Krishi Utpadan Mandi Samiti, Kanpur and Others

Vs

Ganga Dall Mill and Co. and Others

Krishi Utpadan Mandi Samiti, Kanpur and Others

Vs

Brij Mohan Vishnu Kumar and Others

Civil Appeals Nos. 10072-73 and 10074-76 of 1983 and 2283, 2281-82, 2284-87 and 2525-27 of 1984

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

25.09.1984

JUDGMENT

DESAI, J. -

1. Whether the whole includes the parts is the core question. Whether legume, whole grain, when notified as a "specified agricultural produce" within the meaning of the expression in Section 2(t) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 ('Act' for short) would also comprehend its split folds or parts, commercially called dal so as to enable Mandi Samiti (Market Committee for convenience of reference) to levy market fee under Section 17 of the Act on the transaction of sale of dal of legumes specified in the schedule to the Act, is the narrow question that falls to be determined in this group of appeals.

2. Appellant Market Committee levied market fee on the transaction of sale of dal of various legumes by the respondents, asserting that they were specified agricultural produce and the transactions of sale in respect of them by the respondents in the Market Area would be exigible to the levy of market fee. The respondents contended that they were manufacturing in their factory dal from various legumes and therefore, not only they were not producers of agricultural commodity but in view of the description of legumes set out in the Schedule, the dal of such legumes in the processed form is not a specified agricultural produce and therefore, a transaction of sale in respect of them at the hands of the respondents even if it takes place in the Market Area would not permit the appellant to levy market fee on such transaction and they were not liable to pay the same. The respondents contend that unless the agricultural produce specified in the Schedule to the Act is notified as a specified agricultural produce in respect of a particular Market Area, the Market Committee having jurisdiction in the Market Area will not be entitled to levy market fee on the transaction of sale of such agricultural produce. In short they say that even if legumes set out in the Schedule are specified agricultural produce, the dal processed therefrom in the factory could not become specified agricultural produce unless it is so specified and therefore, the Market Committee had no authority to levy market fee on the transaction of sale of dal. The respondents approached the High Court of Allahabad by filing writ petitions under Article 226 of the Constitution raising myriad contention including the one as herein set out.

3. The High Court by its judgment dated January 28, 1983 held that legume in its split form was not the same thing as legume specified in the Schedule and therefore, in the absence of a specification, dal of any of the legumes enumerated in the Schedule cannot be said to be specified agricultural produce and therefore, any transaction of sale in respect of them was not exigible to the levy of market fee. In reaching this conclusion, the High Court took note of the fact that apart from anything else the subsequent conduct of the Government of U.P. in issuing Notification 383/12-5-600(401)/81 dated January 20, 1982 substituting the entry under the head 'II Legumes' a description in the bracket against the name of each legume (Saboot Aur Dala Hua) dispelled doubt, if any, lingering on the subject.

4. During the pendency of the writ petitions in the High Court, it appears that the Government of U.P probably out of panic or as contended before us out of abundant caution issued in exercise of the power conferred by Section 4-A of the Act the Notification 383/12-5-600(401)/81 dated January 20, 1982 which reads as under :

> In exercise of the powers conferred upon him under Section 4-A of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (U.P. Act 25 of 1964) the Governor is hereby pleased to notify that with effect from the date of publication in Gazette of this notification, in place of items mentioned under column (1) under the Heading (legume) in the Schedule of Section 2(a) the following items shall be substituted, namely -
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> #Legumes Amended Krishi Utpadan Legume1. Chana 1. Chana (Saboot Aur Dala Hua)2. Matar 2. Matar (Saboot Aur Dali Hui)3. Arhar 3. Arhar (Saboot Aur Dali Hui)4. Urad 4. Urad (Saboot Aur Dali Hui)5. Moong 5. Moong (Saboot Aur Dali Hui)6. Masoor 6. Masoor (Saboot Aur Dali Hui)7. Lobhia (seeds) 7. Lobhia (Saboot Aur Dali Hui)8. Soyabeen 8. Soyabeen9. Khosari 9. Khosari (Saboot Aur Dali Hui)10. Sanai (Seeds) 10. Sanai (Seeds)11. Dhencha (Seeds) 11. Dhancha (Seeds)12. Gwar 12. Gwar13. Moth 13. Moth (Saboot Aur Dali Hui)14. Kulthi 14. Kulthi##

After taking note of this notification, the High Court observed that by the amendment of the relevant part of the Schedule to the Act the Government recognised and almost admitted that legumes whole and legumes split were two different commodities and as now by the notification both have become specified agricultural produce, earlier only the legume whole grain and not in the split form was the specified agricultural produce and therefore, till the issue of the notification the Market Committee was not entitled to levy market fee on the transaction of sale of dal of various legumes.

