

A M/S. SAHAKARI KHAND UDYOG MANDALI LTD.

v.

THE STATE OF GUJARAT

SEPTEMBER 23, 1994

B [B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Sales Tax:

Bombay Sales Tax Act, 1959/Gujarat Sales Tax Act, 1969 :

C Ss.2(11), 3, 14B/2 (10)-Co-operative Society engaged in sugar Manufacture—Society obtains sugarcane from members—Advances loans against the sugarcane—Whether such transactions amount to purchases attracting sales tax liability—In view of the aims and objectives set out in the bye-laws. Whether such Society falls under the definition "dealer".

D *Words & Phrases :*

"Dealer"—Meaning of in the context of Sales Tax Act of Bombay/Gujarat.

E The appellant - a Cooperative Society engages itself in supply of seeds, manure, agricultural implements and expert advice and assistance, for production of sugarcane. It utilises the sugarcane supplied by the members for manufacture of sugar at its factory. It also grants loans to the members against sugarcane entrusted by them to the Society. The Society also ensures that the proceeds out of the sale of sugar are distributed to the maximum possible extent amongst the members.

F For the assessment years 1967-68 and 1968-69 the Sales tax Officer held that the supply of sugarcane by the members were transactions of purchase by the Society and so it was liable to pay Sale tax under S.14B of the Bombay Sales Tax Act, 1959.

G Society's appeals to the Assistant Commissioner of Sales Tax were dismissed. In appeal the Sales Tax Appellate Tribunal held that the matter was converted by *Bileshwar Khand Udyog Mandal v. State of Gujarat*, 29 STC 105. However, at the instance of the appellant society, the Tribunal referred the following questions to the High Court.

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1. Whether the Tribunal was right in holding that the judgment of the Gujarat High Court in the case of M/s. Bileshwar Khand Udyog Mandal (Sales Tax Reference No. 7 of 1966 decided on July 5, 1968) has not been superseded by the decision of the Supreme Court in *Khedut Sahakari Ginning and Pressing Society Ltd.* (29 S.T.C. 105) and that the Tribunal was bound to follow the said judgment of Gujarat High Court, and that in view of the said judgment the supply of sugarcane by the producer-member to the the Society were purchased liable to purchase tax under the section 14B of the Bombay Sales Tax Act, 1959? A

2. Whether on correct interpretation of the bye-laws of the applicant-Society, the transactions of supply of sugarcane by the grower members of the Society to the society were transactions of purchases by the Society, so as to attract the purchase tax under Section 14B of the Bombay Sales Tax Act, 1959? B

3. Whether the Tribunal was right in holding that in respect of sugarcane grown by applicant on land of the members under arrangement to share profit or loss, the applicant was purchasing sugarcane from partnership firm and was liable to pay purchase tax in respect of the said sugarcane? C

A Division Bench of the High Court which initially heard the Reference along with similar other References of other sugar societies, felt that in view of the decision of the High Court in *Khedut Sahakari Ginning and Pressing Society Ltd. v. State of Gujarat*, 29 STC 105 (which was followed by it in the latter case of *Bileshwar Khand Udyog Mandali Ltd.*) had been reversed by this Court, the Reference should be heard by a Full Bench. Accordingly, the Full Bench of the High Court heard the Reference along with the similar References. By a common judgment, the Full Bench held that the transactions between the Societies and their members regarding supply of sugarcane amounted to purchase of sugarcane from its members. Against this decision, the appellant-Society preferred the present appeal. D

The appellant contended *inter alia* that the farmers gave sugarcane to the society and received advances on the security of sugarcane or sugar made out of their sugarcane and as such the sugarcane remained the property of the members throughout. Therefore, such transactions were not transactions of purchase or sale, as it is a case of entrustment of E

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A sugarcane by the farmers to the society for the benefit of the farmers.

