(2002) 10 PAT CK 0024

In the Patna High Court

Case No : C.W.J.C. No. 11638 of 1993

Prabhat Zarda Factory (India) Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Citation : (2002) 10 PAT CK 0024

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—The Petitioners process and trade in tobacco.

2. The Petitioners seek reliefs that a writ be issued and it be declared that the Market Committee, functioning under the Bihar Agricultural Produce Market Act, 1960 and the Bihar Agricultural Produce Market Rule, 1975 may not apply to the product they process and trade in, that is to say tobacco or ''Zafrani Zarda''.

All things considered, ultimately the controversy in these cases will not be able to avoid three cases of Supreme Court These are:

1. Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc.,

2. The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,

3. Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others,

3. The Court mentions this at the outset because any case which may have been cited by the Respondents in their defence to counter the arguments of the Petitioner are cases prior to cases decided by the Supreme Court.

4. The issue in the present petition is as to when the market fee became leviable on products known as (Zafrani zarda vagairah).

5. This judgment may be taken as a sequel to the one to which the Court has given in the matter of CWJC No. 4432 of 1978: Prabhat Zarda Factory and Another Vs. State of Bihar and Another, The contention on behalf of the Petitioner

is that market fee would be attracted on these two items as from the date when the Schedule was amended. This is the Schedule to which reference has been made u/s 2(1)(a) of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Act).

6. Section 2(1)(a) is relevant and, thus, it is reproduced:

''Agriculture produce'' means all produce whether processed or non processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule.

7. Thus, it will be seen that ''Agriculture produce'' has been defined to include has ''Agricultural produce'' whether processed, (sic)tion processed, manufactured or not of Agriculture and some aspects more as re(sic)rred to in the definition. But the relevant respect of it is that while an item may be Agricultural produce, it will be such that for the purpose of the Act it is stipulated "as specified in the Schedule". The contention is that if the item is not referred to specifically as an entry in the Schedule, market fee would not be leviable. The Petitioners accept that such are the decisions of the Supreme Court also.

8. Subjects as are dealt with in the Schedule are 12 in number. These are:

I. Cereals

(1) Paddy,

(2) Rice,

(3) Wheat,

(4) Maize,

(5) Barley,

(6) [X X X],

(7) [X X X],

(8) [X X X],

(9) [X X X],

(10) [X X X],

(11) [X X X],

(12) [XXX],

(13) [X X X],

(14) Wheat Atta,

(15) Sujji,

(16) Maida,

(17) Chana Ka Sattu (Gram Sattu)

(18) [X X X],

(19) [X X X],

(20) Jai,

(21) [X X X],

(22) Chhati Jao,

(23) [X X X],

(24) Sabudana,

(25) [X X X]

II. Pulses

(1) Gram,

(2) Arhar,

(3) Masur,

(4) Urad or Kalai,

(5) Khesari,

(6) Mung,

(7) Dry Peas (Matar or Kerao),

(8) Kurthi,

(9) Cowpea seed (dry),

III. Oilseeds

(1) Mustard, Rape and Toria,

(2) Linseed,

(3) Castar Seed,

(4) Groundnut,

(5) Seasamum Seed,

(6) Niger Seed,

(7) Mahua Seed,

(8) Kusurn Seed,

(9) Karanj,

(10) Cotton Seed

IV. Oils

(1) All Vegetable Oils

V. Fruits

(1) Aam,

(2) Kela,

(3) Lichi,

(4) Narangi,

(5) Nimbu,

(6) Angur,

(7) Pam Grenet,

(8) Tarbuj,

(9) Kathal,

(10) [X X X],

(11) Amrud,

(12) Nashpati,

(13) Sev,

(14) Custard Apple,

(15) Ananas,

(16) Chiranji Dana (Chilka sahit avam Chilka rahii),

(17) Lalmi,

(18) Bel,

(19) Mosammi,

(20) Singhara (Chilka sahit avam bina chilka ka, hara abam sukha)

