

CASE NO.:
Appeal (civil) 3982-3984 of 1999

PETITIONER:
G. GIRIDHAR PRABHU & ORS.

Vs.

RESPONDENT:
AGRICULTURAL PRODUCE MARKET COMMITTEE

DATE OF JUDGMENT: 02/03/2001

BENCH:
V.N. Khare & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

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These Appeals are against a Judgment dated 2nd April, 1998.

Briefly stated the facts are as follows:

The Appellants purchase raw cashew nut and after subjecting the same to process of manufacture extract cashew kernel. The cashew kernel is then sold by them all over India as well as in International markets. Both cashew nut and cashew kernel are Notified Agricultural Produce under the Schedule to the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter called the said Act). The Appellants have licences under the said Act as Importers, Traders, Exporters and Producers from the Market Committee. The Appellants are paying market fee as per the provisions of Section 65(2A) when they purchase cashew nut.

The Market Committee issued Notices to the Appellants directing them to collect market fee from their buyers and pay the same to the Committee in respect of transactions of sales of cashew kernel. These Notices were issued under the provisions of Section 65(2A)(iii) of the said Act.

The Appellants filed a Writ Petition in the High Court of Kerala praying for declaration that they were "Producers" of cashew kernel and, therefore, were not liable to collect the market fee from their purchasers and pay the same to the Committee. They also sought a declaration that as producers of cashew kernel they did not even require a license. The Appellants sought directions from the Court to quash the Notices issued by the Market Committee and to restrain the Market Committee from recovering market fee from them. This Writ Petition came to be dismissed by a single Judge of the High Court on 21st August, 1996. The Appellants then filed a Writ Appeal which also came to be dismissed by the impugned Judgment dated 2nd April, 1998.

The controversy in these Appeals is very limited. There is no dispute that the Appellants are purchasing cashew nut and by a process of manufacture extracting cashew kernel. There is no controversy and no dispute that on the purchase transactions the Appellants are paying market fee. There is also no dispute that on the sale transactions, of cashew kernel, market fee is payable. The only dispute is whether the Market Committee can insist that the Appellants realize the market fee from their purchasers and pay it to the Market Committee or whether the Market Committee has to collect the market fee directly from the purchasers of cashew kernel.

For an understanding of this question certain provisions of the said Act require to be looked at. The Preamble to the said Act lays down that it is an Act to provide for the better regulation of marketing of agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karnataka. Section 2(1) of the said Act defines "Agricultural Produce" as follows:

"2(1). "Agricultural Produce" means the produce or goods specified in the Schedule."

It is an admitted position that initially under Item 8 of the Schedule only cashew nut was included as an Item. Market fee was sought to be levied on cashew kernel. The Mangalore Cashew Manufacturing Association challenged this levy in the High Court of Kerala. The High Court held that cashew kernel was not included in the Schedule to the said Act and it was thus not a Notified Agricultural Produce. Pursuant to this decision the State Government issued a Notification under Section 5 read with Section 3 of the Act and included cashew kernel also in the Schedule. Thus, now both cashew nut and cashew kernel are two separate items in the Schedule to the said Act. Sections 2(5), 2(13), 2(14), 2(14A), 2(18A), 2(21), 2(28), 2(32), 2(33), 2(34) and 2(48) of the said Act are relevant. They read as follows:

"2(5). "Buyer" or "purchaser" means a person who buys or agrees to buy goods;

2(13). "Exporter" means a person other than a producer who exports goods or causes goods to be exported on one's own account or as agent of another person, from the market area outside such area for the purpose of selling, processing, manufacturing or for any other purpose except for the purpose of one's own domestic consumption, but shall not include a public carrier.

2(14). "Goods" means any kind of notified agricultural produce.

2(14A) "Importer" means a person who imports or causes goods to be imported on his own account or as an agent for another person from outside the market area into a market area for the purpose of selling, processing, manufacturing or for any other purpose except for one's own domestic consumption, but shall not include a public carrier.

2(18A) "Marketing means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution.

2(21). "Market functionary" or "functionary" includes a broker, a commission agent, an exporter, a ginner, an importer, a presser, a processor, a stockist, a trader, and such other person as may be declared under the rules or the bye-laws to be a market functionary.

2(28). "Notified agricultural produce" means any agricultural produce which the State Government has by notification issued under Sections 4 and 5 declared as an agricultural produce the marketing of which shall be regulated in the market area.

2(32). "Process" means any one of the serious of treatments to which raw agricultural produce is subjected to make it fit for use or consumption.

2(33). "Processor" means a person who processes notified agricultural produce by mechanical means.

2(34) "Producer" means a person who produces notified agricultural produce on one's own account.-

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in share of the produce.

2(48). "Trader" means a person who buys notified agricultural produce either for himself or as agent of one or more persons for the purpose of selling, processing, manufacturing or for any other purpose, except for the purpose of domestic consumption."

