
(2015) 09 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7614 of 2012

Shakil Ahmad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-09-2015

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 2(a)

Citation : (2015) 113 ALR 653

Hon'ble Judges : Rakesh Tiwari and Mukhtar Ahmad, JJ.

Bench : Division Bench

Advocate : Udit Chandra, for the Appellant; Satish Mandhyan, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record. By means of this writ petition, the petitioners have prayed for issuance of a writ in the nature of mandamus commanding, directing and restraining the respondents from recovering the Mandi Fee/development charge/Cess from the petitioners on transportation, purchase and sale of manufactured product i.e., veneer.

2. The petitioner have their industries/factories for manufacturing Veneer. The text alongwith photograph showing manufacturing process of Veneer is appended as Annexure-1 to the writ petition.

3. The main stress is given by learned Counsel for the petitioners on the point that Veneer does not come within the definition of agriculture produce as defined under section 2 (a) of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (herein after referred to as the Act); that it also does not fall within the definition of forest produce but in processed form "wood". The respondents are charging Mandi fee/Cess and other charges. They are insisting upon the petitioners to get themselves registered for payment of Mandi fee/development charge and Cess

etc.; that Veneer does not have any characteristic of wood and the same is a new product having different commercial identity. Therefore, no mandi fee is chargeable on sale or purchase of manufactured goods "Veneer, doors, chaukhat, buggi and different types of furniture. It is stated that Mandi fee/cess is payable only on an agricultural produce as specified for the purpose of levy of market fee, as mentioned in Schedule-A of the Mandi Samiti Act.

4. In support of his contention learned Counsel for the petitioner has placed reliance upon following rulings:

- "1. State of Madras Vs. Swastik Tobacco Factory, Vedaranyam,
2. State of Madras Vs. Swastik Tobacco Factory, Vedaranyam,
3. Dharampal Satyapal Vs. Commissioner of Central Excise, Delhi-I, New Delhi,
4. Jindal Stainless Ltd. and Another Vs. State of Haryana and Others, ;
5. Kesarwani Zarda Bhandar Vs. State of U.P. and Others,
6. Bata India Ltd. Vs. Commissioner of Central Excise, New Delhi, ;
7. Commissioner of Central Excise Vs. Tarpaulin International, ;
8. Commissioner of Income Tax-V, New Delhi Vs. Oracle Software India Ltd., ; and
9. Rapti Commission Agency Vs. State of U.P. and Others, ."

5. On behalf of the respondents it is contended that Veneer is nothing but a form of processed wood. He has relied upon the judgment of the Apex Court in State of Assam Vs. Tumba Saw and Veneer Mills, Tumpa, Arunachal Pradesh, , wherein process of making veneer is given and that even if it is a product of manufacture, it would fall within the ambit of the definition of "agriculture produce" for the purpose of market fee under the Mandi Adhiniyam.

6. The cardinal issue sought to be considered is as to whether Veneer is an agricultural produce or processed wood product within the meaning of the Act of 1964?

7. Before considering the rival contentions of the parties we think it appropriate to consider the definition of agriculture produce in section 2 (a) of the Act. Agriculture produce has been defined in the Act thus:

"2. Definition.--In this Act unless there is anything repugnant in the subject or context:

(a) "agriculture produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and include admixture or two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery."

Various products are shown in Schedule-A of the Act which are as follows-

- "1. Gum
2. Wood
3. Tendu leaves
4. Lac.
5. Reetha
6. Khair wood."
8. We now advert to the cases cited before us.

In the case of State of Madras v. Swastik Tobacco Factory's case the Apex Court was considering Rule 5(1)(i) of Madras General Sales Tax (Turnover and Assessment) Rules, 1939 with regard to excise duty. It held that only excise duty paid on goods sold by the assessee is deductible from gross turnover. Raw tobacco when converted by process of manufacture to chewing tobacco is different marketable product under that Act.

Whereas in the case of Agricultural Produce Market Committee (supra) also it was held by the Court that sale of "Zarda" by respondent-firm was a variety of manufactured tobacco and not in its processed or non-processed form and hence, was not an "agriculture produce" on which market fee could be levied. The Apex Court further held that there was no infirmity in the judgment of the High Court or its reasoning. However, as the definition of "agriculture produce" has undergone a change in 1982 (effective from-30.4.1982) so as to include the manufacturing aspect in it, the judgment of the High Court should be confined as valid until the date of the amendment and the period thenceforth should be left in a vacuum to be decided in future litigation.

