(2011) 11 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 11406 of 2010

Yashwantrai Joshi APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Agricultural Produce Market Committee Act, 1963 — Section 28, 48, 49
Constitution of India, 1950 — Article 226

Citation : (2012) 1 GLH 820

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : V.C. Vaghela for Petitioner 1, for the Appellant; J.K. Shah, Assit Government Pleader for Respondent : 1 and Mr. Dilip B. Rana for Respondent: 4, for the Respondent

Final Decision : Allowed

Judgement

Mr. M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner Shri Yashwantrai Joshi Cooperative Agriculture Producing Processing and Marketing Society Ltd., has prayed for an appropriate writ, order and direction quashing and setting aside the order dated 11.6.2010 passed by respondent No. 1 confirming the order passed by the respondent No. 2 dated 19.1.2010 as well as letter dated 15.2.2010. which came to be confirmed by respondent No. 1. The short question which is posed for consideration of this Court whether the petitioner society which is engaged in the business of pooling cotton from members and thereafter processes it and supplies it to cotton federation and cotton union is liable to pay market cess on the same ?

2. It is the case of the petitioner that petitioner society is registered as Cooperative Agriculture Producing, Processing and Marketing Society Ltd and it pools cotton from its members and processes it and thereafter supplies it to the cotton federation or cotton union and whatever profits are thereby obtained, are disbursed to its members. It is the case of the petitioner that it has obtained the

license of the Hasot Market Committee as a trader. It is the case of the petitioner that petitioner society is a member of South Gujarat Cooperative Market Union Ltd and it supplies, processed and unprocessed agriculture produce to the federation/ union for its sale. It is the case of the petitioner that petitioner society merely procures goods from its member societies and supplies it to the federation or sells it through federation/cotton union to the traders but all the activities are carried out through federation/cotton union and therefore, the petitioner society is not liable to pay the market cess. That despite the same, respondent market committee issued the notice to the petitioner society on 31.3.2008 to pay the cess/fees, to which the society replied by reply dated 2.4.2008 stating that the society is only engaged in the business of pooling the agriculture produce and after processing the same, supplies the same to Federation and therefore, as such there is no sale by the petitioner society at all and therefore, it is not required to pay market cess/fees. It is the case of the petitioner that despite the same, respondent market committee has time and again issued various notices for the recovery. That thereafter, the market committee made representations to the respondent Nos. 2 and 3 and even thereafter, respondent Nos. 2 and 3 asked the petitioner society to show cause as to why cess/fess be not recovered. It is the case of the petitioner that petitioner society tried to convince the authorities but respondent No. 3 passed order dated 19.1.2010 and thereafter by communication dated 15.2.2010 respondent No. 3 has directed the petitioner to pay up the cess/fees or else it will recover from the members of the managing committee. Being aggrieved and dissatisfied with the same, the petitioner society preferred Revision Application No. 55 of 2010 before respondent No. 1 challenging the order dated 19.1.2010 passed by respondent No. 2, which came to be rejected by the order dated 11.7.2010. Being aggrieved and dissatisfied with the aforesaid decision and action of the respondent market committee directing and/or calling upon the petitioner society to pay market cess, the petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

2.1. Shri V.C. Vaghela, learned Advocate for the petitioner has vehemently submitted that petitioner society is a registered Cooperative Marketing Society engaged in the business of pooling of agriculture produce and thereby obtain high benefits for its members and it does not make any profit and therefore, the petitioner society is not liable to pay cess/fees. It is submitted that as such the petitioner society procures the goods/cotton from its members and processes it and thereafter straightway supplies it to the cotton federation and cotton union for sale and whatever profit is received, the same is distributed amongst the members. Therefore, it is submitted that as such there is by the petitioner society at all and as such it can be said that the petitioner society is acting as agent as observed by the Hon''ble Supreme Court in the case of Khedut Sahakari Ginning and Pressing Society Ltd. Vs. The State of Gujarat, . Relying upon the decision of the Hon''ble Supreme Court in the case of M/s. Khedut Sahakari Ginning and Pressing Society Ltd (supra) it is submitted that for doing the business of pooling cotton from its members and thereafter processing it and supplying it to the cotton federation, petitioner is not liable to pay market cess. Shri Vaghela, learned Advocate for the petitioner has also relied upon the bye-laws of the petitioner society under which, the petitioner society is doing business of pooling cotton, more particularly, bye-law Nos. 1, 6, 9 and 15.