5. After the notification dated January 20, 1982 was issued, a fresh batch of writ petitions were filed challenging both the validity of the notifications also the eligibility of the Market Committee to levy market fee on the transaction of sale in respect of dal of legumes. It was contended that merely amending or adding to the list of agricultural produce set out in the Schedule by itself without anything more would not enable the Market Committee to levy market fee on the sale of such agricultural produce because before levying market fee the agricultural produce has to be notified a specified agricultural produce by issuing either a notification under Section 6 or addition or alteration in exercise of power under Section 8 of the Act. It was contended that after the amendment of the Schedule by the impugned notification fresh notification either under Section 6 or Section 8 having not been issued, the agricultural produce introduced in the Schedule, namely, dal of various legumes have not become specified agricultural produce since the amendment of the

Schedule and therefore, any sale in respect of such agricultural produce even in the Market Area will not enable the Market Committee to levy Market fee nor would it oblige persons or parties to the transaction of sale to pay the same. This contention equally found favour with the High Court. It was held that till the agricultural produce under the heading 'II Legumes' set out in the Schedule since the amendment of January 20, 1982 are notified as specified agricultural produce, the Market Committee was not entitled to levy and collect market fee on the transaction of sale of such agricultural produce. The High Court accordingly allowed the petitions and quashed the notice issued by the Market Committee raising the demand for market fee.

6. Hence these appeals by special leave.

7. If the contention raised on behalf of the appellant in the first batch of appeals is accepted, the judgment of the High Court in the second batch of appeals will have to be quashed and set aside without anything more. In view of this interconnection between the two batches of appeals, they were heard together though one after the other and are being disposed of by this common judgment.

8. To appreciate the very narrow contention arising in these appeals, a glance at the relevant provisions of the Act is indispensable.

9. The Act was enacted as its long tile shows "to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefor in Uttar Pradesh." 'Agricultural produce' is defined in Section 2(a) as under :

> "agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggery;

'Market Area' is defined in section 2(k) to mean "an area notified as such under Section 6, or as modified under Section 8". "Specified agricultural produce" is defined in Section 2(t) to mean "agricultural produce specified in the notification under Section 6 or as modified under Section 8". 'Sub-Market Yard' is defined in Section 2(w) to mean "a portion of a Market Area, declared as such under Section 7". Section 4-A which was introduced in the Act by U.P. Act 10 of 1970 conferred power on the State Government to amend the Schedule. It reads as under :

> 4-A. The State Government may by notification in the Gazette, add to, amend or omit any of the items of agricultural produce specified in the Schedule, and thereupon the Schedule shall stand amended accordingly.

Section 5 provides for a declaration of intention to regulate and control sale and purchase of agricultural produce in any area. Where the Sate Government is of the opinion that it is necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in any area, and for that purpose to declare that area as a Market Area it may, by notification in the Gazette, and in such other manner as may be prescribed, declare its intention so to do, and invite objections against the proposed declaration. Section 6 provides for the declaration of Market Area in respect of agricultural produce set out in the notification issued under Section 5 after considering the objections. A combined reading of Sections 5 and 6 would show that in order to be an effective declaration. The notification must set out the Market Area that is its geographical boundaries as also

the agricultural produce in respect of which the Market Area is so declared. Section 7 confers power to carve out Market Yard and Sub-Market Yards in a Market Area. Section 8 confers power on the State Government to alter Market Area as also modification of the list of agricultural produce in respect of each Market Area. If a change in the geographical limits of a Market Area becomes necessary or addition or omission in the list of agricultural produce in respect of a Market Area is desired, Section 8 confers power on the State Government by a notification to that effect in the Gazette to so alter the Market Area or modify the list of agricultural produce. Every agricultural produce set out in the notification declaring a Market Area under Section 6 or alterations made under Section 8 becomes specified agricultural produce for the purposes of the Act. Section 9 sets out the effects of a declaration of a Market Area, the principal being that no one within the Market Area can set up, establish or continue or allowed to be set up, established or continued, any place for the sale-purchase, storage etc. of the specified agricultural produce, except; under and in accordance with the conditions of a licence granted by the Committee. Sub-section (2) confers power on the Market Committee to give licence to carry on business as trader etc. in the Principal Market Yard or Sub-Market Yard. Section 17 enumerates the powers of the Market Committee which has to be set up for each Market Area as required by Section 12, which inter alia includes the power to levy and collect market fee in the circumstances therein mentioned. The relevant portion of it reads as under :

> 17. A Committee shall, for the purposes of the Act, have the power to -
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> # * * *##
>
> (iii) levy and collect :
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> #(a) * * *##
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> (b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than one and half percentum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner -
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> (1) if the produce is sold through a commission agent, the commission agent may resales the market fee from the purchaser and shall be liable to pay the same to the Committee;
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> (2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the Committee;
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> (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 to the Committee; and
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> (4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee :
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> Provided that no market fee shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer;...