While dismissing the appeal of Dharampal Satyapal, the Apex Court held that marketability is an attribute of manufacture. It is an essential criteria for charging duty. Identity if the product and marketability are the twin aspects to decide chargeability. Durability of the product depends on whether the product is known to the market. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. Marketable means saleable. The test of classification is: how the goods are known in the market.

In the case of Jindal Stainless Ltd. (supra) the Apex Court while differentiating between "Tax" and "Fee" has evolved the concept of principle of equivalence.

It held that the fee is a kind of reimbursement and the burden is on the State to show the kind of special service which has been provided by the State in pursuance of the fee charged. Paragraph Nos. 40 and 41 of the judgment read thus.

"40. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the States' action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.

41. On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the Government action and even if such benefit results from the Government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable."

In the case of Kesarwani Zarda Bhandar (supra) it has been held by the Apex Court that market fee is leviable on specified agricultural produce, not on agricultural produce simpliciter and as Zarda is not a specified agricultural produce. It can be subjected to payment of market fee provided it is held to be "tobacco". Zafrani zarda, is an agricultural produce for the purpose of market fee must answer the description of "specified agricultural produce" as defined in section 2 (a) of the Act. If it is held that zafrani zarda is merely a processed form of tobacco, it would be subjected to levy of market fee, but if it is manufactured. it would not.

As regards the case of Bata India Limited (supra), the question before the Apex Court that yet arose for consideration in the appeal was whether unvulcanised sandwiched fabric assembly produced in the assessee's factory and captively consumed can be termed as "goods" and can be classified as "rubberised cotton fabrics" falling under Sub-Heading 5905-10 of the Schedule to the Central Excise Tariff Act, 1985. The Apex Court while allowing the appeal of the appellant held that product must be marketable in condition in which it emerges. A product is excisable only if it is a complete product having commercial identity capable of being sold to consumers. Mere theoretical possibility of product being sold is not sufficient but there should be commercial capability of its being sold. Onus lies on Revenue to establish marketability of product so as to attract duty. Double textured rubberised fabric/unvulcanised sandwiched fabric, an intermediate product, manufactured for captive utilization to be used for shoe uppers in footwear. The Court further held that the product is used as an intermediate product and goes into making of final product. Revenue had not produced any

material to show that the product was either being marketed or capable of being marketed, without further processing. It again held that the intermediate product would not be goods much less excisable goods.

In the case of Commissioner of Central Excise, Chennai-II (supra), the term "manufacture" has been distinguished from "processing" whereas in the case of M/s. Oracle Software India Ltd. (supra) the Apex Court has held that even converting blank CD into recorded CD amounts to manufacturing and thus blank CD cannot be treated with the same that of the recorded CD.

In the case of Rapti Commission Agent (supra) the Apex Court has held that once the amount is not payable on the face of it the Court may not pass an order for deposit of the amount on the pretext that if the writ petition is allowed the amount will be refunded. Paragraph 14 of the judgment reads thus:

"14. Before we part with the case, it would be appropriate to remind the legislatures of what was stated in Bhawani Cotton Mill's case (supra) that if a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid, because if sales or purchases are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax. The view was reiterated in Steel Authority's case (supra) and Nathpa Jhakri case (supra). In the latter case, it was noted, echoing the view in Bhawani Cotton Mill's case (supra) that it is no solace to say that such a person can get refund after completion of assessment. If the principles indicated in these cases are followed, large number of unnecessary litigations can be avoided."

The Apex Court in para 11 of the judgment given in case of State of Assam Vs. Tumba Saw and Veneer Mills, Tumpa, Arunachal Pradesh, , defined the Veneer as under--

"11. "Veneer" is a raw material converted from green logs for manufacturing plywood. Initially trees, being the forest produce, are cut into pieces and tops are removed to be known as Timber". These pieces of such Timber" called as logs, are taken to the factory to be peeled out by some mechanical means. The logs, firstly, are cut into sections according to the required sizes of "Veneer", barks of the logs are removed and the naked sections logs are fitted within the peeling machine by using mechanical process where logs are moved in a circular motion. Thereafter the thin layers of Timber being sliced, come out. These thin layers are thereafter cut into different sizes which make the "Veneer"."

9. According to the Oxford Dictionary, "veneer" is a layer of wood or plastic that is stuck into the surface of a cheaper material, especially wood to give it a better appearance."

