

DIRECTOR, KRISHI UTPADAN MANDI SAMITI AND ANR. A

v.

M/S. RAM KISHAN DAYA RAM & CO.

SEPTEMBER 19, 2007

[S.B. SINHA AND H.S. BEDI, JJ.] B

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964—ss. 2 (f), 17(iii) (3)—Market fee—On the trade of tendu leaves—Liability to pay—Held: The liability to pay the market fee is on the trader and not on the purchaser—The corporation cannot be absolved from such liability on the ground that it has not realized it from the purchaser. C

State of U.P. appointed U.P. Forest Corporation as its agent to deal in business of 'tendu' leaves. In a litigation, challenging levy of market fee on the Corporation by the appellant-committee, it was agreed between parties that the Corporation would collect market fee from the purchasers and deposit the same with the appellant. Corporation did not collect the same. Appellant issued notices against the respondent-purchaser demanding the market fee u/s 17 (iii)(4) of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964. Respondent filed Writ Petition, which was allowed by High Court. Hence the present appeals. D

Dismissing the appeals, the Court E

HELD: 1. U.P. Forest Corporation was a trader and it could not have escaped its liability from payment of the market fee, only because the appellant as also the State of U.P. lost the Writ Petition filed by the U.P. Forest Corporation before the High Court, which by itself, does not entitle the appellant herein to fall back upon the respondent for the purpose of realization of market fee. F

[Paras 8 and 12] [590-C; 592-D] G

2. The definition of the term 'trader' u/s 2(f) of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 does not envisage that all H

A traders must be licensed traders for the purpose of realization of the market fee. The proviso appended to clause (3) of sub-section (iii) of Section 17 of the Act, although was enacted by Act No. 4 of 1999, the same had been given retrospective effect and retrospective operation. In no uncertain terms it provides that the trader would be

B bound to pay the market fee and shall not be absolved from such liability on the ground that he has not realized it from the purchaser.

[Para 11] [592-B-C]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3732 of 2001.

From the Judgment and final Order dated 3.2.2000 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 32828 of 1991.

WITH

D C.A. No. 3079 of 2004.

Shobha Dikshit, Sr. Adv., Pradeep Misra and Daleep Kr. Dhayani for the Appellants.

M. Indrani (for Abhijit Sengupta) for the Respondent.

E The Judgment of the Court was delivered by

F **S.B. SINHA, J.** Appellant is aggrieved by and dissatisfied with the judgment and order dated 3.2.2000 passed by a Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.32828/1991, whereby and whereunder the writ petition filed by the respondent herein was allowed directing:

G “The petition succeeds. The contention of the petitioner that it is not liable to pay the market fee to the Market Committee on the purchases of tendu leaves made by it from the U.P. Forest Corporation, is accepted. The Market Committee concerned is directed to refund the deposit of Rs.99,310.00 against the market fee for the year 1991-92 to the petitioner and also to pay 12 percent per annum interest thereon in accordance with the interim order dated 11.11.1991 of this Court.”

H

2. Basic fact of the matter is not in dispute. Business in tendu leaves A
is dealt in by the Government of U.P. It has a monopoly in respect thereof.
The State of U.P. appointed the U.P. Forest Corporation as its agent.
The State of U.P. appointed the U.P. Forest Corporation as its agent.
Questioning the legality of levy of market fee upon the Corporation by
the appellant herein a writ petition was filed, *inter alia*, on the premise B
that no service having been rendered to the Corporation, the market fee
was not leviable.

3. It is the admitted case of the parties that the said writ petition
was allowed by a judgment and order dated 20.1.1983. A special leave
petition was filed thereagainst. Before this Court, the parties to the said C
SLP agreed that the U.P. Forest Corporation would collect market fee
from the purchasers and deposit the same with the appellant. However,
the U.P. Forest Corporation did not collect any market fee from the
purchasers for the assessment years 1991-92. Demand notices were
issued against the purchasers by the appellant relying on and/or on the D
basis of Clause (4) of sub-section (iii) of Section 17 of the Uttar Pradesh
Krishi Utpadan Mandi Adhiniyam, 1964 ("Act" for short). Notices of
demand having been issued to the respondent, a writ petition was filed
before the High Court which, as noticed hereinbefore, has been allowed
by reason of the impugned judgment dated 3.2.2000. It is not in dispute E
that the total amount sought to be collected by reason of market fees was
Rs.99,310/-. Respondent deposited the said amount before the High
Court but after delivery of the impugned judgment the said amount has
been returned to it.