The Schedule appended to the Act enumerates various species of agricultural produce as required by

Section 2(a). Under the heading 'II Legumes' in the Schedule 14 different legumes such as (1) Gram (2) Peas (3) Arhar (4) Urad etc. are specified for the purpose of Section 2(a) and Section 4-A.

10. On the date on which the first batch of writ petitions were filed in the High Court, the relevant notification under Section 5 read with Section 6 provided that with effect from May 1, 1978, the agricultural produce mentioned in the Schedule 'kha' shall be included in the list of agricultural produce of the Market Area mentioned in Schedule 'ka'. Amongst others at plecitum (2) following entries are to be found :

> (2) Dwi Daliya Utpadan :
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> (1) Channa (2) Matar (3) Arhar (4) Urad (5) Moong (6) Masoor (7) Lobhia (seed) (8) Soyabeen (9) Sanai (seed) (10) Dhencha (seed) (11) Ganwar.

11. In the first batch of appeals arising from writ petitions filed before January 20, 1982, it was contended that various legumes set out in the Schedule which became specified agricultural produce by being included in the notification dated April 11, 1978 could only be legume whole grain and not its split portions which is the end product of a manufacturing process. It was said that the dal which is obtained by applying a process of manufacture to the whole grain of legumes is neither an agricultural produce and at any rate it is not a specified agricultural produce. The High Court charted an easy course by merely referring to the subsequent notification dated January 20, 1982 which substituted entry under heading 'II Legumes' in the Schedule by putting into bracket words 'Saboot Aur Dala Hua' and concluded that if an amendment by a notification became necessary to bring split folds of legume in the Schedule, by necessary implication they could not have been included or deemed ever to have been included in the Schedule 'II Legumes' prior to the amendment and therefore market fee could not be levied on the transaction of sale of split folds of legume (dal) in a Market Area. We propose for the time being to ignore this notification and concentrate on the entry in the Schedule as it stood prior to the notification dated January 20, 1982 and the definition of the expression 'agricultural produce' to ascertain whether any of the enumerated legumes in the condition of whole grain or in the split folds were specified agricultural produce comprehended with the terminological exactitude described as Gram, Peas, Arhar, Urad etc. In other words, if Gram, Peas, Arhar, Urad etc. is mentioned as specified agricultural produce in the notification either under Section 5 read with Section 6 or under Section 8, would it mean only its whole grain or would it also take in the product known as dal obtained by splitting the whole grain into its two folds.

12. To resolve this controversy, one will have to seek light from the definition of expression 'agricultural produce' as set out in Section 2(a) of the Act and not by a resort to decisions under entirely different statutes such as the sales tax laws to find out whether the whole grain and its split folds constitute the same product or two different and independent products commercially so recognised. It is an indisputable canon of construction that where an expression is defined in the statute, unless there is anything repugnant in the subject or context, the expression has to be construed as having the same meaning assigned to it in the dictionary clause of the statute. This canon of construction is too well-recognised to necessitate any reference to precedent.

13. Analysing the definition of the expression 'agricultural produce', it would mean not only those items of produce of agriculture as are specified in the Schedule, but will also include the admixture of two or more of such items as also any such item in its processed form. Let us rewrite the definition by substituting one of the items in the Schedule to make explicit what is implicit therein. 'Agricultural produce' means a produce of agriculture such as Gram as specified in the Schedule and

