
(2015) 03 MP CK 0075
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5357/2006

Paras White Gold Agro Industries and Others	APPELLANT
Vs	
M.P. State Agriculture Marketing Board and Others	RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 43

Citation : AIR 2015 MP 77

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Arun Dudawat, for the Appellant; S.P. Jain, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—This petition is filed by the petitioners/processors under Article 226 of the Constitution seeking a direction to the respondents not to compel or insist upon the petitioners to obtain permit for removing their processed product, namely, hulled Sesamum Seed (Dhuli Tili) from the market area of respondent No. 3.

2. A short point is involved in this case. It is not in dispute between the parties that Sesamum or "Tili Seed" is a notified agricultural produce as per the Schedule prepared under section 2(1)(a) of Krishi Upaj Mandi Adhiniyam, 1972 (for brevity, the "Adhiniyam"). The case of the petitioners is that they purchase the Sesamum from different areas and bring it to the area of respondent No. 3. Thereafter, by "processing" they convert it into hulled Sesamum Seed (Dhuli Tili). It is contended that Dhuli Tili comes into existence after due processing and, therefore, petitioners are not required to obtain permit on this product. The short question needs to be decided is whether Sesamum Seed (Dhuli Tili) comes into existence after "processing" ?

3. The stand of the petitioners is that the Dhuli Tili is a processed product

whereas the respondents No. 2 and 3 have taken a diametrically opposite stand.

4. Learned counsel for the parties relied on definition of "agricultural produce", "processing" and "processor", mentioned in the Adhiniyam. Shri Dudawat relied on the definition of "processing" mentioned in Law Lexicon by P. Ramnath Iyer, M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, ; Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others, and State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., in support of his contention. Shri Dudawat relied on Entry 3 of Item IV (Oilseeds) of the Schedule aforesaid. The said entry is "Ground nut (husked and unhusked). It is submitted that the legislature in its wisdom decided to cover both kinds of Ground nut (husked and unhusked) and, therefore, included it in Entry 3 aforesaid. There is a deliberate omission by the Legislature with regard to Entry 1, which only deals with Sesamum and does not include Sesamum Seed (Dhuli Tili). Thus, it is contended that Dhuli Tili is not covered as unprocessed agricultural produce. Thus, it needs to be treated as processed agricultural produce, which is covered as per the proviso to Section 19(6) of the Adhiniyam.

5. Per Contra, Shri S.P.Jain, learned counsel for the respondents, contended that no cause of action accrued for filing this petition. In absence of any order by which the respondents directed the petitioners to show the permit, no cause of action accrued. He submits that Sesamum Seed (Dhuli Tili) is not a processed item. He relied on Orient Paper and Industries Ltd. Vs. The State of M.P. and Others, and Tapa Traders Vs. Krishi Upaj Mandi Samiti and Another, .

6. No other point is pressed by learned counsel for the parties.

7. I have heard learned counsel for the parties at length and perused the record.

8. I deem it proper to first deal with the objection of Shri Jain regarding cause of action for filing this petition.

9. The petitioner in para 5.17 of writ petition has specifically pleaded that officials of Mandi are insisting upon the petitioners to obtain the permit for transportation of their product notified as agricultural produce. The respondents have given an evasive reply of this paragraph. It is contended by them that the respondent- Mandi is not insisting upon any licensed trader to obtain permit for removing or dispatching his product which is processed from agricultural produce from its market- yard. A plain reading of the return shows that the respondents are not treating the hulled Sesamum as a "processed" item. Thus, it is clear that the respondents were insisting for permit for the product in question. Thus, I am unable to hold that no cause of action accrued for filing this petition. The objection of respondents is rejected being bereft of merits.

10. Before dealing with rival contentions, I deem it proper to reproduce the definitions of "agricultural produce", "processing" and "processor", mentioned in section 2 of the Adhiniyam, which reads as under:-

“(a) “agricultural produce” means all produce of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest as specified in this Schedule.

(mmm) “processing” means powdering, crushing, decorticating, husking, parboiling, polishing, ginning, pressing, curing or any other treatment to which an agricultural produce or its product is subjected to before final consumption.

(Emphasis Supplied)

(mmmm) “processor” means a person who processes agricultural produce by manual or mechanical means.