2.2. Shri Vaghela, learned Advocate for the petitioner has also relied upon Sections 48 & 49 of the Agriculture Produce Market Committee Act, 1963 by submitting that even with respect to the goods which were to be exported within a period of 15 days, the same is not liable to pay market cess and/or goods which are kept for use of industrial purpose, cess is not liable to be paid on the same. Shri Vaghela, learned Advocate for the petitioner has also relied upon the decision of the learned Single Judge of this Court in the case of Agriculture Produce Market Committee v. Amod Group Cooperative Sales Ginning & Pressing Society Ltd & others dated 15.6.2009 in Special Civil Application No. 12750 of 2000 by submitting that with respect to the Amod Group Cooperative Society which is also engaged in the business of process of cotton pooling, the learned Single Judge has specifically held that market committee is not authorized to collect the fees.

2.3. Shri Vaghela, learned Advocate for the petitioner has also relied upon the circular issued by the State Government dated 18.7.1985 which provides that in case of only pooling of the cotton, no events of sale or purchase takes place and till such time same has happened, cess cannot be collected. By making above submissions, it is requested to allow present petition.

3. Petition is opposed by Shri Dilip Rana, learned Advocate for the respondent No. 4 Market Committee. He has relied upon the decision of the learned Single Judge of this Court (Coram: Hon''ble Mr. Justice J.M. Panchal, as he then was) rendered in Special Civil Application No. 6351 of 1986 and other allied matters dated 11.2.2000 and relying upon the said decision it is submitted that as held by the learned Single Judge there is deemed sale in favour of federation considering Section 28 of the Act and therefore, even if the petitioner is doing business of pooling cotton it is liable to pay the cess. Therefore, it is submitted that respondent No. 1 has not committed any error and/or illegality in dismissing the revision application preferred by the petitioner and directing the petitioner to pay market cess. It is further submitted by Shri Rana, learned Advocate for the respondent No. 4 that even it has been found that the petitioner society is not selling/supplying the goods to the federation and is supplying and selling cotton to the traders also and in last so many years it has been found that there is no supply of goods to the federation, but the cotton goods are sold/supplied to the individual traders. Therefore, it is requested to dismiss the present petition.

4. Shri J. K. Shah, learned AGP has requested to pass appropriate order in the facts and circumstances of the case.

5. Heard the learned Advocates for the respective parties at length. As stated

herein above, the short question which is posed for consideration of this Court is whether the petitioner society which is doing the business of pooling cotton from its members and supplies it to the cotton federation and/ or cotton union is liable to pay the market cess on the same ?

6. Bye-law Nos. 1, 6 and 9 clearly indicates that members of the society are entrusting their goods to the society for the purpose of selling it to others and as such are not selling them to the society and even the society also advances loan to its members on the estimated value of the good entrusted to it on the security or those goods and those advances will carry interest. Therefore, if those goods are sold to the society then there can be no question of any entrustment nor can the society advance any money on the security of its own goods. If the transactions are sale in favour of society then the amount to be paid by the Society would be purchase price. Such a payment cannot be made on the security of goods nor can that payment carry any interest. Therefore, as such there is no sale in favour of the petitioner society. Similarly there is no sale by the petitioner society in favour of federation.

7. Identical question came to be considered by the Hon''ble Supreme Court in the case of M/s. Khedut Sahakari Ginning and Pressing Society Ltd (supra) and in similar set of facts and circumstances and the bye laws of the said society the Hon''ble Supreme Court has observed and held as under :-

23. This bye-law refers to the goods of the members of the Society and not to goods of the Society. Because of that bye-law the members of the Society, who are bound by that bye-law must be deemed to have authorised the Society to pool their goods, grade them, if necessary and sell them either after ginning or without ginning. That bye-law also prescribes the mode in which the price fetched should be distributed amongst the persons whose goods are sold. The Society is the agent of all its members. Its principals are many. Because of the various bye-laws, the several principals must be deemed to have appointed a common agent - the Society for disposing of their goods in the manner most advantageous to them. To achieve that object they must be held to have empowered the Society to pool their goods, grade them if necessary, and sell them either after ginning or without ginning. Such an authority in our opinion does not violate the law of agency.