would also include Gram in its processed form. Therefore, not only Gram is an agricultural produce but Gram in its processed form is equally an agricultural produce. When it is said in the definition "such items of produce of agriculture as are specified in the Schedule", it means that not only all those items of agricultural produce which are set out in the Schedule will constitute agricultural produce but also the admixture of two or more of such items of produce of agricultural as sets out in the Schedule as well as any such items of agricultural produce in their processed form. Suppose a producer sells neither Gram nor Peas each by itself but mixed Gram and Peas, according to the contention canvassed on behalf the respondents, this mixture would be not an agricultural produce. The contention can be negatived by referring to the definition which says agricultural produce means such items of produce of agriculture (omitting the words which are not necessary for the present purpose) ....as are specified in the Schedule such as Gram and Peas as also an admixture of two or more of such items i.e. admixture of Gram and Peas. A further step can be taken as flowing from the definition itself. Agricultural produce means such items of agricultural produce namely, Gram as specified in the Schedule and it shall include any such items i.e. Gram in its processed form. Even the respondents did not contend, on the contrary it was the sheet-anchor of their submission that a split legume is obtained by a manufacturing process of whole grain of legumes, 'Saboot', as it is now described, and that dal i.e. the whole grain split into two folds is its processed form acquired by manufacturing process. Even on their own submission dal of legume enumerated in the Schedule is an agricultural produce.

14. This very conclusion can be reached by a slightly different route. As is well-known, the legislative enactments in the State of U.P. are enacted primarily in Hindi language and its official and authentic translation in English is simultaneously published. Bearing this in mind, we turn to the notification dated April 11, 1978 specifying legumes therein enumerated as specified agricultural produce for various Market Area. The heading under which various legumes are enumerated is "Dwi Daliya Utpadan'. This tongue twister was explained to us to mean that legume itself is 'Dwi Daliya Utpadan i.e. the whole grain is made of two folds. Ek daliya grain is without a fold. Dwi Daliya is a grain composed of two folds and certainly not many folds. Concise Oxford Dictionary specifies the meaning of legume to be "fruit, edible part, pod, of leguminous plant; vegetable used for food," and 'leguminous' to mean "like of the bontanical family of pulse". And in common parlance 'pulse' connotes legume and denotes dal of legume. Reverting however, to the heading under which legumes are enumerated in 1978 notification. It must be confessed that it clearly connotes the meaning to be given to the whole grain and denotes dal i.e. split folds as specified agricultural produce. The Hindi protagonists used the expression' Dwi Daliya Utpadan meaning thereby double folded grain called Gram, Peas, Arhar, Moong etc. on a strict construction, the two dals i.e. two parts forming the whole grain both are comprehended in the expression 'Dwi Daliya Utpadan'. Therefore, it is crystal clear that while enumerating legumes in the Schedule and reproduced in the 1978 notification to make them specified agricultural produce, the farmers intended to include both the grain as a whole and its split parts the dal. And when the agricultural produce enumerated in the Schedule such as Gram including its processed part is reproduced in the notification as Dwi Daliya Utpadan, the dal of each of the legumes therein mentioned became specified agricultural produce.

15. It was however, urged that if the legume in the split form is the same as legume as a whole grain, the Market Committee would not be entitled to levy any market fee on the transaction of sale of legume; in split form because market fee already having been once levied in the form of the; whole grain, a second levy on the product is not contemplated by the Act. Reference in this connection was made to the decision in Ramesh Chandra v. State of U.P. ((1980) 3 SCR 104 : 1980 Supp SCC 27 : AIR 1980 SC 1124) in which levy of market fee under the Act by various Market

Committees was challenged on diverse grounds, one such being that if market fee is paid on the transaction of sale of paddy, though rice is separately enumerated in the Schedule, no market fee could be levied on the transaction of sale of rice. The Court has observed at page. 130 (SCC p. 46, para 20) that "if paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub-clause (2) of Section 17(iii)(b). He cannot be asked to pay market fee all over again under sub-clause (3) in relation to the transaction of rice. Nor will it be open to the market committee to choose between either of the two in the example just given. Market fee has to be levied and collected in relation to the transaction of paddy alone". Reliance was also placed on the observation at page 132 (SCC P. 48, para 23) where the Court observed "if Catechu is a product of Khar trees by some processing, as prima facie it appears to us to be so, then it is plain that market fee can be charged only on the purchase of Khar woods and not on the sale of Catechu". Reliance was also placed on Ashok Industries v. State of Bihar (AIR 1979 Pat 217 : 1979 BBCJ (HC) 465 : 1979 BLJ 611) where similar view appears to have been taken. We fail to see the significance of this submission in these appeals because this contention was not canvassed before the High Court and the respondents merely invited the High Court to decided that dal of legumes enumerated in the Schedule are not specified agricultural produce. If the respondents are entitled to any relief on the view of the matter taken in Ramesh Chandra case (AIR 1979 Pat 217 : 1979 BBCJ (HC) 465 : 1979 BLJ 611) they may obtain appropriate relief, but as has been rightly observed by this Court that redress of the grievance in this behalf depending upon deciding a disputed question of fact cannot be rendered here for want of pleading in this behalf and for want of a decision by the High Court on this point. But on this account it is not possible to accept the submission of the respondents that regume in the split form is not comprehended in the Schedule to the Act as well as in the notification dated April 11, 1978.

