(2008) 08 MP CK 0042

In the Madhya Pradesh High Court

Tapa Traders APPELLANT

Vs

Krishi Upaj Mandi Samiti and Another RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 19

Citation : (2008) ILR (MP) 2906 : (2008) 4 MPHT 357 : (2008) 4 MPJR 14 : (2008) 4 MPLJ 207

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

These petitions, W.P. No. 1348/05, Tapa Traders, Gwalior v. Krishi Upaj Mandi Samiti Gwalior; W.P No. 2839/05, R.R. Patel v. Krishi Upaj Mandi Samiti Guna and Anr.; W.P. No. 1021/05, Ram Avatar v. Kishi Upaj Mandi Samiti Morena; W.P. No. 1266/05, Meera Stores, Morena v. Krishi Upaj Mandi Samiti Morena and W.P. No. 1986/05, Kapoor Chand Jain v. Krishi Upaj Mandi Samiti Bhind, are inter-linked and have been taken up together for disposal because a common question of law is involved with regard to competence of Krishi Upaj Mandi Samiti to impose tax on Tobacco Choor and similar form of Tobacco.

The facts narrated in Writ Petition No. 1348/05 have been taken into consideration in to this order.

The petitioners are in business of selling Tobacco Choor. The aforesaid Tobacco Choor has been brought by the petitioners for sale from out side of the State. As per petitioners it is a processed product, hence the Krishi Upaj Mandi Samiti has no authority and power to impose tax on the sale of aforesaid product. In Para 5.3 of Writ Petition No. 1348/05 petitioner has stated that manufacturers of Tobacco Choor purchases Tobacco leaves from farmers. Thereafter the leaves, stock and stems are processed by beating/thrashing, refining and sorting out in different categories and sizes. Processed product has been named as ''Tobacco Choor'', ''Tobacco Rawa'' and ''Tobacco Dust''. Petitioners sale the aforesaid product to retail-sellers. The aforesaid form of Tobacco mentioned above has been used by persons for personal consumption.

Respondent, Krishi Upaj Mandi Samiti, in the return stated that as per the decision of Hon''ble the Supreme Court in I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others, , the Secretary of the Krishi Upaj Mandi Samiti decided to impose Mandi Tax on tobacco in accordance with Section 19 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 because the petitioner had been selling agriculture produce, Tobacco in the market area of the respondent, Krishi Upaj Mandi Samiti. Along with the return the respondent also filed a copy of the Bill, which was sent by Balalji Traders, Patari. (Bihar) to the petitioner wherein it has been mentioned ''Bags of unmanufactured Tobacco Choor''.

Learned Senior Counsel, Shri N.K. Jain, appearing for the petitioner, has submitted that the Mandi Committee is not entitled to impose any tax on Tobacco Choor under the provisions of the Act of 1972 because it is a processed, manufactured item and it is not an agriculture produce. The definition of ''Processing'' has been mentioned in the Act of 1972. The Legislature has cautiously exempted processed goods from Mandi Tax by way of amendment in Section 2 of Madhya Pradesh Krishi Upaj Mandi Adhiniyam 1972. In support of his contentions the learned Senior Counsel relied upon the judgment of Hon''ble the Supreme Court in Orient Paper & Industries Ltd. v. State of M.P. and Ors. 2006 AIR SCW 6017 and decisions of this Court in Goyal and Sons and Another Vs. Krishi Upaj Mandi Samittee and Another, and S.K. Goyal Oil Mill and Another Vs. Krishi Upaj Mandi Samiti, Indore and Another, . Similar arguments have been advanced by the learned other Counsels engaged in other connected writ petitions. It has further been stated that the petitioners have not been selling any agriculture produce.

Contrary to this, learned Counsel for Krishi Upaj Mandi Samiti, Mr. Chaturvedi, has submitted that the petitioners are in business of selling Tobacco, a notified agricultural produce. It is clear from the Bill where it has been mentioned ''Unmanufactured Tobacco Choor''. The Tobacco Choor is a form of tobacco leaves, hence Krishi Upaj Mandi Samiti is competent to impose tax on sale of the aforesaid agriculture produce. In support of his contentions, learned Counsel relied upon the judgments of Hon''ble the Supreme Court in Commissioner of Income Tax, Kerala Vs. Tara Agencies, ; M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, , M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, and Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd. AIR 1963 SC 79. Learned Counsel for the State accepted the arguments advanced by Mr. Chaturvedi, learned Counsel appearing for Krishi Upaj Mandi Samiti.

The point for determination before this Court is whether Krishi Upaj Mandi Samiti is competent to impose tax on Tobacco Choor or other forms of Tobacco as mentioned in the petition-Tobacco Rawa or Tobacco Dust under the provisions of the Act of 1972?

Respondent No. 1, Krishi Upaj Mandi Samiti has been constituted under the provisions of Madhya Pradesh Krishi Upaj Mandi Adhiniyam 1972. Section 2(1)(a) of the aforesaid Act defines ''agricultural produce'' which is under:

2(1)(a) "agricultural produce" means all produce of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest as specified in the Schedule;

Section 2(1)(mmm) defines ''processing'' as under:

''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;

Section 19 of the Act of 1972 prescribes power to the Mandi Committee to levy market fee, which is as under:

19. Power to levy market fee.- (1) Every Market Committee shall levy market fee,-

(i) on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and

(ii) on the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing;

at such rates as may be fixed by the State Government from time to time subject to a minimum rate of fifty paise and a maximum of two rupees for every one hundred rupees of the price in the manner prescribed:

Provided that no Market Committee other than the one in whose market area the notified agricultural produce is brought for sale or processing by an agriculturist or trader, as the case may be, for the first time shall levy such market fee.

