

(2013) 01 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No's. 375, 517, 553, 664, 665, 673, 987, 1417 and 2324 of 2012 (M/S)

M/s. BST Textiles Mills Pvt. Ltd. and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Citation : (2014) 1 UC 413 : (2013) 1 UPLBEC 1

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : V.K. Kohli, Sri H.M. Bhatia, Mr. Lalit Sharma, Mr. Ramesh Singh, Mr. Pankaj Kumar Singh and Sri Ramji Srivastava, for the Appellant; A.S. Rawat, Additional Advocate General, Shri Paresh Tripathi, Additional Chief Standing Counsel for the State of Uttarakhand and Sri J.C. Belwal for the Mandi Samities, for the Respondent

Judgement

Sudhanshu Dhulia, J.—Heard learned Counsels for the parties. In this bunch of writ petitions, the petitioners (most of whom claim to be manufacturers) have challenged the notice-cum-demand made by the "Mandi Samities" for payment of "market fee" for the agricultural produce which the petitioners have brought in their market area. The principal contention of the petitioners before this Court is that the market fee is not liable to be charged on their agricultural produce for the reasons that, firstly, there is no sale and purchase of the goods in the market area and, secondly, it cannot be charged u/s 27(c)(iii) for the reasons that there is no sale, storage, processing or transaction of this agricultural produce.

2. The State Government is being represented by Mr. A.S. Rawat, Additional Advocate General and Mr. J.C. Belwal, Advocate represents the Mandi Samities, who have sent this notice of demand to the petitioners.

3. In some of these writ petitions, there is a challenge to the constitutional validity of the provisions itself i.e. Section 27(c)(iii) of Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 inasmuch as the

petitioners contend that since the agricultural produce is being brought in the market area which is not followed by any sale or purchase of this agricultural produce, and therefore the provision itself suffers from Legislative Competence inasmuch as a market fee can only be levied for a sale and purchase of agricultural produce in a market area, and where admittedly it is being done for something other than sale or purchase then what is being charged is not actually a "market fee" but some other duty and therefore it falls outside the subject matter i.e. Entry 28 in List II of 7th Schedule and therefore would fall in the residuary clause i.e. entry 97 List 1 where powers vests only with the Parliament. In other words, the legislative competence of the State Legislature has been questioned.

4. Entry 28 of List II under which the State Government derives powers reads as under:-

28. Markets and fairs.

5. The residuary clause of List I under which the petitioners submit that only the Parliament has power to make law reads as under:-

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

6. This argument, it must be stated, has not been contested with any degree of seriousness. Moreover, this challenge to the legislative competence comes in only Writ Petition (M/s.) No. 673 of 2012 by its Counsel Mr. Ramesh Singh. He too admits that the State legislature is competent to legislate on the subject of "markets". It is also admitted by the petitioners that they bring their agricultural produce inside the market area in Uttarakhand. Section 27 of the Act which is a chargeable Section, and it visualizes imposition of "market fee" not only where an agricultural produce is brought inside a market area for sale and purchase but also visualizes payment of market fee on that agricultural produce if it is brought for the purposes not of sale or purchase but either of storage, processing or transaction, as we shall see in Section 27(c)(iii) of the Act.

7. The pith and substance here would be the market area of Uttarakhand which is admitted and the product which is in question an agricultural produce. These two essential ingredients being met, the challenge to the legislative competence does not survive.

8. However, the main thrust of the argument of the petitioners is that a market fee can only be charged if there is a sale and purchase involved in the agricultural produce and even where there is no sale and purchase of the agricultural produce the "market fee" in that event can be only charged if the goods are brought for specified purposes alone, as given u/s 27(c)(iii), otherwise not.

9. The State of Uttarakhand has enacted an Act known as Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 (from

hereinafter referred to as the Act). The purpose of the Act was to provide for an effective regulation in marketing of agricultural produce, establishment and development of proper and modern marketing system, promotion of agricultural processing and agricultural export, superintendence and control of markets in the State of Uttarakhand and for the matters connected therewith or incidental thereto.

10. The charging Section is Section 27 of the Act, where the market committee has the powers to issue or renew licenses, to suspend or cancel licenses and to levy such fees as may be prescribed for the issue or renewal of licenses and to collect market fees.

