(1978) 08 BOM CK 0013

In the Bombay High Court

Case No : Criminal Appeal No. 927 of 1976

Venkatrao Narayanrao Ambekar APPELLANT

Vs

The Alma Sugar Mills and Another RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 2(1), 46, 6, 6(1), 6(2)
Maharashtra Purchase Tax on Sugarcane Act, 1962 — Section 5

Citation : AIR 1979 Bom 38

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : L.V. Kapse and S.J. Deshpande, N.M. Kachare, P.P, for the Appellant; S. Malik, for the Respondent

Final Decision : Partly Allowed

Judgement

R.A. Jahagirdar, J.—This is an appeal preferred on behalf of the Agricultural Produce Marketing Committee of Aurangabad challenging the order of acquittal passed by the learned Judicial Magistrate, First Class, of Aurangabad in Summary Case No. 646 of 1974. The appellant, hereinafter referred to as the complainant is the Secretary of the Marketing Committee and the respondent No. 1, hereinafter referred to as the accused is the Manager of a Sugar Mills situated at village Phulamri on the out-skirt of Aurangabad city. There is no dispute that the area in which the Sugar Mills is situated comes within the market area as defined under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, of Aurangabad. The prosecution was launched by the complainant charging the accused with the offence punishable u/s 6 (1) (a) and (b) read with Section 46 of the aforesaid Act which will hereinafter be referred to as the Act of 1964. The prosecution case was that the accused was operating in the marketing area, over which the complainant has jurisdiction, as a trader and also as a processor of the declared agricultural produce. It was also alleged by the prosecution that the accused was operating in some other capacity in relation to the marketing of the declared produce. Such operation is prohibited by Section 6 of the Act of 1964 except in accordance with the terms and conditions of the licence which is to be granted under the provisions of the Act of 1964. Admittedly the accused has not obtained such a licence. The Mills of which the accused is the Manager is a manufacturer of sugar but it has come in evidence that it manufactures Khandsari sugar. I must proceed on the basis that the accused is the manufacturer of Khandsari sugar and not sugar. The importance of this distinction will be evident when I consider the defence of the accused.

2. In the trial court the defence of the accused was that he was not liable to obtain any licence because u/s 5 of Maharashtra Purchase Tax on Sugarcane Act 1962, hereinafter referred to as the Act of 1962 a licence has been obtained by him. The learned trial Magistrate accepted this defence and held that it was not necessary for the accused to obtain a licence under the Act of 1964. The learned trial Magistrate also found that the manufacture of sugar from the raw material of sugarcane does not amount to processing of an agricultural produce which is sugarcane. He also held that the marketing of sugar by the accused at the factory premises does not amount to using any place in the marketing area for trading in sugar though the sugar is agricultural produce. In view of these findings the learned trial Magistrate acquitted the accused of the offence with which he was charged. The order of acquittal is of 25th Feb. 1976 and is the subject matter of challenge in this appeal.

3. The contention that the licence obtained u/s 5 of the Act of 1962 dispenses with the necessity of obtaining licence u/s 6 of the Act of 1964 is too absurd to be accepted and happily has not been repeated here. The two Acts deal with two different subjects and operate in altogether different fields.

4. Mr. Kapse, the learned Advocate appearing for the Agricultural Produce Marketing Committee has criticised the judgment of the learned trial Magistrate by contending that he has misdirected himself on several important provisions of law. Mr. Kapse pointed out that large quantities of sugarcane are admittedly being purchased by the accused and if one reads the definition of ''trader'' contained in Section 2 (1) (t) of the Act of 1964 it is clear that the accused is a trader in an agricultural produce. The Schedule to the Act of 1964 mentions Gul, Sugar and Sugarcane as the items of agricultural produce and that sugar and sugarcane are agricultural produce, therefore, cannot for a moment be disputed. Mr. Malik, the learned Advocate appearing for the accused, however, pointed out that the accused purchases sugarcane but does not sell it. In other words, the accused buys an agricultural produce and after it is converted into an altogether different product sells the same. It was his contention that unless a person buys and sells an agricultural produce he cannot be covered by the definition of trader contained in the Act.

5. I am not free to accept this interpretation put by Mr. Malik on the word ''trader'' defined under the Act of 1964. Similar contention was advanced in another case viz., Spl. Civil Appln. No, 857 of 1971 decided on 19-7-1977. In

that case I, sitting with Chandurkar J., have held, after considering the definition contained in the Act, along with the scheme and objects of analogous Acts of other States, that a trader means either a purchaser or a buyer (sic) (seller) of the agricultural produce as defined in the Act. He may of course fulfill both the characters but it is enough if he fulfils one or the other character to be a trader under the Act. I must, therefore, proceed on the basis that a person who buys or sells, not merely a person who buys and sells is a trader within the meaning of that term under the Act of 1964.

6. Mr. Malik then proceeded to contend that a careful reading of Sub-section (2) of Section 6 would show that the purchases of agricultural produce made by any per-son for personal consumption are exempted automatically from the provisions of Sub-section (1) of Section 6. As I have already mentioned above Section 6 (1) requires that the person operating in my market area as a trader or processor or otherwise in the marketing of the agricultural produce has to take a licence as provided therein. Sub-section (2) of Section 6 is in the following terms:--

"Nothing in Sub-section (1) shall apply to sales by retail, sales by an agriculturist who sells his own produce, nor to sales by a person where he himself sells to another who buys for his personal consumption or the consumption of any member of his family".

