
(1991) 09 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No. 20003 of 1988

Paharpur Cooling Tower Ltd.

APPELLANT

Vs

Krishi Utpadan Mandi Samiti, Ghaziabad

RESPONDENT

Date of Decision : 30-09-1991

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 2

Citation : AIR 1992 All 225 : (1992) 1 AWC 248 : (1992) RD 221

Hon'ble Judges : D.S. Sinha, J;A.N. Varma, J

Bench : Division Bench

Advocate : Mr. Sunil Gupta, for the Appellant;

Judgement

A.N. Varma, J.—The short question raised for consideration in this writ petition is whether cuttings and "trimmings" of wood commonly called wood waste are also "wood" exigible to market fee under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (the Act for short).

2. The question arises in this way. The petitioner, a company registered under the Companies Act, 1956, has a factory in the Industrial Area, Sahibabad in the district of Ghaziabad. It carries on the business of designing, erecting and commissioning of Cooling Towers as per the specification of its customers. In the erection of Cooling Towers the petitioner requires and prepares what are called "Scantlings" out of various kinds of wood such as chair and ply etc. These scantlings are prepared by sawing, sizing and drilling etc. of the wood. In the process of sawing and drilling etc. of the wood, waste in the form of cuttings and trimmings (herein .after referred to as waste) come into being. The petitioner sells this waste to various dealers for a variety of uses. For instance waste is used by paper mills which use this waste as raw material for making pulp for the manufacture of craft paper. The respondent Mandi Samiti sought to levy and collect from the petitioner market fee on the transactions of sale of this waste by the petitioner as an item falling under the Schedule to the aforesaid Act which lists various items of agricultural produce as defined u/s 2(a) of the Act. It is this

demand which has brought the petitioner to this Court. The petitioner contends that the waste arising from sawing and drilling etc. of wood cannot be characterised as wood eligible to market fee under the Act. It is further contended that the waste arising from the raw material, which is wood in the present case, cannot be characterised as wood.

3. The simple stand taken by the respondent Mandi Samiti is that the cuttings and trimmings are themselves wood. Only the form undergoes change. In short, the contention is that the waste arising from sawing and drilling of wood does not lose its essential character as wood.

4. Having given the matter our careful consideration, we find it difficult to accept the petitioner's contention. We have not the slightest doubt that the cuttings and trimmings arising from the simple process of sawing and drilling of wood are themselves nothing but wood. They retain their basic identity and characteristics as wood. The term "wood" mentioned as item No. 2 under the head "H" of the Schedule to the Act has been used in a generic sense and is wide enough to comprehend all forms of wood within its scope from whatsoever source obtained, and, by whichever process produced. Indeed in the context of the Statute wood is the genus. The cuttings and trimmings are but the species of wood. The shape or size or form of wood is, to our mind, not material. These cannot change the basic characteristic or identity of wood.

5. The view we are disposed to take is amply fortified by the decisions both of the Supreme Court and of our own. In *M/s. Atma Ram Ratan Lal v. State of U. P.*, 1979 All Law Journal 126, one of the questions debated was whether timber or fire wood come within the comprehension of item of wood as mentioned in the Schedule to the Act. Assailing the levy of market fee on those items, it was urged that "Forest Products" include only the self-grown forest, otherwise the definition would have included produce of in viticulture.

6. The submission was repelled by the Bench. It was observed in paragraph 33 of the Judgment (at page 131):

"the argument has no substance and is liable to be rejected on the grounds on which it has been rejected in earlier decisions. The commodities mentioned in the Schedule are statutorily agricultural produce. The first part of the definition of agricultural produce has been given only to provide guidance to the State Government if it acts u/s 4-A to amend the Schedule. When the Schedule mentions wood, which is a generic term, its ambit cannot be cut down by technical arguments. Firewood, timber etc. obtained from whatever source whether forests or groves, or orchards, or plantations or bamboo, are wood and so within the Act. In this view the submission that the word "forest" should be read as coloured by the preceding terms like agriculture, horticulture, viticulture etc. is of no avail in courts. Such a submission may be beneficial if and when the State Government thinks of amending the Schedule."

