
(2002) 09 AHC CK 0146
In the Allahabad High Court
Case No : Second Appeal No. 2657 of 1987

Krishi Utpadan Mandi Samiti	Vs	APPELLANT
Om Prakash and Others		RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2

Citation : (2002) 4 AWC 3179 : (2002) 3 UPLBEC 2543

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; N.C. Rajvanshi and R.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard the learned counsel for the parties and perused the records.

2. The second appeal arises out of the judgment and decree passed by the 1st Additional Civil Judge, Meerut, dated 17.8.1987 by which the suit filed by the plaintiffs for injunction has been decreed. Suit was filed alleging that the plaintiffs were exclusively dealing in manufacturing and selling of buggies (bullock-carts), curries, windows, etc. manufactured from wood, which are not agricultural produce within the meaning of Section 2 (a) of the U. P. Krishi Utpadan Mandi Adhiniyam. 1964, but the Mandi Samiti has been trying to bring them as traders of wood. Mandi Samiti, Baraut, earlier issued notices for taking licence by the traders for doing business and sale in manufactured items within the market yard of Baraut, which went upto the Supreme Court. Ultimately, the said case was decided by the Apex Court in which it was held that Mandi Samiti was justified in imposing licence fee on traders during transactions of wood if brought to market area after cutting from forest but no market fee can be charged on furniture or other goods after they are manufactured from such wood. In the same case, Mandi Samiti admitted that the Act does not apply to

the traders dealing in manufactured goods such as furniture as they are not covered by word "Agricultural produce". This judgment is *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, After the said judgment, Mandi Samiti again issued notices dated 24.4.1980 to the plaintiffs asking them to take licence and pay market fee. The plaintiffs replied the said notices, but due to insistence by Mandi Samiti, they filed suits for injunction restraining Mandi Samiti from interfering in carrying on the business of sale of manufactured goods without payment of market fee. The trial court decreed the suit so far as licence fee on trading, of manufactured items were concerned on the ground that such items are wood, but dismissed the suit in respect of market fee on products of wood. In appeal the appellate court allowed the appeal of plaintiffs regarding market fee and also restrained the Mandi Samiti from realizing licence fee as well as market fee. Thus, the suit was decreed in toto by the lower appellate court. The main ground on which the suit was decreed is that the manufactured items such as bullock-carts, buggies, windows etc. are not "wood" and have ceased to be agriculture produce as defined in Section 2 (a) of the Act, 1964 and the plaintiffs were not doing business of wood. The Mandi Samiti has filed this appeal against the said decree.

3. The definition of the agriculture produce given in the Adhiniyam of 1964 is as under :

" "Agriculture produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandary or forest as are specified in the schedule, and includes admixture of two or more of such items, and also includes any such items in processed form, and further includes gur, rab, shakkar, khandsari and jaggery.

Word "trader" is defined u/s 2 (i) of the Act as meaning a person who ordinarily in course of business engaged in buying or selling agriculture produce and is engaged in processing of agriculture produce. Section 17 of the Adhiniyam provides that the committee constituted under the Act have power to issue licence and collect market fee on sale/purchase of agriculture products."

4. By notification dated 11.4.1978, the State Government declared 115 items as agriculture products which includes "wood".

5. The learned counsel for the appellant argued that earlier a large number of writ petitions were filed in the High Court challenging the notification, levying of licence fee and market fee by the plaintiffs/respondents. All the writ petitions were dismissed. The leading case was of *Atma Ram Ratan Lal and Ors. v. State of U. P.* 1979 ALJ 126. Against the said judgment, some of the plaintiffs/respondents filed special leave petitions before the Hon"ble Supreme Court, which were decided by the Apex Court and the judgment of the High Court was upheld. The relevant Paras 24 and 33 of the judgment in AIR 1980 SC 1125 are quoted below :