7. According to Mr. Malik though the exemption seems to apply to sales by a person, there is implicit in the third part of this Sub-section that sales made by a person and purchases made of such sales by another person for his personal consumption must be deemed to be exempted under the provisions of Sub-section (2). I am unable to accept this interpretation put by Mr. Malik on Sub-section (2). Sub-section (2) provides for exemption of sales only by particular categories of persons and does not apply to purchases made by any category of persons. If a trader is a buyer or a seller and need not be both, then unless the exemption applies to both the parts of the definition of trader it cannot be said that the purchases made by a person, in the absence of specific words to that effect are exempted from the provisions of Sub-section (1) of Section 6 by virtue of provisions contained in Section 6 (2). The purchases, therefore, made by the accused of the sugarcane are not, in my opinion, exempted from the provisions of Section 6 (1), even if it is assumed that the purchases are made for personal consumption in the sense of consumption in the Mills.

8. It is true that a single act of buying by a person may not attract the provisions of Section 6 (1) though the definition of trader seems to imply that a person who buys even once becomes a trader within the meaning assigned to it under this Act, It is only when a person buying or selling and, therefore, as a trader operates in the market area that the provisions of Section 6 (1) (b) are attracted. A person doing a single act of buying or of selling cannot be said to operate as a trader. The word ''operation'' implies a continuing or repeated process and not a single act. Though in some context the word ''operate'' may mean a single act,

applied to a trader it must mean the repeated acts, In the context in which the word ''operate'' has been used it must be held to mean a series of acts performed by a person in the capacity as a trader and not a single act of buying or selling. There must be some regularity or repetition in his activities as a buyer or seller of an agricultural produce so that that person is characterised as a trader operating in an agricultural produce. There is no difficulty in holding that in the instant case the large scale purchases made by the accused of sugarcane which is undoubtedly an agricultural produce amounts to an operation by the accused as a trader of the agricultural produce in the market area of Aurangabad. If, therefore, the accused has operated as a trader in the market area without the licence and except in accordance with the terms and conditions of licence required to be taken u/s 6 (1) he would be guilty of contravention of the provisions of Section 6 (1) (b) of the Act of 1964.

9. Mr. Kapse then proceeded to say that it must also be held that the accused is operating as a processor of agricultural produce because the sugar-cane which is being purchased by him is being subjected to certain processes in the factory. I am unable to agree with Mr. Kapse that the transformation of sugarcane into the ultimate product of sugar by several processes amounting to manufacture is tantamount to processing sugarcane. 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 was mean to treat a particular commodity by any method but not in such a way that the commodity itself is completely transformed into a new commodity. When a particular agricultural produce like sugar- cane 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. In my opinion, the character of sugarcane has been destroy ed resulting in the appearance of altogether a new product which may be called Khandsari sugar or sugar. I am, there fore, unable to agree with Mr. Kapse that the accused is guilty of operating in the market area as a processor of the sugar- cane.

10. The third contention of Mr. Kapse is that the accused must be held to be guilty of operating in relation to the marketing of the declared agricultural produce which in the instant case is sugar. According to Mr. Kapse what is being manufactured in the factory of the accused is sugar and he is undoubtedly selling the same and, therefore, must be held to be marketing that product. Mr. Malik was quick in showing that what is being manufactured is Khandsari sugar and not sugar. The schedule to Act of 1964 mentions Gul, Sugar and Sugarcane as agricultural produce and according to Mr. Malik the absence of Khandsari sugar In the schedule must lead us to the conclusion that it is not an agricultural produce for the purposes of Act of 1964. It has been contended on behalf of the

prosecution that sugar is a generic term which includes Khandsari sugar. But with the external aid that is available Mr. Malik had no difficulty in showing that while interpreting the penal provisions in the instant case sugar cannot be held to include Khandsari sugar also. In this regard he referred to the Act of ''1962 as it stood before the amendment In 1974. The Act of 1962 referred only to the broad word ''sugar'' and at no place it mentioned Khandsari sugar. By the amendment made in 1974, ''sugar'' in the Act of 1962 has been defined as follows:

"Sugar includes Khandsari sugar ...."

Similarly in the preamble to the Act originally the words manufacture or process of ''sugar'' had been used whereas by the amendment of 1974 after the word ''sugar'' the words ''including Khandsari sugar have been included. There is thus warrant for holding that sugar is not always understood to include Khandsari sugar. While interpreting the penal provisions, the interpretation which is more favour able to the accused will have to be accepted and, therefore, I hold agreeing with Mr. Malik that what is being manufactured and sold by the accused is not an agricultural produce for the purposes of the Act of 1964.

11. In the result this appeal is partly allowed. The accused is held guilty of the offence punishable u/s 46 of the Act 1964 for operating as a trader of sugarcane within the market area of Aurangabad Agricultural Produce Marketing Committee without a licence issued u/s 6. The accused is further sentenced to pay a fine of Rs.50/-.

12. Appeal partly allowed.