7. We respectfully agree with the dictum. The wood is a generic term and its

ambit cannot be curtailed by hyper-technical arguments. The cuttings and trimmings of wood, called waste of wood are also comprehended within the entry "wood."

8. The Supreme Court has also dealt with this subject in *Krishi Utpadan Mandi Samiti, Kanpur and Others Vs. Ganga Dall Mill and Co. and Others*, which completely supports the view we have felt persuaded by. The question raised there was whether legume (whole grain) would also comprehend its split folds or parts commercially known as Dal so as to enable the Mandi Samiti to levy market fee thereon. The issue was answered in the affirmative in favour of the Mandi Samiti and against the Dal Mills. For the Dal Mills, reliance was placed before the Supreme Court on a decision of this Court in the case of *Modi Spinning and Cotton Mills v. State of U.P.* 1980 AILLJ 1137 wherein in the context of this very Act it was held that the cotton waste is not comprehended in the entry "cotton ginned and unpinned" as specified in the Schedule.

9. Their Lordships of the Supreme Court disapproved the decision of this Court and ruled that cotton waste is not the bye-product of cotton but it is cotton minus the removed seed. The relevant observations which appear in paragraph 18 of the judgment are extracted below.

"In our opinion, the Court has started the language to reach an unsustainable conclusion holding that cotton waste is not the processed form of cotton but it is a bye-product quite different form of cotton though containing cotton fibre which cannot be used as ordinary cotton. As its name indicates cotton waste appears to be droppings, stripping and other waste product while ginning cotton. It cannot be said to be a bye-product of cotton but it is cotton nonetheless minus the removed seed. In other words it is residue of ginned cotton. We, therefore, find it difficult to agree with the view of the High Court that cotton waste is not comprehended in the item "cotton ginned and unpinned".

10. Similar observations have been made by the Supreme Court in the case of *State of Tamil Nadu Vs. Mahi Traders and Others*, Their Lordships held that splits and coloured leather continue to be hides and skins eligible for special treatment under the Central Sales Tax Act. Split leather it was ruled, was nothing but cut piece of hides and skins. The dictum fully applies to the case in hand. The cuttings and trimmings arising from sawing or drilling of wood are a fortiori wood nonetheless and do not cease to be so simply because it has been sawed or drilled.

11. The decision quoted in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, on which learned counsel for the petitioner placed reliance is clearly distinguishable. There the question was whether market fee could be levied on furniture manufactured by the purchaser of wood treating it as an item of wood. It can hardly be disputed that wood when manufactured into furniture results in the coming into being of an item which is wholly distinct and different from wood. The wood loses its identity and gets converted into an

item which has a distinct commercial identity just when cloth is sewn or stitched into a garment or iron ore or ingots get Converted through a series of the processes of manufacture into finished steel products. Even Market Committee had, therefore, concluded before the Supreme Court that no market fee was or was being charged on the transactions of furniture. This decision, therefore, lends no assistance to the petitioner.

12. This finally brings us to the petitioner's last contention namely that cuttings and trimmings of wood being waste of the raw material, namely, wood, cannot themselves be characterised as wood. The submission has no merit. The basic issue is whether cuttings and trimmings of wood are comprehended in the entry of wood. We do venture to think that for determining whether a substance falls within the scope of one or the other entry of the Schedule, one has only to examine the item regardless of whether it is produced out of the raw material or some other stage of the ultimate product.

13. Our conclusion, therefore, is that the wood arising from sawing, drilling, sizing and fabricating etc. of wood is eligible to market fee under the aforesaid Act.

14. In the premise there is no merit in the petition and the same is dismissed. No order as to costs. The interim orders are discharged.

15. Petition dismissed.