Dismissing the appeal as also the connected three appeals and a Special Leave Petition this Court

B **HELD:** 1.1. No doubt the Co-operative Society was formed for the best interest of the farmers and to enable the farmers to get a good and proper return for the sugar cane produced by them. The liability of the Society to pay tax will depend upon the terms of the bye-laws and also the provisions of the statute. [785-H, 786-A]

C 1.2. The bye-laws leave no room for doubt that the Society will have to purchase sugarcane from its members and others every year at a price fixed by the Board of Directors. The members are bound to sell sugarcane to the factory at the price fixed annually by the Board of Directors. [782-F]

D 1.3. Going by the definition "dealer" in S.2(ii) of the Bombay Sales Tax Act, 1959, the appellant-Co-operative Society clearly comes within the purview of 'any society', club or other association of persons which buys goods from or sells goods to its members'. Although the Act has specifically exempted an agriculturist, who sells agricultural produce grown on land cultivated by him personally, no exemption has been granted to a person or a Society who buys agricultural produce from such an agriculturist. [786-D, E]

F 1.4. Section 2(10) of the Gujarat Sales Tax Act, 1969 has also defined a 'dealer', to include any society, club or other association of persons which buys goods from or sells goods to its members or to other persons. An agriculturist, who sells agricultural produce has been exempted from this definition. Therefore, it is clear from the provisions of the Bombay Sales Tax Act as well as the Gujarat Sales Tax Act that a Society, which purchases goods from its members, is a 'dealer'. If that be so, the only way the Society could get out of the net of taxation was by showing that it did no purchase sugarcane from its members. [786-F, G]

H The Society is not a selling agent on behalf of its members. It runs a factory to manufacture sugar. The factory has to pay for the sugarcane supplied by the members and non-members. The purchase price is fixed by the Board of Directors. The bye-laws also cast a duty upon every member of the Society to sell Sugarcane grown by him to the factory by

the Co-operative Society. The Board of Directors will fix the price to be paid for the sugarcane supplied by the members. The object of the Society, *inter alia* is 'to purchase from members and non-members jaggery, raw-material and other requirements for this factory'. The Society is authorised to purchase sugarcane not only from members, but also from the non-members. All these provisions make it clear that the bye-laws contemplate that the Society will purchase sugarcane at a fixed price. The sugarcane may be purchased from the members of the Society as well as from the outsiders. [787-B to D]

3. It cannot be said that the Society was a mere agent of its members and was effecting sales of the products of the members. Having regard to the facts of the case and also the bye-laws, the questions referred to the High Court have been correctly answered by it. [787-E]

M/s. Khedut Sahakari Ginning and Pressing Society Ltd. v. The State of Gujarat, [1971] 3 SCC 480, distinguished.

Bileshwar Khand Udyog Mandal v. State of Gujarat, Reference No. 7 of 1966, decided on 5.7.1968 and *M/s. Khedut Sahakari Ginning and Pressing Society Ltd. v. The State of Gujarat*, 29 S.T.C. 105, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1490 of 1980.

From the Judgment and Order dated 15.11.179 of the Gujarat High Court in Sales Tax Ref. No. 4. of 1976.

Ms. Smita Inna and P.H. Prakash for the Appellants.

R.P. Bhatt, Ms. Meenakshi Arora, Ms. Tanuja Sheel, Anip Sachthey and M.N. Shroff for the Respondent.

The Judgment of the Court was delivered by

SEN, J. This is an appeal against the Full Bench judgment of Gujarat High Court, holding the appellant purchaser of sugarcane and as such liable to pay tax under the provisions of Gujarat Sales Tax Act, 1969.

The appellant, is a Co-operative Society registered under the Bombay Co-operative Societies Act, 1925. Its main object is to encourage

- A development of agricultural industries amongst its members by introducing modern methods of agriculture and by promotion of principles of co-operation and joint farming methods, so that members can take maximum advantage of their modern large scale agricultural production. The appellant-Society supplies to its members seeds, manure, agricultural implements and expert advice and assistance, for production of sugarcane.
- B Sugarcane supplied by the members are utilised by the Society at its factory for manufacturing sugar. The society grants loans to the producer-members against sugarcane entrusted by them to the society. The Society crushes the sugarcane and manufactures sugar and sells the same in the market, subject to such restrictions as has been laid down by the Central or the State
- C Government. At the end of the season, the Society passes a resolution fixing the rate per ton ex-field delivery for the payment to be made to its members for the supply of sugar by them. This payment is worked out in accordance with a formula on the basis of the price realised by sale of sugar by the appellant-society. The Society makes an effort to see that the
- D proceeds out of the sale are distributed to the maximum possible extent amongst the members.

