

(2014) 07 AHC CK 0194

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 50508, 50509, 50511, 50514 and 50516 of 2004

Krishi Utpadan Mandi Samiti

APPELLANT

Vs

Deputy Director, Administration, R.K.U.M.P.

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 6 ADJ 370 : (2014) 6 AWC 5651 : (2014) 124 RD 529

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Satish Mandhyan, Advocate for the Appellant; Dinesh Tiwari, Prateek Kumar and V. Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri B.D. Mandhyan, learned Senior Advocate assisted by Sri Om Prakash, Advocate for the petitioner and Sri V. Singh, Advocate for respondent No. 2. All these writ petitions involve common questions of law and fact and, therefore, as requested and agreed by learned counsel for the parties, have been heard together and are being decided by this common judgment.

2. The only difference is that the manufacturing and crushing unit where-from goods have been transferred to dealer, i.e., respondent No. 2 in all these cases are at different places in State of U.P. other than Agra. For the purpose of discussion, Writ Petition No. 50508 of 2004 is taken as the leading case and facts have been taken therefrom itself.

3. The writ petition under Article 226 of the Constitution of India has been preferred by Krishi Utpadan Mandi Samiti, Agra (hereinafter referred to as the "KUMS, Agra") through its Secretary, Amitabh Shukla, being aggrieved by order dated 26.6.2004 passed by Deputy Director (Administration), Rajya Krishi Utpadan Mandi Parishad, Sikandra, Agra in Revision No. 2043 of 1997 preferred

by M/s. Jamuna Enterprises, Barha Bhai Ki Gali, Belanganj, Agra, respondent No. 2, whereby revisional authority has partly allowed revision reducing demand of market fee as Rs. 11141.72 instead of Rs. 73080.16 and accordingly modifying assessment order of KUMS, Agra.

4. The dispute relates to alleged sale of agricultural produce, i.e., Khandsari for the period of December, 1995 to January, 1996, in respect whereof petitioner raised a demand of Mandi fee as Rs. 73080.16. The aforesaid demand was challenged by respondent No. 2 before Revisional Authority, i.e., respondent No. 1 on the ground that revisionist is a commission agent and has not purchased any agricultural produce but the agricultural produce of Crusher unit has been sold to purchasers in respect whereof respondent No. 2 has rendered only service for assisting in sale and has received some commission. The sale, therefore, must be treated first sale" so as not to attract chargeability of market fee.

5. In other words, the case set up by respondent No. 2 is that it is the Commission and Freight Agent (hereinafter referred to as the "CF Agent") of Khandsari and Gur situate in various districts. Its registration as CF Agent renewed in the year 1996-97 is not in dispute. The State Government floated a compounding scheme on 14.11.1995 for the year 1995-96 u/s 17(3) of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as the "Act, 1964"). Under the said scheme, units, involved in manufacturing of Gur and Khandsari, were given liberty to have their market fee compounded for sale of their agricultural produce, i.e., Gur and Khandsari in the relevant year. It is not in dispute that Khandsari Crusher Unit, of which respondent No. 2 claimed to have sold goods as Commission Agent, had entered into and accepted compounding scheme and paid one time market fee for the period 1995-96 for which compounding was accepted.

6. According to the case set up by respondent No. 2 these manufacturing Crusher Units transported certain Khandsari to respondent No. 2 at Agra which has been sold to purchasers. The sale proceeds were transmitted to manufacturing units after deducting necessary expenses and commission by respondent No. 2. The petitioner, however, is treating it to be "second sale" by respondent No. 2 to purchaser and demand "market fee" while according to respondent No. 2 there was no sale when agricultural produce was transferred to it by manufacturing unit(s). At that stage there was no sale. The first sale is when respondent No. 2 sold to purchasers, hence exempted from payment of market fee in view of compounding scheme which provided that those matters where compounding scheme has been accepted, the first sale would be exempted from "market fee" chargeable on individual transactions, once the compounded market fee has already been paid by manufacturing unit.

7. The agricultural produce in the case in hand, relates to manufacturing Crusher Unit, namely, Damodar Krusher Unit, which is at Shahjahanpur, who has obtained and accepted compounding scheme and paid lump sum market fee

under the said scheme for the period 1995-96. Admittedly no gate pass was obtained by manufacturing unit at Shahjahanpur and there is only one gate pass issued at Agra, which is in the name of respondent No. 2. The reason assigned by respondent No. 2 is that manufacturing unit itself brought agricultural produce at Agra and since there was no sale or transfer at Shahjahanpur, therefore, no gate pass was obtained at Shahjahanpur. Instead when goods have been sold at Agra, the gate pass has been obtained at Agra. Since sale has been given effect to by respondent No. 2 as an agent of manufacturing unit, therefore, the gate pass is in the name of respondent No. 2 but it would not dilute the fact that it is the "first sale" which has been effected at Agra, hence exempted, in view of compounding scheme.