16. Mr. Shanti Bhushan for some of the respondents urged that the respondents have set up their factory for processing whole grain of legumes into its split folds and the commodity known as dal is a well recognised identifiable commercial commodity distinct from the legume whole grain from which it is derived by a manufacturing process and as the Act was enacted for protecting the interest of producers of agricultural produce, the factory owners being in no need of such protection cannot be subjected to the levy of market fee on the transaction of sale of legume in split form. The submission does not commend to us because it proceeds on an erroneous assumption that the Act was primarily enacted for the protection of producers of scheduled agricultural produce. In fact, as pointed out earlier, the Act was enacted primarily for "the regulation of sale and purchase of agricultural produce and for the establishment, super intendence and control of markets therefore". In the Statement of Objects and Reasons accompanying the Act, it is in terms stated that the proposed measure to regulate the market in the State has been designed with a view to achieving the objects therein enumerated, only one of them being to ensure that the agricultural producer has his say in the utilisation of market funds for the improvement of the market as a whole. Agricultural producer has nowhere been mentioned in the nine objects set out therein except as mentioned above. On the other hand, the Constitution Bench in Ramesh Chandra case (AIR 1979 Pat 217 : 1979 BBCJ (HC) 465 : 1979 BLJ 611) noticed that the "Act was passed for the development of new market areas and for efficient data, collection and processing of arrivals in the mandis to enable the World Bank to give a substantial help for the establishment of various markets in the State of Uttar Pradesh" (SCC p. 36, para 3). The Act was compared with similar statutes in force in different States and a distinguishing feature was pointed out that in other States the Act is mainly meant to protect the agriculturist producers from being exploited when he comes to the Mandis for selling his agricultural produce. This court observed in agreement with the High Court that certain other

transactions also have been roped in the levy of market fee in which both sides are traders and neither side is an agriculturist and this has been done for the effective implementation of the scheme of establishments of markets mainly for the benefit of producers. Approving the observation in Kewal Krishan Puri v. State of Punjab ((1979) 3 SCR 1217 : (1980) 1 SCC 416 : AIR 1980 SC 1008) the Court further observed that the fee realised from the payer has by and large to be spent for his special benefits and for the benefit of other persons connected with the transaction of purchase and sale in various Mandis. Therefore, it cannot be said that the respondents-factory owners not being agricultural producers and not being in search of any protection of the Market committee could not be subjected to the levy of market fee. In fact, the primary object of the Act as far as the State of U.P. is concerned is regulation of sale and purchase of agricultural produce irrespective of the character of the party to the transaction save and except that character is relevant as set out in sub-clauses (1) to (4) of Section 17(iii)(b). It is not a relevant consideration whether the factory owners need any protection but the real question is whether people dealing with them need protection. Viewed from either angle, we find no merit in the submission.

17. Dr. Y. S. Chitale referred to Ganesh Trading Co., Karnal v. State of Haryana (AIR 1974 SC 1362 : (1974) 3 SCC 620 : 1974 SCC (Tax) 100), Babu Ram Jagdish Kumar & Co. v. State of Punjab ((1979) 3 SCR 952 : (1979) 3 SCC 616 : 1979 SCC (Tax) 265), State of Karnataka v. B. Raghurama Shetty ((1981) 3 SCR 280 : (1981) 2 SCC 564 : 1981 SCC (Tax) 134) and Laxmi Chand Badri Narain v. C.S.T. (AIR 1971 MP 74 : 1971 MPLJ 21 : 1971 Jab LJ 69) and urged that dehusked paddy which is rice has been held to be not the same or identical goods but two distinct commercially known commodities and they are separately enumerated and therefore one does not include the other. In all the four judgments, the question arose under the relevant sales tax law. The contention raised was whether paddy and rice can be considered as identical goods for the purpose of imposition of sales tax ? Under the relevant Sales Tax Act exemption from payment of sales tax is provided if the very paddy in respect of which purchase tax was levied was sold and not if that paddy is converted into rice and sold. The contention was that paddy and rice are identical goods and therefore, when the law grants an exemption in respect of paddy that exemption is also available to rice. It was urged that rice is nothing but dehusked paddy and when the paddy is dehusked, there is no change in the identity of the goods. This contention was negatived in all the four cases depending upon provisions of the relevant sales tax law. It was however, said that the ratio of the decision would assist us in understanding what is the processed form of a particular agricultural produce. Approaching the matter from this angle, it was urged that though rice is produced out of paddy, this Court held that it is not true to say that paddy continued to be paddy even after dehusking, and they are two different things in ordinary parlance. This ratio cannot assist us at all for a very good reason. It was not pointed out to us that the various provisions of the relevant sales tax law which came for consideration of this Court in those four decisions did or did not have a definition such as we have of 'agricultural produce' in Section 2(a) of the Act.