11. Whereas u/s 27(c)(i) powers are given to the Committee to levy such fee as may be prescribed for the issue or renewal of licenses, u/s 27(c)(ii) the market committee has got the powers to collect market fee which is payable on transaction of sale of specified agricultural produces in the market area. This is infact the main charging Section, where as referred to above, a market fee is liable to be given on a sale or purchase of agricultural produce. Section 27(c) of the Act reads as under:-

27. A committee shall, for the purposes of this Act, have the following power; namely-

(a) ...

(b) ...

(c) (i) to levy such fees, as may be prescribed for the issue or renewal of licenses; and

(ii) to collect Market fees, which shall be payable on transaction of sale of specified agricultural produces in the Market area at such rates, being not less than one percent and not more than two and half percent of the price of the Agricultural produce so sold, as the State Government may specify by notification, and to levy and collect such Development cess at such rates being not less than ? percent and not more that 2? percent of the price of such deal. Such fee or development cess shall be realized in the following manner-

(A) if the produce is sold through a commission agent, the commission agent may realize the Market fee and Development cess from the purchaser and shall be liable to pay the same to the Committee;

(B) 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;

(C) if the produce is purchased by a trader from another trader, the trader selling the produce may realize Market fee and Development cess from the purchaser and shall be liable to pay it to the Committee;

Provided that if the purchaser is only license holder, then he shall be liable to pay

Market fees and Development cess;

(D) 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 the seller of the produce shall not be exempted from payment of Development cess on the ground that he has not recovered the same from the purchaser.

(iii) Any such agricultural produce, which reaches any Market area of the State for sale, storage, processing or transaction from any other State or out of country for the first time it shall be registered as "First Arrival" and on such produce, Market fee and Development cess shall be payable.

(iv) any agricultural produce, which is brought to any Market area within the State after the transaction of sale from any other Market area of the State after paying Market fee and Development cess for the purpose of sale, storage, processing or transaction, it shall be called as "Second Arrival" and on that produce no Market fees and Development cess shall be leviable;

(d)

(e)

(f)

(g)

(h)

(i)

(j)

12. From a bare perusal of Sections 27(c)(ii) and 27(c)(iii) of the Act, one will notice the difference which is that whereas under 27(c)(ii) market fee is liable to be charged on any transaction of sale or purchase of an agricultural produce which is brought in the market area, u/s 27(c)(iii) irrespective of it, if an agricultural produce reaches any market area of the State for the first time for following four purposes, namely, (a) sale (b) storage (c) processing and (d) transaction from any other State or out of the country then a market fee and development cess is liable to be paid on such an agricultural produce.

13. One of the Counsels appearing for the petitioners in Writ Petition (M/s.) No. 673 of 2012 Mr. Ramesh Singh has also argued that if Section 27(c)(iii) visualizes a sale and purchase of that agricultural produce and even if it is brought for the aforesaid four purposes, but it subsequently does not result in sale and purchase,

the market fee is not liable to be charged. He has relied upon para 23 of the judgment of Hon''ble Apex Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, and submitted that in the said Constitution Bench judgment, the Hon''ble Apex Court has held that one of the essential conditions for charging of a market fee is that there must be a transaction or sale.

14. This argument of the petitioner is liable to be rejected at the very threshold for the simple reason that the provision i.e. Section 27(c)(iii) was not there in the "U.P. Krishi Utpadan Adhiniyam, 1964" when it came up for discussion by the Hon''ble Apex Court as this provision has come for the first time in 2011 in Uttarakhand, where irrespective of a sale and purchase which may follow, if an agricultural produce is brought for the first time in a market area for defined purposes, as already referred above, a market fee is liable to be charged.

15. "Agricultural produce" is defined u/s 2(i) of the Act, which reads as under:-

2. In this act, unless the context otherwise requires:-

(i) "Agricultural Produce" means all produce and commodities, whether processed or unprocessed, of agriculture, horticulture, floriculture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, forest produce, as are specified in the Schedule or declared by the State Government, by notification, from time to time and includes admixture of two or more of such products, processed in form and further includes Gur, Rab, Shakkar, Khandsari and Jaggery;

16. It is again an admitted case of the petitioners that the agricultural produce or the produce, which they admit, they have brought in the market area in Uttarakhand is defined as an "agricultural produce" in the Schedule to the Act. Therefore, there is no dispute regarding the fact that the petitioners have admittedly brought an agricultural produce in a market area of Uttarakhand from outside the State. It is also admitted that the produce is brought in the market area for the first time and is "first arrival". Nevertheless, the "Mandi Samiti" can only charge a market fee u/s 27(c)(iii) on those agricultural produces, if these agricultural produces have to undergo for any of the four purposes i.e. (a) sale (b) storage (c) processing and (d) transaction.

