(2012) 05 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 8204 of 2010, 7715 of 2010, 8402 of 2010, 8402 of 2010, 8403 of 2010, 8404 of 2010, 8422 of 2010;9151 of 2010, 9152 of 2010, 9894 of 2010, 9898 of 2010, 9899 of 2010, 11438 of 2010, 11439 of 2010, 11508 of 2010 and 10272 of 2010

M/s. Bhanavi Agro Private Limited and Others APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:
Sales of Goods Act, 1930 — Section 19, 4

Citation : (2012) 3 WLN 22

Hon'ble Judges : Kailash Chandra Joshi, J;Arun Mishra, J

Bench : Division Bench

Advocate : Sachin Acharya and Mr. Narendra for Mr. Sajjan Singh Rajpurohit, for the Appellant; Ravi Bhansali, Yashwant Mehta, L.K Purohit, Rajesh Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—Heard learned counsel for the parties. The writ petitions have been filed by the petitioners questioning the vires of Rule 58 of the Rajasthan Agricultural Produce Market Rules, 1963 (referred to herein after as ''the Rules of 1963''). Prayer has also been made to quash the common order dt. 16.03.2010 passed by the Director, Agricultural Produce Marketing Board, Jodhpur (referred to herein after as ''the Agricultural Board'').

2. The common question arises in these writ applications, as such they are decided by this common order. Facts are being narrated from CWP No. 7715/2010 (Arihant Udhyog. vs. State of Raj. & Ors.).

3. It is averred that the petitioner is a small scale industry for which permanent registration certificate has been issued by the Government of Rajasthan. It purchases Legume from outside the State of Rajasthan and by processing it in its premises by different scientific ways, it prepares various Dalls. On the commodity

so purchased from outside the State of Rajasthan, Mandi Fee is also paid. The Agricultural Produce Marketing Committee (referred to herein after as ''the market committee'') is constituted under the Rajasthan Agricultural Produce Markets Act, 1961 (referred to herein after as ''the Act of 1961''). Rules have also been framed called the Rajasthan Agricultural Produce Market Rules, 1963. The license has been issued by market committee under Sec. 14 of the Act of 1961 to the petitioner firm though it was not required to obtain such license. Under Sec. 17, the market committee is empowered to collect the market fees but only to the extent that the agricultural produce is bought and sold in the market area. Rule 58(4) is an exception to the general rule. Reference has also been made to Byelaws 16 and 17 providing for levy of market fees and the process of its collection. Byelaw 17(7) provides that if a licensee brings for sale or processing any agricultural produce, he shall have to furnish an information and shall have to deposit the market fees also. Notice to the said effect was also issued by the market committee. It is submitted that since the petitioner purchases the agricultural produce from outside the State for industrial purpose, the notification dt. 27.04.2005 is not applicable to the industrial concerns like the petitioner. Rule 58(4) of the Rules of 1963 has been deleted. Earlier a writ application was filed. It was directed by this Court vide order dt. 05.02.2009 that they should file representation to the Director of the Agricultural Board. Representation (Annex.8 to the writ application) was accordingly filed. Reply was also submitted. The Director has passed the impugned orders on 16.03.2010 holding that the petitioners are liable to make payment of market fees. Hence, the writ applications have been preferred.

4. The State of Rajasthan and Director of Agricultural Board in their return have contended that the market fees is required to be paid with respect to the notified agricultural produce under Sec. 17 of the Act of 1961. As per Section 14 of the Act of 1961, a trader is bound to obtain license and is under lawful obligation to make good the market fees. Rule 58(4) of the Rules of 1963 has been deleted with effect from 27.04.2005. The petitioners are liable to make payment of market fees on agricultural produce purchased from outside the State, even if the mandi fee in respect of that produce has also been paid by the petitioner outside the State. If the Cess is paid in any other market area of State, then the same can be exempted by virtue of Rule 58(1) of the Rules of 1963 but no such declaration has been filed by the petitioner stating therein that it has already paid or deposited cess in any other market committee of the State. As a consequence of deletion of Rule 58(4), the petitioner cannot claim any exemption of market fee on exported agricultural produce after deletion of the said provision. After deletion of Rule 58(4), there is no procedure of filing any declaration so as to claim exemption. The petitioner cannot rely upon the provision of Rule 58(4) which has been deleted. The petitioner is under obligation to pay cess on the agricultural produce bought and sold in the market area. As the market fees has been deposited, the petitioner cannot question the amendment made in the Rule.