(21) [X X X],

(22) Khira,

(23) Kakari

VI. Vegetable

(1) Potato,

(2) Onion,

(3) Parwal,

(4) Bagan,

(5) Gord,

(6) Bhindj,

(7) Pumpkin,

(8) Tamatar,

(9) Gobhi,

(10) Patgobhi,

(11) Hah Chhemi,

(12) Sem,

(13) Sag,

(14) Gajar,

(15) Muli,

(16) Shakarkand,

(17) Karela (bittergourd),

(18) Nenua (Paror),

(19) Kainta,

(20) Jhigni,

(21) Kaddu (Pumpkin),

(22) Chthali,

(23) Bora,

(24) Misarikand,

(25) Shalgam,

(26) Sahjan,

(27) Oal,

(28) Kanda,

(29) Kundari

(30) Aruai,

VII. Fibres

(1) Cotton (ginned and unginned),

(2) Jute,

(3) Sunnhemp,

(4) Resham,

(5) Tasar Gola (Kakunas),

(6) Ganni Bag,

(7) Sutali,

(8) Narial, Save ityadi ki rassi,

VIII. Animal Husbandary Products

(1) Murga/Murgai (Poultry),

(2) Ande (Egg),

(3) Cattle,

(4) Sheep,

(5) Goat,

(6) Wool,

(7) Makhan, (Butter),

(8) Ghee,

(9) [X X X],

(10) Hides and Skin,

(11) Bones,

(12) Khal,

(13) Bakra-Bakrai avam Bher-Bheri ka Mans,

(14) Machali,

(15) Suar ka Bal,

(16) Malai (Cream),

(17) Chhena,

(18) Suar ka mans,

(19) Khoa,

(20) [X X X],

IX. Condiments, Spices and others

(1) Turmeric,

(2) Chillies,

(3) Garlic,

(4) Coriandar,

(5) Ginder,

(6) Cardamom and Pepper,

(7) Betel leaves,

(8) Betel nuts,

(9) Cashew nuts,

(10) Methi,

(11) Mangraila,

(12) Tamarind,

(13) Aniseed (Saunf)

(14) Cuminseed (Jeera),

(15) Cloves (Laung)

(16) Ajwain,

(17) Chhohara,

(18) Narial Gari,

(19) Currant (Kismis-Munakka),

(20) Almond,

(21) Coconut (Shelled and Unshelled),

(22) Cinnamon (Dalchini)

X. Grass and Fodder

(1) Sabai grass,

(2) Dhan ki bhusi,

(3) Gehu ki bhusi,

(4) Bhusa.

XI. Narcotics

(1) Tobacco,

(2) (Zarda),

(3) (Zafrani zarda vagairah)

XII. Miscellaneous

(1) Sugarcane,

(2) Gur,

(3) Chini,

(4) [X X X],

(5) Oil Cakes,

(6) Jute seed,

(7) Mesta seed,

(8) Isfgole,

(9) Makhana,

(10) Mahua Flower,

(11) Myrobolan,

(12) Rab,

(13) Bidi Leaves,

(14) Bambco,

(15) Wood,

(16) Dhoop Wood,

(17) Sugar candy,

(18) Aam ka achar (Mango Pickles),

(19) Hare,

(20) Bahera,

(21) Madhu,

(22) Tari,

(23) Gond,

(24) Kath,

(25) Khandsari,

(26) Chhoa,

(27) Chunni,

(28) Chokar,

(29) [X X X],

(30) Chai (Pati avam dust),

(31) Rice brown oil,

(32) Kard board,

(33) Astra board,

9. The intention of the legislature was not to leave entries vague and unspecified. What would constitute as "Agricultural produce" under the subject cereals, pulses, oilseeds, oils, fruits, vegetable, fibres, animal husbandry products, condiments, spices and others, grass and fodder, narcotics, miscellaneous agricultural products, the products were identified. If cereals be the subject, then against the listing, the specific product item has been identified in the Schedule. In this regard this Court adopts the observations made in the matter of CWJC No. 4432 of 1978 [reported in 1985 PLJR 531]: M/s Prabhat Zarda Factory and Ors. v. The State of Biha and Ors. (supra). The Court was called upon to interpret as to what market fee would be leviable on tobacco. In the matter relating to chewable tobacco the Court was called upon to answer the issue whether Khaini as a product would be subject to market fee and if so from when. This decision was answered in favour of the market committee. The Court did not agree with the Petitioners that they could escape the meaning given to tobacco which in fact is Khaini and other products. What Khaini is in Hindi, tobacco is in English. It is chew able tobacco.

10. The Court explained'' in its judgment that the product or the variation of the products which has been referred to in these Schedule, in context, is narcotics. Any items which comes within the meaning of narcotics could be assumed to be attracting market fee, but in accordance with law the specific item which may be a narcotic would have to be identified, under the Act, so as to be assessed to market fee. Thus, since Khaini is tobacco, the same item in two languages, both synonymous except that one is so called in English and the other in Hindi. Narcotics covers both expressions. There is no escape for the Assessee to avoid the market fee under the Act and the fee would be liable to be assessed. The contention of the Petitioners in the matter of CWJC No. 3652 of 1985: M/s Chauba Tambaku Factory v. The State of Bihar and Ors. failed.