- It has been contended on behalf of the appellant that having regard to the fact that it is a Society formed by the agriculturists without any profit motive, it should not be brought under the net of taxation. The Society
- E really helps the agriculturists to produce sugarcane in an organised and modern scientific manner and tries to provide a machinery to the farmers for selling their product. Strong reliance has been placed on a judgment of this Court in the case of *M/s. Khedut Sahakari Ginning and Pressing Society Ltd. v. The State of Gujarat*, [1971] 3 SCC 480. In that case, the question
- F of law referred by the Gujarat Sales Tax Tribunal to the High Court for its opinion was 'Whether on the facts and in the circumstances of the case, the transactions are purchases of cotton by the Society from its members?'

- The High Court answered the question in the affirmative. The Society appealed to this Court. On a review of the facts and the bye-laws
- G of the Society, it was held that "none of the bye-laws of the Society goes to show that the Society had purchased the goods entrusted to it by its members."

In the case before us, the object of the Society, *inter alia*, are :

- H "(4) To manufacture sugar, jaggery and their by- products out of

sugarcane grown and supplied by members of the Society and other
and to sell the same to the best advantage. A

(5) To establish sugar manufacturing factory and to manage it and
for that purpose :

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(c) To arrange and run means of transport.

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(f) To cultivate sugarcane crop for manufacture of sugar and to
purchase from members and non-members, jaggery, raw material C
and other requirements for this factory.

(6) To make advances to members on the security of sugarcane or
sugar made out of their sugarcane and to advance loans for raising D
their crops and development of agriculture."

(Underlining provided.)

Therefore, it will appear that the bye-laws which were taken into
account in the case of *M/s. Khedut Sahakari Ginning and Pressing Society* E
Ltd. (supra) were quite different from the bye-laws of the Society in the
case before us. This Society cannot be treated as an agent of the producers
of sugarcane for selling their product. The Society manufactures sugar out
of sugarcane grown and supplied by its members and others. The sugarcane
required by the Society is purchased from members as well as non-mem- F
bers. It is true that the Society has been formed for the benefit of the
members and the sale proceeds from the sugar manufactured and sold, are
to be distributed as far as possible amongst its members, but the Society
cannot be described as an agent of the members to sell sugarcane grown
by them.

The position is made clear by the following bye-laws: G

"8. Every member shall be bound to sell sugarcane on all his lands
in factory area to the factory. The factory will, however, be bound
to buy sugarcane only upto the total average covered by the shares H
held by a member.

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27. The duties of the Board of Directors shall be:

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B (6) To fix the price for the purchase of sugarcane and the terms and conditions thereof.

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C 32. The Board of Directors shall each year fix the price to be paid for sugarcane supplied by members. (This price per ton of sugarcane ex-field delivery shall not exceed by more than Rs. 10 the average per mond of sugar realised by the Society during the particular season.)

D In special cases this may exceed Rs. 10. However, when a price exceeding Rs. 10 is fixed, all the amount payable to a producer member in respect of the excess of the price above Rs. 10 shall be credited as a deposit by him under bye-law No. 37. So long as the society has not redeemed the share capital contributed by Government and/or has not fully repaid the loan taken from the Industrial Finance Corporation and/or the Central Financing Agency on block capital account, the Board of Directors shall not fix the price to be paid for the sugarcane supplied by the members of the society, except with the prior approval of Government."

F The bye-laws set out hereinabove leave no room for doubt that the Society will have to purchase sugarcane from its members and others every year at a price fixed by the Board of Directors. The members are bound to sell sugarcane to the factory at the price fixed annually by the Board of Directors.

G The Sales Tax Officer, who made the assessment of the Society for the years 1967-68 and 1968-69, held that the supply of sugarcane by the members of the Society were transactions of purchase by the Society and as such the Society was liable to pay Sales Tax under Section 14B of the Bombay Sales Tax Act, 1959.