11. Section 19(6) of the Adhiniyam reads as under:-

“19(6)- No notified agricultural produce shall be removed out of the market yard, market proper or the market area as the case may be, except in accordance with a permit issued by the market committee, in such form and in such manner as may be prescribed by the Bye-laws:

Provided that if any removes or transports the processed or manufactured product of notified agricultural produce from the market yard, market proper or the market area, as the case may be, such person shall carry with him the bill or cash memorandum issued under Section 43 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994.”

12. As noticed, the singular question which needs to be answered is whether Sesamum Seed (Dhuli Tili) can be treated as a processed agricultural produce. Shri Jain has heavily relied on the judgment of this Court in Tapa Traders Gwalior (supra), which is based on the judgment of Supreme Court in Orient Papers and Industries Ltd. (supra). A plain reading of the judgment of Tapa Traders (supra) shows that the petitioners therein were in the business of selling Tobacco powder (Choor). In the said case the Tobacco powder was used for preparation of Tobacco Candy, Tobacco Rawa etc. This Court opined that there is no change in the character of tobacco neither any ingredients have been added in the tobacco. In such circumstances, this Court opined that the different types of tobacco named above cannot be said to be a processed produce. In the present case, the petitioners have categorically pleaded that during processing, the Sesamum Seed is converted into hulled Sesamum Seed. A mechanical process was adopted for husking, parboiling, i.e., removing the upper layer (husk) of the Sesamum Seed by using mechanical process. It is submitted in para 5.10 of the writ petition that after processing the product, hulled Sesamum Seed cannot be used as a seed for obtaining crops. The respondents have not chosen to deny the factual foundation mentioned in para 5.10 of the petition. It is indeed submitted in the reply to the said para that merely because a process of cleaning or removing upper layer of Sesamum is adopted thereby converting into hulled Sesamum, the basic character of product is not changed and it still remains an agricultural produce. For this reason, it is contended that the process adopted does not fall within the ambit of Section 2 (mmm) of the Adhiniyam.

13. A plain reading of definition of "processing" makes it clear that it is very wide. "Processing" means powdering, crushing, decortivating, husking, parboiling, polishing, ginning, pressing, curing etc. The definition is wide enough to include any other treatment to which an agricultural produce or its product is subjected to before final consumption. The respondents have not chosen to deny the specific pleading of the petitioners that hulled Sesamum cannot be used as a seed for the purpose of fresh crop. Thus, I find force in the argument of Shri Dudawat that characteristic of Sesamum has changed when it was put to processing. Since characteristic is changed, the judgment in Tapa Traders (supra) has no application in the factual backdrop of this matter.

14. It is needless to mention that the word "processing" needs to be interpreted in the context in which it is used in the present Adhiniyam. As per the dictionary meaning of "process", it is "a continuous and regular action or succession of actions taking place or carried out in a definite manner and leading to the accomplishment of some result" (Oxford Dictionary). The meaning of word "decorticate" is to strip off the bark or outer coat of, peel, husk, hull; to strip off a production of the cortical substance of (Webster Comprehensive Dictionary). According to the Webster's Third New International Dictionary, "decorticate" means, to remove the bark, husk, or other outer covering from : hull, peel, skin, strip, and, as per Chambers 20th Century Dictionary, meaning of "decorticate" is, to deprive of the bark, husk, or peel; to remove the cortex of. The "hulled Sesamum" is obtained as a result of the processing by which the outer cover of the seed is removed. Thus, in my view, the petitioners use the process of decortivating/husking on the Sesamum. Resultantly, they get hulled Sesamum Seed (Dhuli Tili), a product for final consumption. In Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, , the Apex Court considered the word "process". The Apex Court opined that what is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change. The question is not whether there is manual application or energy or there is application of mechanical force. If this litmus test is applied in the present matter, it is clear that as a result of processing, the Tili Seed/produce experience some change. In other words, the characteristic of the original Tili Seed gets changed after processing and said seed cannot be used as a seed for obtaining crops.

15. As analyzed above, it is clear that the hulled Sesamum Seed comes into existence after the processing as defined in the Adhiniyam. Thus, in my view, the petitioners are entitled to remove or transport the processed product from the market yard, market proper or the market area by carrying a bill or cash memorandum issued under section 43 of Vanijyik Kar Adhiniyam, 1994.

16. Petition is allowed to the extent indicated above. No cost.