

Supreme Court of India

Agricultural Produce Market ... vs Prabhat Zarda Factory on 31 March, 1993

Equivalent citations: 1994 SCC, Supl. (2) 514

Author: M Punchhi

Bench: Punchhi, M.M.

PETITIONER:

AGRICULTURAL PRODUCE MARKET COMMITTEE

Vs.

RESPONDENT:

PRABHAT ZARDA FACTORY

DATE OF JUDGMENT 31/03/1993

BENCH:

PUNCHHI, M.M.

BENCH:

PUNCHHI, M.M.

BHARUCHA S.P. (J)

CITATION:

1994 SCC Supl. (2) 514

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal arises from the judgment and order of the Patna High Court allowing Civil Writ Case No. 4432 of 1978, quashing a demand of the appellant for recovery of market fee under the Bihar Agricultural Produce Markets Act.

2. The respondent-firm was served with notice dated July 29, 1978 by the appellant-market committee to pay market fee on the sale of Zarda produce by the respondent-firm on the basis that it was included in a scheduled item under the Act by the description 'tobacco'. Since the respondent-firm refuted the liability to pay market fee mainly on the ground that Zarda was a different commodity though manufactured out of tobacco, it resisted the notice. Since the payment of market fee was insisted upon and threatening notices were issued to the respondent-firm, a writ petition was moved in the High Court which resulted in acceptance as aforesaid.

3. When the notice afore-referred to was issued, the expression 'agricultural produce' as defined in Section 2(1)(a) was as follows :

"Agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry, and forest specified in the Schedule."

Later the definition was amended by an amending Act of 1982 effective from April 30, 1982, the English rendering of which is as follows :

"Agricultural produce' means all produce whether processed or non-processed, manufactured or not, product of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, livestock or poultry, as specified in the Schedule."

4. It appears that the amended definition of 'agricultural produce' was not pressed into service by the appellant- market committee before the High Court.

The tenor of the judgment of the High Court goes to suggest that 'Zarda' according to it was a variety of manufactured tobacco and not in its processed or non-processed form. Learned counsel for the appellant, in this situation, has confined his plea to claim relief for the period after the amendment of April 30, 1982 till the date of the judgment of the High Court because, according to him, the period prior to April 30, 1982 stands on a different footing. He otherwise was unable to point out any infirmity in the judgment of the High Court or in its reasoning in determining Zarda to be a variety of manufactured tobacco. Resultantly the reasoning of the judgment will have to be sustained.

5. Now the definition of 'agricultural produce', which obviously has undergone a change so as to include the manufacturing aspect in it, would have to be viewed afresh in the proper context, if eventually any coercive steps are taken against the respondent-firm in relation to a demand for the post-April 30, 1982 period. Presently, the correctness of the amended provision cannot be judged in this appeal, All what we have to do is to mould the relief and confine the judgment of the High Court as valid up till the date of the amendment and leave the future period from April 30, 1982 onwards in a vacuum to be filled in by the acts of commission or omission of either party, validity of which may have to see the light of another litigation. We make it clear however that any reference reflecting upon the scope and ambit of 'manufacture' employed in the judgment is not to express any opinion on the subject. Thus we mould the relief in favour of the appellant to this extent that the judgment of the High Court, though valid in every respect, is operative till April 30, 1982, and the period thenceforth is left in a void. Ordered accordingly.

6. Before we part with the judgment, the claim of the parties with regard to the refund or retention of the payments made will have to be cleared of any doubt. When the writ petition was pending in the High Court, the following interim order was passed :

"During the pendency of this application no action for realisation of the assessed market fee will be taken, provided the petitioner goes on depositing with the

Secretary, Agricultural Produce Market Committee, Muzaffarpur, in the first week of every following month, that is to say, for the month of September, in the first week of October, for the month of October, in the first week of November and so on, a sum of Rupees 15,000 (Rupees fifteen thousand only) every month. The amount so deposited will be on account deposit subject to the result of this writ application."

7. On the acceptance of the writ petition, the aforesaid deposits made by the respondent-firm became liable to be refunded. However, this Court while granting special leave made the following order :

"It is ordered that the amount already collected by the petitioners which they are now liable to refund under the judgment of the High Court against which this appeal is filed need not be refunded till the final disposal of the appeal. If the petitioners fail in the appeal and the Supreme Court so directs the amount shall be refunded with interest at 12% per annum, within 90 days from the date of the order of the Supreme Court. In other respects no stay."

8. The fact that the operability of the judgment of the High Court has been divided, would cast no reflection on the order of refund for both the respective periods. The claim of the market committee, as presently set up, has no basis. If and when any demand is made under the amended provisions that would be an effort de novo. Presently, the refund has to be made with interest at the rate fixed by this Court while granting special leave. Those orders would have to be worked out in the true spirit and effect. The refund is ordered to be made accordingly. The appeal is partially allowed to the extent afore-indicated. Parties shall bear their own costs.