H Appeals were filed against the said decisions to the Assistant Com-

missioner of Sales Tax were dismissed. Second Appeals Nos. 49 and 50 and 1973 were filed before the Gujarat Sales Tax Tribunal. The Tribunal considered the bye-laws of the petitioner-Society as well as bye-laws of similar other societies whose appeals were simultaneously heard. The Tribunal found the following factors were common to all the societies whose appeals were being heard :

(i) By and large, the Societies were of the producer-members themselves for the betterment of the producers and improvement of their sugarcane crops.

(ii) The entire programme of growing sugarcane, namely, area and time, growing and harvesting were decided by the Society.

(iii) There was an obligation on the part of the Society to take certain quantity of sugar cane and obligation on the part of the member to supply such quantity.

(iv) The Society supplied the seeds, the manure and technical advice and staff for harvesting.

(v) The members were given loans on interest not exceeding 70 per cent of the market value of the sugarcane supplied.

(vi) Sugarcane crop was brought to the factory.

(vii) The directors at the end of the years decide the amount to be paid to the members in respect of the sugarcane supplied and the price was determined as per bye-laws No. 32. The proceeds of the sale of sugar go to the members by way of price of sugarcane as the price of sugarcane is linked with the price of sugar under bye-laws No. 32.

(viii) Distribution by way of price of sugarcane supplied had no relation to the quality of sugarcane supplied by each member. It depended upon the quantity alone.

The Tribunal was of the view that the question involved in the aforesaid appeals were covered by the Judgment of the Gujarat High Court in *Bileshwar Khand Udyog Mandal v. State of Gujarat*, being Sales Tax Reference No. 7 of 1966, decided on 5.7.1968.

- A The Tribunal distinguished the case of *M/s. Khedut Sahakari Ginning and Pressing Society Ltd. v. The State of Gujarat*, 29 S.T.C. 105, by holding that the facts and the bye-laws were quite different in that case.

At the instance of the appellant, the Tribunal referred the following question of law for decision of the High Court:

B

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the judgment of the Gujarat High Court in the case of *M/s. Bileshwar Khand Udyog* (Sales Tax Reference No. 7 of 1966 decided on July 5, 1968) has not been superseded by the decision of the Supreme Court in *Khedut Sahakari Ginning and Pressing Society Ltd.* (26 S.T.C. 105) and that the Tribunal was bound to follow the said judgment of Gujarat High Court, and that in view of the said judgment the supply of sugarcane by the producer-members to the society were purchase liable to purchase tax under Section 14B of the Bombay Sales Tax Act, 1959?

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(2) Whether on the facts and in the circumstances of the case and on correct interpretation of the bye-laws of the applicant-Society, the transactions of supply of sugarcane by the grower members of the Society to the society were transactions of purchases by the Society, so as to attract the purchase tax under Section 14B of the Bombay Sales Tax Act, 1959?

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(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that in respect of sugarcane grown by applicant on land of the members under arrangement to share profit or loss, the applicant was purchasing sugarcane from partnership firm and was liable to pay purchase tax in respect of the said sugarcane?

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A Division Bench of the Gujarat High Court initially heard the said Reference being Sales Tax Reference No. 4 of 1976 along with similar other Sales Tax References of the other sugar societies. The Division Bench felt that in view of the fact that the decision of the Gujarat High Court in the case of *Khedut Sahakari Ginning and pressing Society Ltd. v. State of Gujarat*, (which was followed by it in the latter case of *Bileshwar Khand*

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Udyog Mandali Ltd.) had been reversed by this Court, the Reference

should be heard by the Full Bench. Accordingly, the Full Bench of the Gujarat High Court heard this Case as also the cases of all other similar societies.

The Full Bench came to the conclusion, after referring to the bye-laws of the Society, that the transactions between the appellants and its members regarding the supply of sugarcane amounted to purchase of sugarcane by the Society from its members. By a common judgment all the References, made at the instance of the Sugar Societies, were disposed of on the ground that the facts of all these cases were similar and the bye-laws of the various Societies were also more or less identical.