17. There is no sale of such agricultural produce by the petitioners as the case of the petitioners before this Court is that this agricultural produce is converted into another product in a factory in Uttarakhand by the petitioners and, if at all, there is a sale, it is a sale of that "end product" which is not an agricultural produce, and there is no sale of the agricultural produce which they have brought in the market area. The same argument would apply for transaction as what is ultimately transacted by them from their factory is not an agriculture produce. Therefore, there is no transaction of the produce from that market area to another market area and the only possibility where the market fee can be charged if the agricultural produces are "stored" or if they are "processed".

18. The petitioners do admit that once they bring the agricultural produce, it is

stored for some time inside the factory premises before it is processed or manufactured into another product. But the petitioners would argue that this is not the kind of storage which the Legislature intended as "storage" u/s 27(c)(iii), as "Storage" in Section 27 would mean storage for the purposes of business and a market fee could have been charged from the petitioners only if the petitioners were doing storage for business purposes. But, since what the petitioners are doing is manufacturing of that agriculture produce into some other product and merely if they store the agriculture produce for some time in their factory premises, it is only incidental for the main purposes, and not for the purposes of storage per se, or for the purposes of business. We will presently leave this argument of the petitioners here and deal with it later, and we shall straight away proceed to deal with the other submissions of the petitioners, which is that there is no "processing" involved.

19. Necessary would be to deal now with the factor which is "processing". Definitely if the petitioners process the agricultural product a market fee is liable to be charged. Before one deals anything further on this aspect, it is necessary to deal with the kind of agricultural produce which all the petitioners have brought in the market area.

(A) In Writ Petition (M/s.) No. 375 of 2012 and Writ Petition (M/s.) No. 553 of 2012 what have been brought by the petitioners in market area of Uttarakhand are cotton or cotton gin which according to the petitioners, they finally convert into cotton yarn.

(B) In Writ Petition (M/s.) No. 664 of 2012, Writ Petition (M/s.) No. 987 of 2012, Writ Petition (M/s.) No. 1417 of 2012 and Writ Petition (M/s.) No. 2324 of 2012 what has been brought by the petitioners inside the market area is Barley which is converted into Malt.

(C) In Writ Petition (M/s.) No. 665 of 2012 and Writ Petition (M/s.) No. 673 of 2012 what the petitioners bring inside the market area is Maize which is converted into starch and its derivatives.

(D) In Writ Petition (M/s.) No. 517 of 2012 what the petitioners bring is wood which is converted into wooden crates.

20. The case of the petitioners in all the petitions is that what they are doing with agricultural produce inside their factories or plants is not mere processing but "manufacturing". They would argue that the fine difference between "processing" and "manufacturing" would be that whereas at the end of processing the product by and large remains the same, in manufacturing it results in a different product, a new entity. This argument rests on a fundamental premise that the end product in each case is a different product than what it was before i.e. an agricultural produce. For example, cotton is converted into cotton yarn which is entirely different. Not only it is not an agricultural produce but it is a different marketable commodity which has a different purpose. In order to strengthen the argument, the petitioner relied upon firstly the Division Bench

judgment of Himachal Pradesh High Court in M/s. Winsome Textile Industries v. State of H.P. and others (C.W.P. No. 32 of 2007) where the Court has held that once cotton is converted into cotton yarn it is manufacturing and not by a simple processing. In other words, cotton yarn is a manufactured product.

21. Another decision relied upon by the petitioner is a decision of Hon"ble Apex Court i.e. Orient Paper and Industries Ltd. Vs. The State of M.P. and Others, , where a fine distinction has been made between "process" and "manufacture" in a case where paper had to be manufactured after Bamboo and the end use is also different.

