IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18658 of 2013

Date of Decision: January 28, 2015

The Abohar Cooperative Cotton Marketing & Spinning
Mills Limited

...Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE DEEPAK SIBAL

Present: Mr. Puneet Kansal, Advocate,
for the petitioner.

Mr. K.K. Gupta, Addl. A.G., Punjab.

Mr. Sanjeev Sharma, Advocate,
for respondent No.3.

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SATISH KUMAR MITTAL, J.

The Abohar Cooperative Cotton Marketing & Spinning Mills Limited has filed the instant writ petition challenging the vires of Section 2 (a) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act of 1961') insofar as it includes even the processed agriculture produce within the definition of "agricultural produce". The petitioner has also challenged the vires of Entry 17 of the Schedule of the Act of 1961 insofar as it includes even ginned cotton as an agricultural produce.

The petitioner mill is a processing unit of ginning the unginned cotton i.e. separating the cotton seed and cotton from the unginned cotton. It is the case of the petitioner that after the ginning process of separating the cotton from the cotton seed, the cotton seed and cotton loses the character of an agricultural produce. After the process, both the commodities would be industrial products and thus the same could not have been included in the Schedule as agricultural produce and resultantly became liable to the levy of market fees and development cess.

On the other hand, it is the stand of the respondents that the Act of 1961 was enacted by the State of Punjab on a subject which is in the State list and as such the State Legislation is competent to legislate on the subject for control and regulation of trade in agricultural produce. Section 2(a) of the Act of 1961 defines "agricultural produce" to mean all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to the Act and in the Schedule attached to the Act item No.17 was added as an agricultural produce. It has been stated that raw cotton (unginned cotton) is undisputedly an agricultural produce as it is harvested by the farmer and cannot be used or consumed in the said form. Through a small process, the cotton fibre is separated from the cotton seed. The two products obtained after separation continue to be agricultural produce as there is no chemical or physical change after the above process. Therefore, in no circumstances the two products can be termed as industrial products. Since these two products after separation remain as agricultural products, the same have rightly been added in the Schedule at item No.17 and being the agricultural produce they are liable to levy of market fees under Section 23 of the Act of 1961 which provides as under:-

> "**23. Levy of fees**.- A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad-valorem basis -
>
> (i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and
>
> (ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees.
>
> Provided that -
>
> (a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce brought or sold is not actually made; and
>
> (b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

It has been further pointed out that Rule 30 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as 'the Rules of 1962') provides for exemption from payment of market fees, which reads as under:-

> "30.Exemption from payment of fees.- [Sections 23 and 43(2)(vii].-2 (1) No market fee shall be levied on the sale or purchase of any Agricultural Produce manufactured or extracted from the agricultural produce in respect of which such fee has already been paid in the same notified market area or in any other notified market are within the

State."

While referring to these provisions, it has been stated that there is no double taxation or charging of market fee on the processed cotton or cotton seed if the market fee has already been paid on the unginned cotton in the notified market area. It has been further stated that under the aforesaid provisions the market fee is either payable on the agricultural produce and if not paid on the agricultural produce, the same is leviable on the agricultural produce manufactured or extracted from the agricultural produce. It is in this context that expression processed and unprocessed has been used in Section 2(a) of the Act of 1961. Therefore, the provisions of Section 2(a) as well as entry 17 of the Schedule attached to the Act of 1961 are perfectly legal.

We have heard the learned counsel for both the parties.

During the course of arguments, learned counsel for the petitioner emphasised that after the process the two products, namely, cotton seed and cotton fibre do not remain agricultural produce but they assume the character of industrial products. Therefore, the inclusion of these two products in the Schedule vide notification dated 26th May, 1961 is illegal and arbitrary as according to the learned counsel no market fee can be levied on the industrial products. This contention of the learned counsel is not tenable. The process of ginning of raw cotton is very simple. It can be done manually or mechanically. In our view, the ginning process is nothing but a process of segregation of the seeds from the cotton fibre. Even after this process, both the products do not lose their character, and only the seeds are spelled out of the cotton fibre without the appliance of any chemical treatment. In our view, there is no element of manufacturing involved in the process of ginning as there is neither any chemical treatment nor any addition or change of composition, therefore, separated cotton fibre cannot be termed as a new product or an industrial product. The process is same as used in paddy where the rice is separated from the paddy husk. Such process is to be treated as agricultural process. Similar is the case when wheat from barley is separated. Therefore, even after separation, both the products remain as agricultural products and they have rightly been added in the Schedule at item No.17 and being agricultural produce they are liable to levy of market fees under Section 23 of the Act of 1961, subject to exemption granted under Rule 30(1) of the Rules of 1962. As far as legislative competence of the State to frame the Act of 1961 is concerned, the same has not been challenged. It has only been stated that the definition of "agricultural produce" provided under Section 2(a) along with Entry 17 of the Schedule is unconstitutional and ultra vires. In our opinion, the word "agricultural produce" has been defined in Section 2(a) which is in conformity with the provisions contained in "The State Agricultural Produce Marketing (Development & Regulation) Act, 2003" which was promulgated on the basis of the recommendations made by the expert committee on 19.12.2000, appointed by Government of India, Ministry of Agriculture. The definition of "agricultural produce" in the said Act is as under:-