4. The short question which arises for our consideration is as to F
whether clause (3) of sub-section (iii) of Section 17 is attracted in the
instant case or not.

5. Mrs. Shobha Dikshit, learned senior counsel appearing on behalf
of the appellant, in support of the appeal, would submit that as the
respondent was not a licenced trader, clause (3) of sub-section (iii) of G
Section 17 would not be applicable in the instant case. According to the
learned senior counsel, a statutory liability having been fixed upon the
purchaser in terms of aforesaid clause the High Court committed a manifest
error in passing the impugned judgment.

A 6. Learned counsel appearing on behalf of the respondent, however, would support the impugned judgment.

B 7. Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (Act) was enacted to provide for regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefor in the State of Uttar Pradesh.

C 8. Section 2(f) of the Act defines "Committee" to mean a Committee constituted there. "Trader" has been defined in Section 2(y) of the Act to mean a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a person engaged in processing of agricultural produce. Indisputably, U.P. Forest Corporation was a trader.

D 9. Section 9 of the Act provides for the effects of declaration of market area; sub-section (2) whereof reads as under:

E "No person shall, in a Principal Market Yard or any Sub-Market Yard, carry on business or work as a trader, broker, commission agent, warehouseman, weighman, Palledar or in such other capacity as may be prescribed, in respect of any specified agricultural produce except under and in accordance with the conditions of a licence obtained therefor from the Committee concerned."

F 10. Section 17 delineates the powers of the Committee. Sub-section (iii) of Section 17 empowers a Committee to levy and collect fees, the mode and manner whereof are as under:

G "(1) If the produce is sold through a commission agent, the commission agent may raise the market fee and the development cess from the purchasers and shall be liable to pay the same to the Committee;

H (2) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee and development cess to the Committee;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee and development cess to the Committee; A

Provided that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the market fee to the Committee and shall not be absolved from such liability on the ground that he has not realised it from the purchaser; B

Provided further the trader selling the produce shall not be absolved from the liability to pay the development cess on the ground that he has not realised it from the purchaser; C

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee and development cess to the Committee; D

Provided that no market fee or development cess shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only." E

Provided further that notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the commission agent, trader or purchaser, who has obtained the licence, accept a lump sum in lieu of the amount of market fee or development cess that may be payable by him for an agricultural year in respect of such specified agricultural produce, for such period, or such terms and in such manner as the State Government may, by notified order specify; F

Provided also that no market fee or development cess shall be levied on transaction of sale of specified agricultural produce on which market fee or development cess has been levied in any market area if the trader furnishes in the form and manner prescribed, a declaration or certificate that on such specified H

A agricultural produce market fee or development cess has already been levied in any other market area."

B 11. Relying on and/or on the basis of the various decisions rendered by this Court Mrs. Dikshit submitted before us that a trader should have a licence. A bare perusal of the definition of the said term, in our opinion, does not envisage that all traders must be licensed traders for the purpose of realisation of the market fee. The proviso appended to clause (3) of sub-section (iii) of Section 17 of the Act, although was enacted by Act No. 4 of 1999, the same had been given retrospective effect and retroactive operation. In no uncertain terms it provides that the trader would be bound to pay the market fee and shall not be absolved from such liability on the ground that he has not realised it from the purchaser.

C 12. In that view of the matter, we are of the opinion that the U.P. Forest Corporation could not have escaped its liability from payment of the market fee, only because the appellant as also the State of U.P. lost the writ petition filed by the U.P. Forest Corporation before the High Court, which by itself, in our opinion, does not entitle the appellant herein to fall back upon the respondent for the purpose of realisation of market fee.

D E 13. For the reasons aforementioned, we are of the opinion that there is no infirmity in the impugned judgment. The appeals are dismissed accordingly. No costs.

K.K.T.

Appeals dismissed.