5. The stand of market committee is to the same effect.

6. Learned counsel Dr. Sachin Acharya a/w learned counsel Mr. Narendra Singh appearing on behalf of the petitioners have submitted that the question of vires of Rule 58(4) has already been decided by this Court. In two of the decisions. Rule has been held to be intra vires. As such, that question does not survives. However, they submit that the Director has factually erred in law in recording perverse finding that the transaction of sale of agricultural produce to the petitioners takes place within the State of Rajasthan. The precise submission raised on behalf of the petitioners is that the goods are purchased from outside the State of Rajasthan and the transaction of purchase is completed outside the State of Rajasthan. As such, there is no purchase made by the petitioners within the State of Rajasthan or in the market area. It was not open to the concerned market committee to levy market fee. The processed goods are also not agricultural produce. This aspect has also not been taken into consideration by the Director of the Agricultural Board. It is also argued that Clause 17(7) of the Byelaws travels beyond the scope of Section 17 of the Act of 1961. They have relied upon the decisions in Ram Chandra Kailash Kumar and Company and others, vs. State of U.P. and Another, (1980) Supp. SCC 27; and Shri Sajjan Mills Limited, Ratlam Vs. Krishi Upaj Mandi Samiti, Ratlam and Others, Reliance has also been placed on Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others, to point out that different commodity comes into being after manufacturing process.

7. Learned counsel Mr. Ravi Bhansali, Mr. Yashwant Mehta and Mr. LK Purohit appearing on behalf of the respondents have submitted that it is apparent from the order passed by the Director that the goods are delivered in the market area and till the delivery of the goods, as apparent from the invoice, the property remains with the seller. Thus, a conjoint reading of Section 4 read with Section 19 of the Sale of Goods Act, 1930 makes it clear that the goods passed to the buyers i.e. Petitioners in the market area. Thus, the provision of Section 17 of the Act of 1961 is clearly attracted. They are holding license also for trading in the market area and this fact has been admitted before the Director that the petitioners are trading in agricultural produce. In view of the admitted fact, as recorded in the order passed by the Director, the petitioners cannot be permitted to contend contrary to the same. They are liable to make payment of market fee. They have further submitted that the effect of deletion of Rule 58(4) is that earlier export of goods was exempted from fee. Now that provision has been deleted. However, Proviso to Rule 58(4) provided that in case the goods are retained for twenty days, the liability to make the payment of market fee shall be on the person bringing the produce into the market area, even in such a case of export. Since that provision has been deleted, the effect is that even when the goods have been bought in the market area in that exigency, the trader is liable to make payment of market fee. They have also relied upon the decisions of Hon''ble Apex Court in Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., and Krishi Utpadan Mandi Samiti, Allahabad Vs. Baidyanath

Ayurved Bhawan (Pvt.) Ltd. and Another,

8. We need not go into the question of vires of Rule 58(4) of the Rules of 1963 since the question of vires has already been decided by the Division Bench of this Court in M/s. Bhanwarlal Sohanlal vs. State, 1966 RLW 339 and the Single Bench has also taken the similar view in Shikharchand and Others vs. State of Rajasthan and Others, 1980 ILR (R S) 1299. The question has rightly not been pressed by learned counsel appearing on behalf of the petitioners.

The proviso to Rule 58(4) of the Rules of 1963 as stood earlier prior to 27.04.2005 provided that no cess shall be levied on agricultural produce brought in the market area from outside the State for the purpose of export and in respect of which a declaration has been made and a certificate has been obtained in Form-V. The second proviso to Rule 58(4) contained the provision that if such agricultural produce brought into the market area for export is not exported or removed there from, before the expiry of twenty days from the date on which it was so brought the market committee shall levy and collect fee on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws. The effect of deletion of Rule 58(4) along with Proviso is that even if the goods are brought from outside the State, the transactions cannot be saved from the clutches of the Act of 1961 and the Byelaws framed under the Act, they shall be liable to make payment of market fee. Byelaw 16 deals with the market fees. Byelaw 16 provides that in accordance with Section 17 of the Act of 1961 and Rule 58 of the Rules of 1963, on every agricultural produce bought or sold, the market fee shall be imposed and realised. The only exception is that in case, the produce has been purchased from any other market within the State and the payment of proof of market fee to such committee has been submitted. Byelaw 17(7) provides that in case any licensee brings any agricultural produce from outside the State, he has to submit the information in the requisite form and he has to make payment of the market fee.

Section 17 of the Act of 1961 is quoted below:

17. Power to levy market fees.-The market committee may, subject to the provisions of rules and subject to such maxima as may be prescribed, levy market fees on agricultural produce bought and sold by the licensees in the market area.

9 It is apparent from a bare reading of the provision that subject to the provisions of the Rules, there shall be levy of market fees on agricultural produce bought or sold by the licensee in the market. Thus, the question is whether the petitioners have bought the agricultural produce within the market area ? The finding of fact has been recorded on the basis of material on record by the Director of Agricultural Board to the effect that the order is placed from the market area, the payment is made in the market area and the goods are ultimately delivered in the market area. Thus, they are bought within market

area.

10. Shri Sachin Acharya, learned counsel appearing on behalf of the petitioners, has attracted our attention to the invoice through which the goods are delivered. Annex.1 is one such invoice. It is apparent from the invoice (Annex.1 to the writ petition) that the goods were sent through invoice by Jawahar Exim Ltd., Jalgaon, Maharashtra State to the destination of the petitioner - Arihant Udhyog, 14/B, Heavy Industrial Area, Jodhpur, Rajasthan through truck of which number has been mentioned along with quantity. There are further terms and conditions printed in the invoice at the bottom, which are as under:-

(1) Goods once sold & delivered will not be taken back.