The levy is under Section 65(1) of the Act. The mode of collection is provided under Section 65(2-A) of the said Act. It reads as follows:

"65(2-A). The market fee payable under this section shall be realised as follows, namely.-

(i) if the produce is sold through a commission agent, the commission agent shall realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ii) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee to the committee;

(iii) if the produce is purchased by a trader from another trader, the trader selling the produce shall realise it from the purchaser and shall be liable to pay the market fee to the committee; and

(iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee."

The Market Committee called upon the Appellants to collect and pay the market fee on the footing that the Appellants are traders who were selling the produce to other traders. The Appellants claim that they are producers of cashew kernel and, therefore, sub-clause (ii) would apply. The Appellants claim that if sub-clause (ii) does not apply then sub-clause (iv) would apply. The question therefore is whether the Appellants are producers or whether they are traders.

As is seen from the definition under Section 2(48) a trader is any person, who (a) buys Notified Agricultural Produce, (b) either for himself or as agent of one or more persons, (c) for the purpose of selling, processing, manufacturing or any other purpose and (d) except for the purpose of domestic consumption. There is no dispute that the Appellants are traders when they purchase cashew nut, which is a Notified Agricultural Produce. In such purchase transaction they are also importers. As such traders and importers they have obtained a licence and are paying market fee. It is, however, submitted that even though they may be traders/importers in the purchase transactions, they are not traders or exporters when they sell cashew kernel. It is submitted that they are Producers of cashew kernel. It is submitted that in the Schedule to the said Act cashew nut and cashew kernel are shown as two separate and distinct commodities. It is submitted that the State Government accepted the Judgment of the High Court of Kerala as correct and implemented the Judgment by incorporating the term "cashew kernel" as a separate items in the Schedule. It is submitted that the Appellants are Producers under Section 2(34) as the Appellants produce a Notified Agricultural Produce, i.e. cashew kernel on their own account, under their personal supervision and by hired labour or servants on wages paid in cash. It is submitted that they fall within the definition of the term "Producer" and are, therefore, governed by sub-clause (ii) of Section 65(2-A). It is submitted that in any event their sale of cashew kernel would not be a sale from a trader to a trader. It is submitted that if sub-clause (ii) did not apply, they would fall under sub-clause (iv) of Section 65(2-A).

Initially, Mr. Sarangan submitted that the term "Trader" under Section 2(48) can only refer to a person who buys. He initially submitted that the term "Trader" cannot apply to a person who sells a Notified Agriculture Produce. However to be noted that under the definition mere buying was not enough. The buying had to be for the purpose of selling or processing or manufacturing or for any other purpose. The buying had to be for a purpose other than domestic consumption. When this was pointed out to him the answer sought to be given was that if a person bought and sold the same Notified Agricultural Produce, then he may be a trader, but if he bought one Notified Agricultural Produce and sold another Notified Agricultural Produce, then in the sale transaction he would not be a trader. It was submitted that cashew nut and cashew kernel were two separate and distinct Notified Agricultural Produce. It was submitted that the Appellants bought cashew nut. It was submitted that they produced cashew kernel and were only selling

cashew kernel. It was submitted that as they were not selling the Notified Agricultural Produce which had been bought they could not be termed as a "Trader".

In support of the submission that cashew nut and cashew kernel are two separate and distinct commodities, reliance was placed upon the case of Vijayalaxmi Cashew Company v. Dy. Commercial Tax Officer reported in (1996) 1 SCC 468. In this case, the Appellant therein was purchasing cashew nut, extracting cashew kernel and exporting cashew kernel to foreign countries. The question was whether they were liable to sales tax under Section 5(3) of the Central Sales Tax Act, 1956. This Court negatived an argument that the purchase was of the same goods which were exported. This Court held that cashew nut and cashew kernel were two separate and distinct commodities.

Reliance was also placed upon the case of Sita Devi v. State of Bihar reported in 1995 Supp. (1) SCC 670. In this case the question was whether cattle could be termed as Agricultural Produce. This Court held that even though in common parlance cattle may not be considered to be an agricultural produce but as it had been included in the Schedule, under "Animal Husbandry", for the purposes of this Act it became an agricultural produce. This Court held that, therefore, market fee could be levied on cattle bought and sold in a market area. Relying on this authority it was submitted that to ascertain what was an agricultural produce one had to look to the items specified in the Schedule to the Act. It was submitted that if two separate items were specified in the Schedule to the Act, then those two had to be treated as two separate and distinct items. However, it may be noted that this case also lays down that if an item, after it is taxed, is subjected to a process and changes its form, then it can again be subjected to market fee in the different form. The examples given in this case are that even though market fee is levied on cattle, subsequently milk, Ghee, butter which are obtained from the cattle could also be exigible to levy of market fee. This case, therefore, shows that by means of a process the very nature of the item may change.