In this appeal, it has been contended that the Full Bench of the High Court had failed to recognise the overriding effect and scope of co-operative principles in interpreting the bye-laws of the Society. The Co-operative Society was primarily formed with the object of encouraging better production of sugarcane crop of its member and to fetch the best available return for the said produce by converting sugarcane into sugar and marketing the same in the country. The real object of the Society was to provide help to the members of the Society, so that the members could be self-sufficient and not dependent on outside help for cultivation and sale of sugarcane. Another primary object was to provide mutual aid amongst its members, so that the best possible return could be made available to the member by joint co-operative ventures. The members had given large powers to the Society as their collective agent, so that produce could fetch the best possible return in the ultimate analysis. By and large, the farmers are illiterate and do not know the ways of business. To prevent exploitation by the middlemen, the producer-societies were formed, so that the farmers could sell their produce in the same form or in different form through the instrumentality of the Society. It was further argued that the farmers gave sugarcane to the Society and received advances at one source from the Society on the security of sugarcane or sugar made out of their sugarcane. This clearly shows that the sugarcane remained the property of the members throughout. These transactions were not transactions of purchase or sale. This was really a case of entrustment of sugarcane by the farmers to the Society for the benefit of the farmers.

We are unable to uphold the contentions made on behalf of the appellant for a number of reasons. Although we have no doubt in our mind

A that the Co-operative Society was formed for the best interest of the farmers and to enable the farmers to get a good and proper return for the sugarcane produced by them. The liability of the Society to pay tax will depend upon the terms of the bye-laws and also the provisions of the statute. The Bombay Sales Tax Act, 1959 defines 'dealer' in the following manner :

B "2(ii). 'dealer' means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State and includes the Central Government, or any State Government which carries on such business, and also
C any society, club or other association of persons which buys goods from or sell goods to its members;

Exception. - An agriculturist who sells exclusive agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause;"

D The appellant-Co-operative Society clearly comes within the purview of 'any society, club or other association of persons which buys goods from or sells goods to its members'. Although the Act has specifically exempted an agriculturist, who sells agricultural produce grown on land cultivated by
E him personally, no exemption has been granted to a person or a society who buys agricultural produce from such an agriculturist.

The incidence of tax in section 3 is on sales or purchases made by the dealer. Section 2(10) of the Gujarat Sales Tax Act, 1969 has also defined a 'dealer', to include any society, club or other association of
F persons which buys goods from or sells goods to its members or to other persons. An agriculturist, who sells agricultural produce has been exempted from this definition.

G Therefore, it is clear from the provisions of the Bombay Sales Tax Act well as the Gujarat Sales Tax Act that a Society, which purchases goods from its members, is a 'dealer'. If that be so, the only way the Society could get out of the net of taxation was by showing that it did not purchase sugarcane from its members.

H In the case of *M/s. Khedut Sahakari Ginning and Pressing Society Ltd.* (supra), this Court went into the bye-laws of the Society and came to the

conclusion that the society acted as an agent for its members for selling their products. The society itself did not purchase anything from its members. The bye-laws have been extensively set out in that judgment. A

In the case before us, the bye-law which have been set out earlier in the judgment are altogether different. The Society is not a selling agent on behalf of its members. It runs a factory to manufacture sugar. The factory has to pay for the sugarcane supplied by the members and non members. B The purchased price is fixed by the Board of Directors. The bye-laws also cast a duty upon every member of the Society to sell sugarcane grown by him to the factory run by the Co-operative Society. The Board of Directors will fix the price to be paid for the sugarcane supplied by the members. C The object of the Society, *inter alia*, is 'to purchase from members and non-members jaggery, raw-material and other requirements for this factory. The society is authorised to purchase sugarcane not only from members, but also from the non-members.

All these provisions make it clear that the bye-laws contemplate that the Society will purchase sugarcane at a fixed price. The sugarcane may be purchased from the members of the Society as well as from the outsiders. D

The argument that the Society was a mere agent of its members and was effecting sales of the products of the members, cannot be upheld. E Having regard to the facts of this case and also the bye-laws, we are of the view that the High Court has correctly answered the question referred to it. The appeal, therefore, is dismissed. There will be no order as to costs.

Civil Appeal Nos. 1491, 1492 and 1493 of 1980

All these appeals are dismissed. F

Special Leave Petition (C) No. 7744 of 1980

This Special Leave Petition is also dismissed.

G.N.

Appeals and petition dismissed. G