

CASE NO.:
Appeal (civil) 1390 of 2003

PETITIONER:
Orient Paper & Industries Ltd.

RESPONDENT:
The State of M.P. and Ors.

DATE OF JUDGMENT: 09/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(With T.P. (C) No. 216 of 2006)

ARIJIT PASAYAT, J.

The Civil Appeal and the Transfer Petition are inter-linked and are taken together for disposal.

Background facts involved are essentially as follows:

A writ petition was filed by the appellant under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') before the Madhya Pradesh High Court. The basic stand of the appellant was that it is not eligible to pay any market fee under the M.P. Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as the 'Act'). Before the High Court it was projected that appellant is a Public Limited Company having its registered Head Office at Brajrajnagar (Orissa) and has a paper manufacturing plant at Amlai in the district of Shahdol in State of Madhya Pradesh. The appellant-company uses bamboos, wood dyes, starch rosin, talcum and several chemicals as raw material for production of paper. The manufacturing process consists of crushing bamboos and wood pieces into pulp to which chemicals are added at a subsequent stage. Elaborate description was given how the manufacturing process takes place. It was paying without any demur the market fee to the Mandi Samiti whenever the appellant bought or sold any agricultural produce either within the market area or the market yard. It had never disputed the liability to pay such fee for purchase made in the area in question. No market fee is payable on the agricultural produce when they are neither bought or sold or brought into the market area for the purpose of sale. Appellant has been getting the agricultural produce from outside the State to its manufacturing unit at Amlai for being used as one of the raw material and hence, the same would not be covered under the provisions of the Act. It is not disputed that the Bamboo as well as the wood are specified agricultural produce within the meaning of the Act.

Stand of the appellant was that when it brought the agricultural produce a demand was raised in exercise of power under the Act that it has been brought inside the market area for the purpose of process on the ground that Amlai Paper Mills is included within the area of the respondent Mandi Samiti, Budhar. A notice was issued by the Director, Krishi Upaj Mandi Samiti, Budhar to which the appellant has filed

his show-cause. It was also averred that the Director, Krishi Upaj Mandi Samiti issued a general circular fixing the liability of persons who are liable to pay the market fee. At that juncture, the appellant moved the High Court by filing a writ petition challenging the view taken by the authorities in the matter.

The writ petition was resisted by the State and the Market Committee, inter-alia, taking the stand that the levy of market fee is in order. The High Court upheld the stand of the State and the Committee and dismissed the writ petition.

In support of the appeal, learned counsel for the appellant submitted that the levy can be made only in respect of the notified agricultural produce which is brought into market areas for processing. In the instant case, the notified agricultural produce brought inside the market area is not used for the purpose of processing, and the end-user is manufacturer. Therefore, the High Court has clearly erred in holding that the Market Committee was authorized to levy market fee.

Per contra, learned counsel for the Market Committee and the State submitted that the end user may be manufacturer, but in the process of manufacture processing is involved and, therefore, the levy is in order.

Though reference was made to a decision of this Court in *Krishi Upaj Mandi Samiti and Ors. v. Orient Paper & Industries Ltd.* (1995 (1) SCC 655) by learned counsel for the respondents, the issue really has no relevance so far as the present dispute is concerned.

The stand of the respondent further is that in the process of manufacture bamboo is processed to pulp which is primary raw material for the purpose of manufacture of paper.

In order to appreciate the rival submissions, it is necessary to take note of few provisions of the Act.

"Processing" is defined in Section 2(mmm). The same read as follows :

"Section 2 (mmm): "Processing" means powdering, crushing, decoraticating, 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 deals with the power to levy market fee. The provision reads as follows:

"19. Power to levy market fee: (1) Every Market Committee shall levy market fee\027

(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.

(2) The market fees shall be payable by the buyer of the notified agricultural produce and shall not be deducted from the price payable to the seller:

Provided that where the buyer of a notified agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area:

Provided further that in case of commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller:

Provided further also that no fees shall be levied upto 31st March, 1990 on such agricultural produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market yard or sub-market yard by an agriculturist to a co-operative society of which he is a member.

Provided also that for the Agricultural Produce brought in the market area for commercial transaction or for processing the market fee shall be deposited by the buyer or processor, as the case may be, in the market committee office within [fourteen] days if the buyer or processor has not submitted the permit issued under sub-section (6) of Section 19.