22. The same argument has been adopted by the petitioners in Writ Petition (M/s.) No. 664 of 2012, Writ Petition (M/s.) No. 987 of 2012, Writ Petition (M/s.) No. 1417 of 2012 and Writ Petition (M/s.) No. 2324 of 2012 where barley is to be converted into malt and it has been submitted that once barley is converted into malt a lot of process is involved such as for preparation of malt, barley is soaked in water, allowed to sprout, dried in kiln and in this process the barley no more remains in its original form of barley, but becomes an entirely new product. It has again been argued that the "end product" in this case which is malt is entirely different from barley and has an entirely different use than that of barley. The petitioners here relied upon a Division Bench judgment of Punjab & Haryana High Court in The Malt Company (India) P. Ltd. v. The Chairman, Market Committee, Gurgaon, (Civil Writ Petition No. 679 of 1978) wherein the market fee was being charged from bringing agricultural produce i.e. barley for manufacturing it into malt, and it was held that market fee cannot be charged as what the barley goes through while converted into malt is not simply a processing but it amounts to manufacturing. The Division Bench in para 6 of the said judgment stated as follows:-

6. For preparation of the malt, the barley is soaked in water, allowed to sprout and then dried in a kiln. The barley malt thus prepared is used for preparing liquor and beer and is used for no other purpose. It is thus evident that when barley is converted into barley malt by the said process it is no more saleable as barely in the market and bears the character which is totally different and distinct from that of the original agricultural commodity. Therefore, according to the said judgment, the preparation of malt would not be simply a processing of barley within the meaning of Section 23 and instead would be an end product of a manufacturing process.

23. By and large, the same argument has been adopted by the petitioners in Writ Petition (M/s.) No. 665 of 2012 and Writ Petition (M/s.) No. 673 of 2012 where what the petitioners bring inside the market area is Maize for converting into starch and its derivatives.

24. The petitioner in Writ Petition (M/s.) No. 517 of 2012 has also argued that in his case as well once wood is converted into wooden crates, it is a different product and the wood is not the same wood.

25. Whereas this Court accepts the arguments of the petitioners (save Writ Petition (M/s.) No. 517 of 2012) to the extent that the agricultural produces which they brought in the market area go through a multiple processes and manufacturing and the end product in each case is not the same as went to the factory and therefore, it cannot be treated simply as processing but it amounts to manufacturing as the end product is different, infact it is a different commodity.

26. This argument though cannot be accepted for the case of wood (Writ Petition No. 517 of 2012) inasmuch there is no major difference between wood and wooden crates, further the wood has not gone into any such changes as occurs in other cases, referred above.

27. Once it is being held that in Writ Petition (M/s.) No. 375 of 2012, Writ Petition (M/s.) No. 553 of 2012, Writ Petition (M/s.) No. 664 of 2012, Writ Petition (M/s.) No. 987 of 2012, Writ Petition (M/s.) No. 1417 of 2012, Writ Petition (M/s.) No. 2324 of 2012, Writ Petition (M/s.) No. 665 of 2012 and Writ Petition (M/s.) No. 673 of 2012 the petitioners have brought their agricultural produces for manufacturing it into something else, it also follows logically that even if these agricultural produces have been stored for some time in their factory premises, the main intention of the petitioners was not storage but was to convert it into another product and therefore they cannot be charged for having stored that product as it is only for incidental purposes and not for the purposes of business.

28. Therefore the Writ Petition (M/s.) No. 375 of 2012, Writ Petition (M/s.) No. 553 of 2012, Writ Petition (M/s.) No. 664 of 2012, Writ Petition (M/s.) No. 987 of 2012, Writ Petition (M/s.) No. 1417 of 2012, Writ Petition (M/s.) No. 2324 of 2012, Writ Petition (M/s.) No. 665 of 2012 and Writ Petition (M/s.) No. 673 of 2012 succeed and are allowed. The notices and the demand notices against each of the petitioners dated 1.1.2012, 13.1.2012, 21.1.2012, 23.1.2012, 1.2.2012, 2.2.2012, 14.2.2012, 15.2.2012, 22.2.2012, 5.3.2012, 27.6.2012, 23.7.2012 and 28.8.2012 are hereby quashed. The respondents are restrained from realizing the "market fee" from the petitioners for the agricultural produces in question.

29. Writ Petition (M/s.) No. 517 of 2012 fails and is hereby dismissed. No order as to costs.