> "2(1) 'Agricultural Produce' means all produce and commodities, whether processed or unprocessed, of agriculture, horticulture, apiculture, sericulture, livestock and products of livestock, fleeces (Raw Wool) and skins animals, forest produce, etc. as are specified in the schedule or declared by the Government by notification

> from time to time and also includes a mixture of two or more than two such products."

In the present case the petitioner mill has been operating in the area of Market Committee, Abohar. Since ginned cotton, which continues to be an agricultural produce has been brought from outside the State after purchase and delivered within the notified area of Market Committee, Abohar, the demand for market fee and Rural Development Fund has rightly been made as per Rule 29 of the Rules of 1962. It is not the case of the petitioner that market fee has been paid on the unginned cotton or the ginned cotton within the State of Punjab. A similar dispute came up for consideration before the Apex Court in the case of <u>Kishan Lal</u> Versus <u>State of Rajasthan and others</u> 1990 (Supp) SCC 742 where the Government of Rajasthan included sugar produced in the mills as agricultural produce in the list provided under Rajasthan Agricultural Produce Markets Act, 1961. The Apex Court rejected the similar challenge to the said entry and the definition of "agricultural produce" while observing as under:-

> "4. Sugar is one of the items which was included in the Schedule to the Act, statutorily, right from its inception. Such inclusion is found in Maharashtra, Gujarat, West Bengal, Bihar etc. Whether it was subsequently deleted or re-included or re-grouped or it was added later was immaterial as Section 40 of the Act empowered State Government to amend or include any item in the Schedule of agricultural produce. Existence of such delegated power is usual feature of the statutes. No illegality or infirmity could be pointed out in it. Any challenge, therefore, founded on excessive delegation of legislative power was misconceived.

5. Inclusion of sugar in the Schedule was urged to be arbitrary as it was not produced out of soil the basic ingredient of agricultural produce. Fallacy of the submission is apparent as it was in complete disregard of definition of the word "agricultural produce" in the Act which includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither excludes any item produced in mill or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks expanse of the expression "or otherwise as specified in the Schedule". Nor switch over from indigenous method of producing anything to scientific or mechanical method changes it character. Khandsari sugar, which is produced by open pan process and is not different from sugar produced by vacuum pan process except in composition, filterability and conductivity as held in *Rathi Khandsari Udyog*[3] was held to be agricultural produce in some decisions. No distinction was made on method of production, namely, by modern plant and machinery. To say, therefore, that sugar being produced in mill or factories could not be deemed to be agricultural produce is both against the statutory language and judicial interpretation of similar provisions of the Act in statutes of other States."

Similarly, rice or dal produced in the processing units have also been held to be agricultural produce in Ram Chandra Kailash Kumar & Co. Versus State of U.P., 1980 (Supp) SCC 27 and Krishi Utpadan Mandi

Samiti v. Ganga Dal Mill and Co., (1984) 4 SCC 516. Further, Khandsari sugar, which is produced by open pan process and is not different from sugar produced by vacuum pan process except in composition, filterability and conductivity as held in Rathi Khandsari Udyog Versus State of U.P., (1985) 2 SCC 485 was held to be agricultural produce. Thus, the inclusion of two products, namely, cotton seed and cotton fibre cannot be said to be illegal or ultra vires to Section 2(a) and Entry 17 in the Schedule of the Act of 1961.

In view of the aforesaid reasons, we find no force in the writ petition and the same is hereby dismissed.

(SATISH KUMAR MITTAL)
JUDGE

January 28, 2015
vkg

(DEEPAK SIBAL)
JUDGE