(2) Responsibility of the seller ceases as soon as the goods are delivered.

(3) Interest @ 24% per annum is payable on all payments received after ten days.

11. It is apparent from the terms and conditions that goods are to be delivered at Jodhpur within the market area and till the goods are so delivered at the given address in the invoice, they remains in the custody of the seller and till such time, delivery is made, the responsibility is of the seller. Thus, the transaction of sale is completed when goods are delivered which is also intendment of Section 4 read with Section 19 of the Sale of Goods Act. It is also apparent from the invoice that the goods are bought finally when delivery takes place within the market area to the petitioners. Thus, in our opinion, the findings recorded by the Director are absolutely correct. We find no ground to interfere in the findings which is found to be correct on the basis of transaction in question.

12. The submission raised by the counsel that Byelaw 17(7) is repugnant to Section 17 of the Act of 1961, is misconceived. We find that provision of Byelaw is fully in consonance with the provision of Section 17 of the Act of 1961. When purchase or sale takes place, only in that case, the Byelaw is attracted and in that event, there is liability to make the payment of market fee. As apparent from the finding of fact recorded by the Director that the produce is bought in the market area, as such, the liability of making payment of market fee is on the petitioners. The petitioners have also obtained the license from the market committee and it has been mentioned by Director in order dt. 16.03.2010 that they are trading in the Agricultural produce. They have obtained license for trading. Now it does not lie in their mouth to contend that they are not trading in Agricultural produce and once the transaction as provided in Section 17 takes place, the liability arises to make the payment of market fees. The Byelaw 17(7) cannot be said to be widening the scope of provision of Section 17. The Byelaw has to be understood and applied in the aforesaid manner. Thus, it cannot be said to be ultra vires.

13. Learned counsel appearing on behalf of the petitioners have placed reliance on the decision of Ram Chandra Kailash Kumar and company (supra) in which

question 18 which was posed for consideration before their Lordships of the Apex Court was that no market fee can be charged if only goods are brought in the market area without their taking place any transaction of purchase or sale in respect of these goods. In this regard, the Apex Court has considered the question in Para 29 thus,

29. This point urged on behalf of the appellants is well founded and must be accepted as correct. On the very wordings of clause (b) of Section 17(iii) market fee is payable on transactions of sale of specified agricultural produce in the market area and if no transaction of sale takes place in a particular market area no fee can be charged by the market committee of that area. If goods are merely brought in any market area and are despatched outside it without any transaction of sale taking place therein, then no market fee can be charged. If the bringing of the goods in a particular market area and their despatch therefrom are as a result of transactions of purchase and sale taking place outside the market area, it is plaint that no fee can be levied.

14. In case, the goods are not purchased or sold within the market area, obviously, Section 17 is not attracted and the question of vires of deleted Rule 58(4) has not been pressed. Thus, the aforesaid decision laying down that when no transaction takes place in the market, no fee can be charged, is not at all attracted as in the instant case, the purchase is taking place in the market area. On facts, the ratio of the case does not apply to the present case.

15. Learned counsel for the petitioners have also relied upon the decision of Madhya Pradesh High Court in Shri Sajjan Mills Limited, Ratlam (supra) in which it has been observed that it has to be established that the notified Agricultural produce was brought for sale or bought or sold in the market area, only then market fee can be levied. In the instant case, on facts, we find that the goods were bought within the market area. Thus, the ratio of the decision does not espouse the cause of the petitioners.

16. It was also submitted by learned counsel for the petitioners that by process of manufacturing, entirely a different commodity comes into being. For this, reliance has been placed on the decision of Edward Keventer Pvt. Ltd. (supra) in which it has been laid down that in peculiar facts of the said case, after the manufacturing process, the fruits become an entirely different item of fruit drinks and lose their identity as fruits and the same would not be covered by the items of fruits specified in the Schedule. Reliance on the aforesaid decision relating to manufacturing process is entirely misconceived. There is distinction between the manufacturing and processing which has been observed by Apex Court in Orient Paper & Industries Ltd. vs. State of M.P. and Others, (2006) 12 SCC 468, as fairly pointed out on being required by the Court by Mr. Sachin Acharya, learned counsel appearing on behalf of the petitioners. The Apex Court has laid down that there is distinction between manufacturing and processing and various decisions have been referred to. The processing is different than manufacturing. The submission raised by the learned counsel for the petitioners that different

produce comes into being, does not advance the cause of the petitioners because on first part, we are of the opinion that the petitioners have ''bought'' the agricultural produce in the market, that itself make them liable for payment of market fee. Consequently, all these writ applications being bereft of force, are hereby dismissed. Stay Applications also stand dismissed.