24. This item presented some difficulty in solution. A licence is granted to a

Paper Mill and to Other kinds of dealers for cutting wood from the jungle and bringing it to their factories for manufacture of various articles such as paper etc. It was argued that there was no transaction of sale and purchase involved in the above operation. Moreover, the wood is cut from the jungle area which although has been roped in the market area but no service is rendered in that jungle area by any market committee. In our opinion the licence is involved sale of wood and a right to go to that land to cut that wood. The wood may be used by the manufacturer for manufacturing furnitures or may be used in manufacturing paper or any other commodity. That is immaterial. The owner of the jungle where from the wood is cut and brought will be a producer within the meaning of the Act and the licenced producer of that wood would be a purchaser of an agriculture produce within the meaning of Sub-clause (2) of Section 17 (iii) (b) of the Act liable to pay market fee. It matters little what use is made of the wood by him.

33. This point is also well founded and must be accepted as correct, market fee can be charged only on the transactions of purchases of wood and if a manufacturer of match-sticks purchases wood from the producer for the purpose of manufacturing the sticks, he will be required to pay market fee on such purchase of wood only and not on the sale of match-sticks or match-boxes. Agricultural produce purchased by the dealer will be chargeable to market fee and not the sale of the products after one kind of processing or the other."

6. In para 13 of the said judgment, it is stated that it is clear and it was ex parte considered on behalf of market committee and State that there cannot be any multi-purchasing of market fee in the same market area.

7. The learned counsel for the appellant has submitted that in those petitions, the question of applicability of the Act and taking of licence was raised. Since those writ petitions were dismissed, it would be deemed that the question of market fee stood concluded against the petitioners and they are required to take licence and pay market fee and same controversy cannot be raised now on principles of constructive res judicata and question of payment of market fee also.

8. The learned counsel for the appellant has argued that if any transaction is held in market area, market fee has to be paid if the agricultural produce is sold or purchased within the market area. He submitted that beams, curries, buggies, window, doors, etc. are only processed form of wood and are liable to pay market fee, if a trader deals in such items in the market area of Baraut and finding of proving that they did not purchase wood in their market area.

9. The trial court held that the term "wood" cannot be confined to bare wood but all forms of wood are included and the wood transformed into doors, windows and other articles remain wood, hence the plaintiffs are liable to take licence. These appeals were heard together. In appeal, the lower appellate court discussed evidence to find out whether the plaintiffs were traders and dealing in wood or manufactured form of wood. After analysing the oral and documentary

evidence, it held that any of the plaintiffs are dealing in whole sale business of wood or which of them was dealing in retail business. It further held that it is also admitted fact in the written statement that some plaintiffs are dealing with furniture only but it has not been specifically mentioned in the written statement as the names of the plaintiffs dealing in furniture business. The hide and seek tactics goes against the respondent/defendant. There is nothing on record to show that any of the plaintiffs is dealing in wholesale business.

10. The lower appellate court recorded finding that :

"So there is no evidence on record to show that the respondents are dealing in wholesale business and in view of Section 17, no market fee shall be levied on retail sale."

11. The learned counsel for the appellants has further argued that the lower appellate court has not set aside the findings of trial court that even when items are manufactured from wood, it would remain wood for the purpose of this Act, hence the plaintiffs would be traders and are required to take licence. I do not agree with this submission.

12. Processing and manufacturing are two different stages. By processing, the original item does not lose its identity. It does not acquire a new name known to the market whereas in manufacturing original commodity is transformed into a new commodity commercially known having a distinct use and identity having its own character and utility, where manufacturing takes place originality is lost and that commodity cannot be marketed in original name and price of such new commodity also changes. As against that, in manufacturing one or more process as may be involved and after manufacturing, the original item loses its identity and acquires a new name and is marketed in its new name. Wood is not defined in the Act, hence it has to be taken as is known to in common parlance and popular meaning. Sawing wood or seasoning is processing wood. The processing wood does not lose its identity but when a bullock-cart is manufactured from wood, it cannot be said that it continues to retain its originality. The wood has been transformed into a new name well known in common parlance. Nobody will sell wood to a purchaser, who wants to purchase bullock-carts, buggies or windows nor anybody will offer bullock-carts, buggies or windows if a purchaser asked "wood". The original log of wood undergoes several processes before taking shape of bullock-carts, buggies or windows.