There was an amendment in Section 2(1)(a) of the Act of 1972 by way of a "Sanshodhan Adhiniyam" named as "The Madhya Pradesh Krishi Upaj Mandi (Sanshodhan) Vidheyak, 1990". By the aforesaid amendment the word "whether processed or not" has been omitted. As per the statement of objects and reasons of the aforesaid amendment the object of amendment was that there was a long standing demand by the owners of processing units in Madhya Pradesh to exempt processed goods from mandi fees. It is clear from the statement of objects and reasons mentioned in the Sanshodhan Vidheyak, which is as under:

There was a long standing demand by the traders and also owners of processing units in Madhya Pradesh to exempt process goods from mandi fees. Another demand was that once mandi fees has been charged in a market area in the State on any particular produce it should not be subject to mandi fees again in any subsequent transaction in any other market area.

In Schedule u/s 2(1)(a) under Chapter ''Narcotics'' ''Tobacco'' has been mentioned as "agricultural produce". Petitioners have been selling different types of Tobacco such as Tobacco Choor, Tobacco Rawa or Tobacco Dust and Tobacco Kandy. Whether the aforesaid version of Tobacco can be said to be processed product of Tobacco or Tobacco itself has to be decided in the light of definition of ''process'' and ''processed''.

Hon''ble the Supreme Court in Orient Paper & Industries Ltd. v. State of M.P. and Ors. 2006 AIR SCW 6017 has held as under with regard to the meaning of the word ''process'':

14. According to Oxford Dictionary one of the meanings of the word ''process'' 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". The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to effect its conversion to some particular stage. There is nothing in the natural meaning of the word ''process'' to exclude its application to handling. There may be a process, which consists only in handling and there may be a process, which consists only in handling and there maybe a process, which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture. Any activity or operation, which is the essential requirement and is so related to the further operations for the end result, would also be a process in or in relation to manufacture. See: Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, .

The Hon''ble Supreme Court in Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, has held as under with regard to word ''Process'':

The word ''process'' in the context in which it appears in the notification includes an operation or activity in relation to manufacture. The natural meaning of the word ''process'' is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to a certain stage. There is nothing in the natural meaning of the word ''process'' to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture. 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. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes ''processing''. Thus, ''processing'' may be an intermediate stage in manufacture and until some change has taken place and the commodity retains a continuing substantial identity through the processing stage, it cannot be said that it has been manufactured. That does not, however, mean that any operation in the course of such process is not in relation to the manufacture.

A Division Bench of Bombay High Court in Venkatrao Narayanrao Ambekar Vs. The Alma Sugar Mills and Another, , in the context of Section 6(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act (1964), has held as under with regard to word "process":

The word ''process'' has got several meanings and in fact may mean different things in different context. But looking to the context in which it is used and gathering the natural meaning of the word in this context, the word ''process'' must be held to mean to subject a particular product or a commodity with the object of making it finer or improving its quality. It may mean to treat a particular commodity by any method but not in such a way that the commodity itself is completely transferred into a new commodity. When a particular agricultural produce like sugarcane is crushed and a large part of the original commodity is thrown away and the juice is alone later by a series of processes converted into a new product like Khandsari sugar or sugar it will be difficult to say that the sugarcane has been subjected to a process or sugarcane has been processed.

As per the above cited judgments, it is clear as held by Hon''ble the Supreme Court that in characterise a product as processed product the commodity must, as a result of the operation, experience some change. In the present case, the Tobacco leaves have been crushed into small pieces and those small pieces, as mentioned in the writ petition, have been named as Tobacco Choor or different names of Tobacco. It has been used for the purpose of consumption. There is no iota of doubt that this Tobacco Choor has been used as Tobacco in consumption. There is no change in characteristic of Tobacco neither any ingredients have been added in the Tobacco. In such circumstances, in my opinion, the different types of Tobacco named as Tobacco Choor, Tobacco Rawa, Tobacco Kandy and Tobacco Dust cannot be said to be a processed product.

The word ''processing'' which has been defined in Section 2(1)(mmm) has to be considered in the context of the word ''processing'' which has been used in Section 19(1)(ii) of the Act of 1972. In the aforesaid Section it has been stated that on notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing. It means that if agricultural produce has been used for processing as defined u/s 2(1)(mmm) then the Krishi Upaj Mandi Samiti is entitled to levy market fees on the aforesaid agricultural produce, however, the definition of the word ''processing'' mentioned in Section 2(1)(mmm) cannot be used for the purpose of ''agricultural produce'' which has been brought in the market area for the purpose of sale as mentioned in Section 19(1)(i) of the Act of 1972. It is settled principle of law that Taxing Statute has to be interpreted strictly in accordance with the meaning used in the Statute or Act. The purpose of the Act of 1972 is to provide facility to the agriculturist so they can sale notified agricultural produce in the market efficiently. The object of amendment in the Act of 1972 to drop out the word ''processed'' was to exempt the processed goods from Mandi fees, as held earlier, the Tobacco Choor, Tobacco Rawa, and Tobacco Kandy cannot be classified as ''processed goods''. Hence, in my opinion, aforesaid products cannot be exempted from payment of mandi tax or fees.

Consequently, I do not find any merit in this petition. It is hereby dismissed. No order as to cost.