24. A person can be an agent for more than one principal and if all his principals jointly authorise him to pool their goods and sell them and pay the sale price to them in the manner prescribed by them, he does not cease to be an agent. The question whether when an agent with the authority of his principals pools together the goods of its principals grades them and sells them, ceases to be an agent and becomes a purchaser was considered by the Mysore High Court in Sherule Fasle and Co. v. Commercial Tax Officer, Addl. Circle. S. Kanara. Mangalore (1963) 14 STC 4 (Mys). Therein the High Court held that he does not cease to be an agent. We agree with the ratio of that decision.

34. It must be remembered that by and large that farmers are illiterate. They do not know the ways of business. The general belief is that taking advantage of the ignorance and illiteracy of the farmers businessmen exploit them. To avoid such exploitation the Act authorized the formation of Co-operative Societies of the farmers through which they can sell their goods. Those Societies merely function as agents for the farmers who are their members. By becoming members of those Societies and subscribing to their bye-laws, they had given large powers to their agents so that their produce may be sold in the best possible manner. None of the bye-laws of the Society goes to show that the society had purchased the goods entrusted to it by its members.

35. The High Court has referred to a number of decisions for coming to the conclusion that under the bye-laws of the Society, the Society must be held to have purchased the cotton and cotton goods sold by it. We see no basis for that conclusion, The question whether a particular agreement is an agreement of sale or an agreement of agency, has to be decided on the basis of the terms of that agreement. Decisions rendered on the basis of other agreements may be useful for finding out the principles to be applied in finding out the true character of an agreement but those decisions cannot conclude the question before the Court as no two agreements are likely to be similar. The nature of each agreement has to be decided on its own terms.

8. The aforesaid observations and decision of the Hon''ble Supreme Court squarely answers the issue involved in the present petition in favour of the petitioner society.

9. Now, so far as reliance placed upon the decision of the learned Single Judge in Special Civil Application No. 6351 of 1986 and other allied matters dated 11.2.2000 is concerned, at the outset, it is required to be noted that the said decision would not be of any assistance to the respondent market committee so far as case of the petitioner society is concerned. It is required to be noted that in the case before the learned Single Judge it was the federation who preferred Special Civil Application submitting that they are not liable to pay the market cess and to that learned Single Judge relying upon Section 28 of the Act held that federation is liable to pay the market cess. There was no controversy before the learned Single Judge whether the society who is pooling the cotton/goods from its members and supplies it to the federation, is liable to pay market cess or not.

10. Now, it is next contended on behalf of the market committee that it has been found that the petitioner society is not supplying the goods to the federation and supplies or sales it to the traders. In such situation, if it is found that the petitioner society is selling the goods to the traders and in such situation on facts being established the market committee may recover the cess such transaction. However, so far as pooling of the cotton by the petitioner society from its members and supplying it to the cotton federation/union is concerned, the petitioner society is not liable to pay market cess on the same. Under the

circumstances, the question which is posed for consideration of this Court is answered in favour of the petitioner and it is held that while pooling of cotton/ goods by the petitioner society from its members and after processing it, supplying it to the cotton federation/ cotton union, on such transaction the petitioner society is not liable to pay the market cess. In view of the above and for the reasons stated above, petition succeeds and order passed by the respondent No. 1 dated 11.6.2010 as well as order passed by the respondent No. 2 dated 19.1.2010 as well as letter dated 15.2.2010 issued by respondent No. 2 are hereby quashed and set aside and it is held that on the transaction of pooling cotton by the petitioner society from its members and after processing the same supplying it to the cotton federation and/or union on such transaction, the petitioner is not liable to pay the market cess/fees. It is reported that pursuant to the interim order passed by this Court, petitioner society has deposited a sum of Rs. 15 lacs, which is reported to be lying with the Registry of this Court in Fixed Deposit. Therefore, on allowing the present Special Civil Application, Registry is directed to return the same to the petitioner by Account Payee Cheque. Rule is made absolute to the aforesaid extent. No costs.

