions of section 19(1)(ii) and emphasised that market fee can be levied on a product which is brought into the marketing area and is used for processing. It is said that "Amchur" is a product created from Mango and therefore, it was liable to be subjected to payment of market duty. Shri Samdarshi Tiwari argued that even if "Amchur" is not included in the schedule in question but as Mango is used for processing and thereafter, it is converted into "Amchur", the liability can be imposed by the Mandi. Placing reliance on a judgment of the Supreme Court in the case of Orient Paper and Industries Ltd. v. State of M.P. and others, (2006) 12 SCC 468 and the observations made in para 11 of the said judgment, Shri Samdarshi Tiwari argued that the learned Writ Court should not have interfered into the matter. The question of levying of the market fee, under section 22 of the Adhiniyam should have been left to be decided by the Secretary, Market Committee on examination and conduct of an enquiry on the basis of evidence to be collected and without conducting any enquiry or assessment proceedings, he tried to indicate that the exemption granted and the findings recorded by the learned Writ Court is unsustainable.

4. Shri Samdarshi Tiwari tried to indicate that looking to the nature of the product and the definition as contained in section 19(1)(ii), the Writ Court should have left it to Assessing Authority to go into various aspects of the matter.

5. However, refuting the aforesaid, Shri Jaideep Sirpurkar, learned counsel for

the respondents/petitioners argued that what has brought into by the appellants into the market area is neither Mango nor any agricultural produce which is used for processing or manufacturing. On the contrary, the respondents-petitioners purchased "Amchur" itself and not "mango" and this being the factual position, it is said that once "Amchur" is not a scheduled product, the learned Writ Court has not committed any error in the matter. Placing reliance on the following three judgments : V.V.S. Sugars v. Govt, of A.P. and others, (1999) 4 SCC 192; Atlas Cycle Industries Ltd. v. State of Haryana and others, (1971) 2 SCC 564 and Bansal Wire Industries Limited and another v. State of U.P. and others, (2011) 6 SCC 545, he argued that taxing provisions should receive strict interpretation and if the words of a taxing provision are clear and unambiguous, the Court must give effect to the word as used in the statute and if this principle is applied in the present case, it is argued that the findings recorded by the learned Writ Court does not call for any interference.

5-A. Admittedly, according to Shri Jaideep Sirpurkar, in this case the appellants do not bring any product into the market area which is sold or purchased and then used for processing or manufacturing a final product. He submits that the appellants brought "Amchur" transaction, sale and purchase is done of "Amchur" and therefore, in the absence of "Amchur" being a scheduled product, the contention of the appellants for conducting any enquiry or assessment proceedings is also nothing but an exercise in futility. He argued that the judgment relied upon by learned counsel for the appellants of Orient paper and Industries Ltd. (supra) will not apply because that was a case where bamboo was brought into the market area and as bamboo was processed to pulp for making paper. In this case, no such factual aspect or process is involved and therefore, the learned Court has not committed any error in deciding the matter.

6. We have heard learned counsel for the parties at length and perused the record. Section 19(1) sub-section (i) and (ii) which are relevant for deciding the issue in question reads as under :-

"Section 19(1) of the Adhiniyam, 1972:

- (i) On the sale of notified agriculture produce whether brought from within the State or outside the State into the market area; and
- (ii) On the notified agriculture produce whether brought from within the State or from outside the State into the market area and used for processing"

7. Admittedly, the aforesaid provision clearly indicate that levy of market fee is permissible on a sale of a notified agricultural produce brought from within the State or outside the State into the market area. Admittedly, in this case the product brought into the market area is "Amchur" which is not a notified agricultural produce. The product brought is not Mango, a notified agricultural produce and therefore, sub-section (i) will not apply. Similarly the provisions of sub-section (ii) will also not apply because the market produce in the area is not used for processing. In fact, what is brought into a market area is already

processed item i.e. "Amchur". That being so, learned Writ Court has not committed any error in holding that the taxing provisions warrants strict interpretation and in applying the principles of law in the case of Bansal Wire Industries Limited (supra), particularly observations made in para 30 therein, so also the law laid down in the case of Atlas Cycle Industries Ltd. (supra) to say that taxing provisions always warrants strict interpretation, is a reasonable finding and we see no error in the same. In this case the marketing fee can be levied only on sale of notified agricultural produce and notified agricultural produce which is subjected to payment of fee is Mango and not "Amchur". That being so, we see no error in the order passed by the learned Writ Court warranting consideration.

8. The contention of Shri Samdarshi Tiwari to refer the matter for assessment as was done in the case of Orient Paper and Industries Ltd. (supra) is also not called for in the peculiar facts and circumstances of the present case, as no useful purpose would be served by sending the matter to enquiry or assessment when there is no dispute with regard to the fact that it is "Amchur" which is purchased and transacted in the market area and once "Amchur" is not notified product and when it is also not used for some processing, it cannot be subjected to any taxation. The principles laid down in the case of Orient Paper and Industries Ltd. (supra), which pertains to bringing into the market area a product bamboo, which was used for processing and which was also a notified agricultural produce, will not apply in the facts and circumstances of the present case.

9. Accordingly, finding no error in the orders passed by the learned Writ Court warranting consideration, both the appeals are dismissed.