13. The definition of agricultural produce takes into ambit only wood and processed wood but not the items manufactured from wood by machine or human labour transformed in a new product known to the market. The wood ceased to be a wood after such manufacturing and cannot be covered in the definition of "agricultural produce" given in the Act. Difference in manufacture and process was laid down by the Supreme Court in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI)* and Others, The Apex Court held that the test that is required to be applied is : does the processing of the original

commodity bring into existence a commercially different and distinct commodity? It has been further held in that case that blending of different qualities of processing different chemical and physical composition, so as to produce or of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced, cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specifications then the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore.

14. The Hon''ble Supreme Court in the above case relied on an earlier decision of the Court Dy. Commissioner of Sales Tax v. Pio Food Packers 1980 SCC 174 wherein the Apex Court has held :

"Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experience a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place."

15. The learned counsel for the appellant has relied on U. P. Aata Chakki v. Krishi Utpadan Mandi Samiti (1976) UPTC 322. In this case, the Court held that commonly flour into wheat was not manufacturing but processing. In view of the law laid down by the Hon''ble Supreme Court, to me it appears to be no more good law. The learned counsel has then relied upon the case of U. P. Krishi Utpadan Mandi v. Industries. This case related to gur and rab. The Apex Court held that agricultural produce is not restricted to any product of agriculture but also includes items, which came into being in processed form. It may be mentioned that definition of agricultural produce itself includes gur and rab. Gur lauta and Rab salawat were held to be only processed form of gur and rab have not been included in the definition of gur and rab as they retained their original form and not new articles. These cases are not helpful in the present case.

16. The Division Bench case in Paharpur cooling Tower Ltd. v. Krishi Utpadan Mandi Samiti 1992 (1) AWC 248 : 1992 ALJ 406 relates to wood. It supports the view taken by me in this case. It was held that cutting out turning of wood remain wood and liable to pay the market fee. The Bench held that wood has been used in a generic sense and is wide enough to comprehend all forms of wood from whatsoever material obtained. The cutting and trimining do not change spacer of wood. The shape or size or form of wood is not altered and they cannot change the basic character of wood or identity of wood. Similarly Super Training Ltd. v. State of U. P. (1997) ALJ 162 relates to leather. The

Division Bench held that leather was processed and skinned into hides, hence was agricultural produce.

17. Hon'ble Supreme Court in AIR 1992 SC 1227 has quoted with approval the following passage from an Heuser Bush Proving Association (1997) 52 Law Ed 336 to 338.

"Manufacture as change but every change is not manufacture but same thing where Is necessary there must be transformation a new and different article must emerge sewing distinct name character or use and further."

18. At some point processing and manufacturing will merge but where the commodity retains continuing substantial identity through the processing stage, we cannot say that it has been manufactured.

19. The following observations of the Apex Court in case of D.C. Pvt. Ltd. v. Commissioner of Income Tax. (1991) SCC 2125 to 2127 is also helpful :

"In common parlance, processing is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. The dictionary meaning of the term is not very different from this meaning in one sense while various other meanings of wider amplitude are also available. The view taken by Allahabad and Calcutta High Courts did not find favour with the three Judges Bench of this Court and in clear terms the judgment indicates that processing involves bringing into existence a different substance from what the material was at the commencement of the process."

20. The two courts below have held that manufactured items such as bullock-carts, buggies, windows, etc. ceased to be agricultural produce as they are no more "wood" or process wood. The view taken by the courts below is reasonable according to tests and law laid down by the Apex Court besides being findings of fact. I am, therefore, not inclined to interfere in second appeal and this case as there is no substantial question of law.

21. However, it is made clear that if any of the petitioners are carrying on trade in wood in the market of Baraut, they will be liable to take licence and pay market fees according to law.

22. For the reasons stated above, the second appeal fails and is dismissed. No order as to costs.