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(Underlined for emphasis)

Undisputedly, the notified agriculture produce in the instant case is "Bamboo". During the pendency of the appeal, it was brought to the notice of this Court that in the judgment impugned in the appeal certain directions were given more particularly para 18 thereof. Directions read as follows:

18. Submission of Mr. Gupta is that the bamboos are brought into the market area and used in manufacturing as one of the raw material and, therefore, concept of processing as has been defined under the statute would not attracted. Learned counsel submitted that if the agricultural produce is brought inside the market area and is not used for processing, market fee cannot be levied. The aforesaid submission of the learned counsel for the petitioner has substantial force. We are inclined to hold that if Section 19(1)(ii) is read in proper perspective it becomes plain as noon day that the market fee is leviable on the

notified agricultural produce it is brought into the market area and used for processing,. If the goods are brought only into the market area and are not used for processing certainly it cannot be liable to the levy of market fee. Both the aspects are to be read in a composite manner. To put it differently it has to be given the cumulative effect of bringing in and used for processing would give create the factum of liability. In absence of the produce being used for processing the liability cannot be saddled or fastened. While we are accepting the submission of Mr. Gupta are not inclined to adjudicate the fact whether the petitioner is engaged in processing or not as in our considered view that lies in the realm of factual aspect and would be adjudicated by the competent authority. Needless to emphasize it would be open to the competent authority to delve upon the fact whether the produce which is brought inside the market area is used for processing and is brought for some other purpose, and take a decision. If the Petitioner seeks a personal hearing the same shall be afforded to it. Mr. Saxena, learned Senior Counsel, has no objection to the aforesaid hearing given to the petitioner.

Pursuant to the directions, the Additional Director, Madhya Pradesh State Agriculture Marketing Board, Bhopal considered the matter. By order dated 7.2.2006 he held that the appellant is liable to pay market fee as process of agricultural produce.

The distinction between 'manufacturing' and 'processing' has been examined by this Court in several cases.

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 on 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 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: C.C.E. v. Rajasthan State Chemical Works (1991) 4 SCC 473).

In Black's Law Dictionary, (5th Edition), the word 'manufacture' has been defined as, "The process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or

prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine".

Thus by manufacture something is produced and brought into existence which is different from that out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. (See Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s. Coco Fibres (1992 Supp. (1) SCC 290).

Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity; but it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. (See Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan (1991 (4) SCC 473).

'Manufacture' is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See M/s. Saraswati Sugar Mills and others v. Haryana State Board and others (1992 (1) SCC 418).

The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached.

Insistence on any sharp or intrinsic distinction between 'processing and manufacture', results in an oversimplification of both and tends to blur their interdependence. (See Ujagar Prints v. Union of India (1989 (3) SCC 488).

To put differently, the test to determine whether a particular activity amounts to 'manufacture' or not is: Does new and different goods emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. Etymologically the word 'manufacture' properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case. (See Empire Industries Ltd. v. Union of India (1985 (3) SCC 314).

These aspects were highlighted in Kores India Ltd., Chennai v. Commissioner of Central Excise, Chennai (2005 (1) SCC 385).

The stand of learned counsel for the respondents that the levy is under two circumstances i.e. (i) on the buying and selling of notified agricultural produce when brought within the State into the market area (ii) on the notified agriculture produce when brought from within the State or from outside the State into the market areas. The case at hand, it is submitted, relates to the second category.

Had it been only that the goods notified are brought into the market area to be covered by the second category then the stand of the respondents would have been acceptable. But the further condition it must be "used for processing" shows that the emphasis is on end-user. In this case that makes the difference. Therefore, the appellant is correct in its stand that levy on the notified agriculture produce being brought within market area where end-user is manufacture does not attract levy of market fee.

Learned counsel for the respondents submitted that by accepting the interpretation suggested by them, the object of the statute shall be achieved.

When the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, Courts are bound to give effect to that meaning irrespective of consequences. (See: State of Jharkhand v. Govind Singh AIR 2005 SC 294, Nathi Devi v. Radha Devi Gupta (2005 (2) SCC 271).

In Sussex Peerage case (1844) 11 CI&F 85, at page 143 Tindal C.J. observed as follows:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself.

As observed in Nathi Devi's case (supra) if the words used are capable of one construction, only then, it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly be not given effect to in opposition to the plain language of the sections of the Act.

The appeal deserves to be allowed which we direct. In view of the order in the appeal no further order is necessary to be passed in the transfer petition. Same is disposed of. No costs.