8. Learned counsel for respondent No. 2 sought to submit that the issue raised in the matter is, whether it is first sale or second sale but to my mind the matter has to be considered and decided in the light of procedure prescribed in the statute as also the law laid down by Apex Court in *Krishi Utpadan Mandi Samiti v. Shree Mahalaxmi Sugar Works*, 1995 Supp (3) SCC 433 and *Krishi Utpadan Mandi Samiti v. Saraswati Cane Crusher*, Civil Appeals No. 1769-73 of 1998, decided on 25.3.1998.

9. It is no doubt true that the manufacturing unit entered into compounding unit and deposited a lump sum market fee but then in order to claim adjustment of market fee or claiming exemption at the time of first sale, procedure for transfer of goods, prescribed in statute had to be followed.

10. Section 17(iii), Explanation, raises a presumption of sale when an agricultural produce is taken out or proposed to be taken out of a market area, by or on, behalf of a licensed trader. It reads as under:

"Explanation.--For the purpose of clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed."

(emphasis added)

11. The explanation, therefore, raises a presumption against dealer and treat a transfer of agricultural produce by taking it away from a market area, as sale, unless the dealer proves otherwise. In the circumstances, it was incumbent upon the manufacturing unit to obtain a gate pass from market area at Shahjahanpur for taking away agricultural produce therefrom to prove or escape from legal presumption that there was no sale and they are simply transferring stock from "A" market area to "B". The permissible demand of market fee by market area at Shahjahanpur could have been made inapplicable by showing that a lump sum market fee has already been paid. That was not done.

12. Then if at Agra the gate pass is obtained by claiming that sale has been affected for the first time, it was again obligatory upon dealer to produce relevant documents, failing which gate pass could have been issued by Mandi Samiti after realizing market fee which then could have been challenged by dealer further. This procedure has been recognized and detailed by Apex Court in Shree Mahalaxmi Sugar Works (supra) and Saraswati Cane Crusher (supra).

13. The manufacturing unit in the case in hand has not followed the procedure when removing goods from market area Shahjahanpur. Thus, then to claim that first sale has taken place at Agra only and not at Shahjahanpur, is something for which manufacturing unit itself has to blame, having violated the procedure prescribed in law and attracting presumption u/s 17(iii). Therefore, it has to be read against him. The said manufacturing unit has not contested the matter at all. Therefore, sale of respondent No. 2 is bound to be treated as a "second sale". It is in this regard, it would be useful to reproduce certain observations of Apex Court in Krishi Utpadan Mandi Samiti and Another Vs. Ved Ram, , where it is said:

"25. The High Court was also in error in holding that even when the movement of goods without gate passes may have been in violation of the rules regulating the issue of such passes, any such violation could only call for a penalty under the said rules. Assessment of market fee on the removal of such goods from the mandi area was, according to the High Court, a different matter unrelated to the breach of the rules requiring the traders to remove goods only on the authority of validly issued gate passes. The High Court appears to have overlooked the fact that if gate passes are required to be obtained under the rules, removal of stocks without applying for such gate passes and without furnishing prima facie evidence of proof that there was no sale of the goods involved, was a reason enough for the Mandi Samiti to demand payment of the market fee on the stocks that were removed. The absence of gate passes was tantamount to removal of the goods in breach of the relevant rules and also in breach of the directions issued by this Court in the two cases mentioned above. A dealer who adopted such dubious procedure and means could not complain of a failure of opportunity to produce material in support of its claim that no sale was involved.

26. No opportunity to a dealer who was acting in defiance of the rules and removing the goods without any intimation and permission of the Samiti could be granted for the occasion to grant such an opportunity would arise only when the trader applied for the issue of a gate pass....."

14. Since in the present case the stage of first sale has come into existence at Shahjahanpur itself wherefrom agricultural produce was taken out without obtaining any gate pass thereat, in my view petitioner rightly treated sale by respondent No. 2 as second sale and demanded market fee from respondent No. 2. The respondent No. 1 in accepting contention of respondent No. 2 without looking into the effect and consequence of Section 17(iii), Explanation, and the law laid down by Apex Court in Shree Mahalaxmi Sugar Works (supra); Saraswati Cane Crusher (supra); and, Krishi Utpadan Mandi Samiti and another v. Ved Ram

(supra) with respect to procedure for gate passes etc., has clearly erred in law. It cannot be said that there was any material placed by respondent No. 2 for rebuttal of presumption and, therefore, the impugned orders, in so far as have reduced liability of market fee, cannot sustain.

15. In the result, all the writ petitions are allowed. The impugned orders dated 26.6.2004 (in Writ Petitions No. 50508 of 2004 and 50509 of 2004) and 28.6.2003 (in Writ Petitions No. 50511 of 2004, 50514 of 2004 and 50516 of 2004) passed by respondent No. 1, reducing liability of market fee of respondent No. 2, are hereby set aside. The demand raised by petitioner, KUMS, Agra with respect to market fee from respondent No. 2, is confirmed. No costs.