Reliance was also placed upon the case of State of Tamil Nadu v. Nellai Cotton Mills Ltd. reported in (1990) 2 SCC 518. In this case it has been held that when an Act has been judicially interpreted, Courts may study the subsequent action or inaction of the legislature for clues as to legislative approval or disapproval of judicial interpretation. It has been held that if the legislature by taking note of the Judgment amends the statute appropriately by not giving any different meaning from the view taken by the Court, with some justification, it can be said that the legislature had accepted expressly or by implication the judicial interpretation. It was submitted that by amending the Schedule to include cashew kernel the State Government had accepted the fact that cashew nut and cashew kernel were two separate and distinct commodities and now they would be precluded from contending that these were not two separate and distinct commodities.

Reliance was next placed upon the case of Commissioner of Income Tax v. N.C. Budharaja & Co. reported in (1993) 204 ITR 413. It was submitted that the word "production" has a wider connotation than the word "manufacture". In this case it is held that every manufacture would be

characterised as production but every production would not amount to manufacture. It is held that when the word "production" or "produce" are used in juxtaposition with the word "manufacture", they may bringing into existence new goods by a process which may or may not amount to manufacture. It is held that these words also take in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods.

Respondents do not dispute that cashew nut and cashew kernel are two separate and distinct items/commodities. The Respondent's submission is that the Appellants continue to be a trader even in the sale transaction as they had bought/imported for purpose of processing and then selling. Respondents contend that merely because, by a process or by manufacture, a different item comes into being does not make the processor or manufacturer a Producer. They contend that a "Producer" is one who produces the initial Notified Agricultural Produce. We are unable to agree with the submissions of Mr. Sarangan. As can be seen from the Preamble the Act is to provide for better regulation of marketing of agricultural produce. In the Act certain exemptions have been given to Producer which exemptions have not been given either to Importer or an Exporter or a Trader. These exemptions, therefore, have been given to Producer because the Producer is the person who produces the main agricultural produce. The main agricultural produce, which may be a Notified Agricultural Produce, could then be converted into various other Notified Agricultural Produce/s by subjecting the same to a process or manufacture. The person who so processes or manufactures a different Notified Agricultural Produce would not be a Producer. To be noted that an importer imports or causes goods to be imported into the market area for the purpose of selling, processing, manufacturing or for any other purpose, except for one's own domestic consumption. Thus, it is clear that a person, who imports would not be a Producer. The import would be for purpose of selling or processing or manufacturing or for any other purpose except for one's own domestic consumption. Similarly, the term "Exporter" makes it clear that an exporter is not a Producer. A trader is also is a person who buys Notified Agricultural Produce for the purpose of selling or processing or manufacturing or for any other purpose except for the purpose of domestic consumption. The definition of the term "Trader" is not a restrictive definition. It is not restricted to a person who only buys. If a person buys for domestic or personal consumption, then he would not be a trader. It is only when a person buys for the purpose of selling or processing or manufacturing that he would become a trader. Thus a person may buy, process or manufacture and then sell. When he processes or manufactures Notified Agricultural Produce which he had bought, it may change its character and become another Notified Agricultural Produce. Thus, by way of examples, a person may buy milk and through processes makes it into butter and/or cheese or a person may buy hides and skins and by a process make it into leather. However, merely because a distinct and separate Notified Agricultural Produce comes into existence does not mean that the person who bought, processed and sold ceases to be a Trader. The term "Trader" encumbrances not just the purchase transaction but the entire transaction of purchase, processing, manufacturing and selling.

In this behalf the case of Himachal Pradesh Marketing

Board v. Shankar Trading Co. Pvt. Ltd. reported in 1997) 2 SCC 496, is relevant. Under the Himachal Pradesh Agricultural Produce Markets Act, 1969, licences were required to be taken for purchase, sale, storage or processing of agricultural produce and market fee was also payable. Producers or growers however did not require a licence and did not have to pay market fees. The Respondent Company (therein) was producing "katha", a specified agricultural produce. They did this by processing Khairwood. They claimed (like the Appellants in this case) that as producers they did not need a licence and market fees were not payable by them. This Court negated this contention by holding that a person producing a specified agricultural produce by processing a natural product does not fulfil the requirement of being producer/grower. It was held that the clause of the Act made it clear that only the actual grower/producer of the natural agricultural produce were to be befitted. Of course the definition of the terms in that Act are different. However in our view the basic principle is the same. It applies to this case also.

We also see no substance in the submission that if Section 65(2-A)(ii) did not apply, then Section 65(2-A)(iv) would apply. Section 65(2-A)(iv) is residuary clause. It would only apply if none of the other clauses applies. As it is clear that the Appellants are Traders they squarely fall within Section 65(2-A)(iii). In fact, they may also fall within Section 65(2-A)(ia). As they fall within these two clauses there is no question of the residuary clause applying.

Under these circumstances, we see no infirmity in the Judgment of the High Court. We see no reason to interfere. The Appeals stand dismissed. There will, however, be no Order as to costs.