10. According to the Collins Cobuild Dictionary, "veneer" is a thin layer of wood or plastic, which is used to improve the appearance of something. The wood was

cut into large sheets of veneer.

11. Mandi Samiti Act is a special Act for the purpose of levy of market fee and therefore, the definition under section 2 (a) in the Act would prevail over the other Acts, wherein "levy of tax" in question is to be interpreted "in relation to those Acts.

12. After hearing learned Counsel for the parties and on perusal of record and the definition of agriculture produce read with products " of wood" in schedule A it is evident that admittedly the definition of "agriculture produce" in section 2 (a) of the Act was amended, which became effective from 30.4.1982 so as to include manufacturing aspect in it also. Therefore, even if veneer is a "process" in manufacturing of ply wood, it would be included in the definition of "agriculture produce" so amended. Ply wood is a marketable product having all the physicals and chemical qualities of wood. Ply wood is pasting of peeled wood in its processed form having all chemical qualities of wood, is marketable as "ply wood" or "veneer ply wood" or ply wood etc. but market fee is also payable.

13. The case laws cited by the learned Counsel for the petitioners are on the question of marketability for the purpose of excise of dutiable goods. Market fee is quite distinct from tax as is evident from paragraph Nos. 40 and 41 quoted in the body of this judgment from the judgment rendered by the Apex Court in Jindal Stainless Ltd. (supra).

14. A perusal of the definition of "agriculture produce" in section 2 (a) of the Act does not throw any light on the meaning of the word. It only shows that it has widen import intended to include the words gur, rab, shakkar, khandsari and jaggery for the purpose of this definition.

15. Lord Watson in Dilworth v. Commissioner of Stamps (1989) AC.99, 105, 106, observed that-

"include is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statutes."

16. In TAJ MAHAL HOTEL Vs. COMMISSIONER OF Income Tax., , the word "means" and "includes" has been discussed as used by the legislature in interpretation of statute.

17. When it is so used, these words and phrases must be construed as comprehending, not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The word "include" is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. When it is mentioned that a particular definition "includes" certain things, it should be taken that the legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the

word or expression or phrase in question.

18. It is well known principle of interpretation that the legislature uses the words "means" where it wants to exhaust the significance of the term defined and the word "includes" where it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive.

19. The dominant purpose on construing a statute is to ascertain the intention of the legislature as so expressed. This intention, and therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament. If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in their ordinary and natural meaning. It is, therefore, permissible in ascertaining the ordinary sense of particular words to refer to dictionaries and the works of standard authors which show what that sense was when the statute was passed. The rule that the literal construction of a statute must be adhered to, unless the context renders it plain that such a construction cannot be put on the words, is especially important in case of statutes which imposed taxation.

20. Keeping the aforesaid principle in mind, the word "agriculture produce" in section 2 (a) of the Act is to be construed.

21. Even if, ordinary definition of the dictionary taken into consideration for the purpose of "veneer", it is only a layer or plastic of wood, which is affixed on the wood, therefore, any layer or plastic affixed on the wood would certainly be wood having all physical and chemical qualities of wood. The Mandi Samiti will not levy fee on plastic, which is a dominant part of the article.

22. The Courts have constantly held that rules framed under an enactment are meant only for the purpose of carrying out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect.

23. There is no appreciable difference in the definition of "forest produce" in the Act, as after amendment it includes the definition aspect of the marketing also. However, perusal of definition would show that "agriculture produce" would not only include any such items gur, rab, shakkar, khandsari and jaggery, which are products of sugar cane an agriculture produce. These words take colour from each other and are various products extracted from cane having distinct marketable products known by their specific names as specified in the definition. Therefore, according to the definition any of such product which is either in processed form or in manufacturing form would be amenable to market fee and or the same analogy gur, rab, shakkar, khandsari and jaggery would be amenable to market fee as it is a peeled or shred log and a raw material of wood known as veneer but it is processed wood. Wood is specified in the definition of agriculture

produce and as Mandi Samiti provides services at the Mandi Sthal for its sale etc. it is liable to payment of market fee and development cess on the sale held within the market area.

24. In view of the above, in our considered opinion, the action of the Mandi Samiti to recover market fee and development cess is not beyond the provisions of the Mandi Adhinyam. For the reasons stated above, the petitioners are not entitled to get any relief. The writ petition is liable to be dismissed and is accordingly, dismissed. No order as to costs.