11. Likewise on the same reason the issues debated were as to since when would market fee on (Zarda), (Zafrani zarda vagairah), be chargeable? As from the time, when the Act was enacted i.e. in 1960 or subsequently? This was an issue which was reflected upon by the Supreme Court in the matter of Civil Appeal No. 1288 of 1986 Agricultural Produce Market Committee Ors. v. M/s Prabhat Zarda Factory and Anr. decided on 31 March, 1993, and in that case regard being had to the (sic)cumstances that the definition of ''Agricultural produce'' saw a change in 1982 i.e. in 30 April, 1982, the Supreme Court, in effect, passed an interim declaration. It was declared, that since the definition saw change subsequently, market fee would not be chargeable prior to this particular (sic). The issues were left open on the date of applicability during the prior period, to be (sic)bated

should an occasion arise in future (sic)gations.

12. The only redeeming feature is that is Court has had the benefit of the Supreme Court decisions to which it has (sic)rred to in the earlier part of this order. (sic) the three Supreme Court cases (sic)ether, the ratio decidenoi which is dis(sic)ble, is to the effect, that while "Agricultural Produce" may be taken as defined in Act but no item could be chargeable to Court fee unless it is specifically entered the Schedule. The situation has been only interpreted by the Supreme Court on this there is no doubt. Other decision rendered previously stand replaced foresaid three decisions.

13. Coming to the point on the issue to when (Zarda), (Zafrani zarda vagairah), saw their into the Schedule, a reference to in had been made u/s 2 (sic) defining ''Agricultural produce''. The was are caused u/s 39 of the reference to the two entries, aforesaid these were made on 31 July, 1991. (sic) the entry was made on 31 July, 1991 is no issue between the parties. This circumstance which is accepted become them.

14. Thus, the subject which would at market fee and referred to in the Schedule is "Narcotics". The Supreme Court decisions are clear that an item if it is to attract market fee has to be identified. The three items against the subject narcotics referred to against item XI are "tobacco". (Zarda), (Zafrani zarda vagairah)". This Court is dealing with the last two items. The items are enlisted in the Schedule as from the date when inserted. As from then the Act controls the products specified in the Schedule so as to be assessed as "Agricultural Produce".

15. Now the question of the date of applicability of the Act in reference to the items, whether it is (Zarda), (Zafrani zarda vagairah). At the exoense of repetition in the present case the Schedule was amended by a notification dated 31.7.1991. Notifications dated 23.5.1992 and 31.8.1992, in reference to Sections 3 and 4 respectively, of the Act, completed the formality that an item or items, being "Agricultural produce", referred to in the Schedule would attract market fee. The market fee became leviable with effect from 31 August, 1992.

16. Under the circumstances the intention of the legislature to regulate the two products, in context, (Zarda), (Zafrani zarda vagairah), will become subject to assessment as from the date when the notification u/s 3 was published on 31 July, 1991.

17. Learned Counsel for the Respondent Market Committee has drawn attention of the Court on the interim order dated 5 September, 1994. He further draws the attention of the Court that notices contained in Annexure 15 series had remained stayed on the Petitioner depositing a sum of rupees 25,18,443.84/-. This was in respect to the issues being determined whether the Market Committee was entitled to charge the fee prior to the notification u/s 4. He submits that current assessment was understood to be paid by the Petitioners in the normal course of business and assessment. Learned Counsel further contends that in this long run

litigation initiated by the Petitioners at the High Court, thereafter its passage at the Supreme Court and then at the High Court between the years 1978 and as of date, should be understood that those assessed, notwithstanding the Assessees were litigating, will not raise issues of limitation on the assessments pending. If the Petitioners'' initiated the litigation to avoid assessment and tax, on the pleate, the assessments of these periods cannot be beyond limitation.

18. The issues brought in this writ petition, were as to when the market fee would become leviable on products known as (Zarda), (Zafrani zarda vagairah)". This issue has been answered with the date indicated in this order in the discussion. The market fee became leviable with effect from 31 August, 1992.

19. The reliefs prayed, in effect, that the Act does not apply or may not be enforced, are misconceived.

20. The writ petitions are dismissed with costs.