18. In this connection, however, specified reliance was placed on the decision of Modi Spinning and Weaving Mills Co. Ltd. v. State of U.P. (1980 All LJ 1137 : 1980 UPTC 1337) wherein the context of the Act, it was held that cotton waste is not comprehended in the entry in the Schedule "cotton ginned and unginned", and therefore, it was held that no market fee was leviable on the transaction of sale of cotton waste. In reaching this conclusion, a Division Bench of the Allahabad High Court held that if "cotton ginned and unginned" was specified as an agricultural produce yet cotton waste which is a processed form of cotton was not so specified, the Legislature indicated not to include the same in the specified agricultural produce. The Court posed to itself a question : whether cotton waste is processed form of cotton while posing to itself another question : is cotton processed for manufacture of cotton waste ? The court then proceeded to observe that in Section 2(b) of the

Cotton Ginning and Pressing Factories Act 1925 'cotton' is defined as "cotton ginned or unginned or cotton waste". While in Section 2(b) of the Cotton Transport Act, 1923, 'cotton' has been defined to mean every kind of unmanufactured cotton, ginned and unginned cotton, cotton waster and cotton seed. After referring to these definitions, the Court held that cotton waste is not included in "cotton ginned or unginned". In our opinion, the Court has strained the language to reach an unsustainable conclusion, holding that cotton waste is not the processed form of cotton but it is a by-product quite different form of cotton though containing cotton fibre which cannot be used as ordinary cotton. As its name indicates, cotton waste appears to be droppings, stripping and other waste product while ginning cotton. It cannot be said to be a by-product of cotton but it is cotton nonetheless minus the removed seed. In other words it is residue of ginned cotton. We therefore, find it difficult to agree with the view of the High Court that cotton waste is not comprehended in the item "cotton ginned and unginned".

19. Lastly a reference was made to the State of Gujarat v. Sakarwala Brothers ((1967) 19 STC 24 (SC). The question that came up for consideration before this Court was : whether sales tax was payable in respect of sales of patasa, harda and alchidana ? The contention arose in the context of the provision contained in Section 5(1) of the Bombay Sales Tax Act, 1959 in its application to the State of Gujarat which provided that "notwithstanding anything contained in the Act, but subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in the Schedule". The relevant entry is the "sugar as defined in Item 8 of the First Schedule to the Central Excises and Salt Act, 1944". Affirming the decision of the Gujarat High Court, this Court held that patasa, harda and alchidana were exempt from any tax payable under the Bombay Sales Tax Act, 1959 because they are comprehended in the expression 'sugar' in the entry granting exemption. This conclusion was reached holding that the expression 'sugar' in Entry 47 granting exemption will comprehend within its ambit all forms of sugar that is to say, sugar of any shape or texture, colour or density and by whatever name it is called. If this line of reasoning is adopted, legume whole grain will necessarily comprehend both folds of the whole grain. But we do not propose to rest our decision on the approach to various commodities commercially recognised distinct under relevant sales tax law.

20. To sum up, for the reasons herein state, the High Court was in error in holding that the legume whole grain as set out in the Schedule does not include its split form i.e. dal and therefor, no market fee was leviable on the transaction of sale of legume in split form. This conclusion disposes of first batch of appeals arising from writ petitions filed prior to the issue of notification dated January 20, 1982.

21. In the other batch of petitions which came to be filed after the notification of January 20, 1982 Mr. F. S. Nariman, learned counsel appearing in C.A. 2286 of 1984 urged that even if under Section 4-A of the Act, the State Government had the power to add to amend or omit any of the items of agricultural produce specified in the Schedule and if by the notification dated January 20, 1982, the State Government purported to substitute the Schedule under the heading 'legumes' by putting into bracket by the side of each enumerate legume 'Saboot or Dala Hua', that by itself would not make such agricultural produce "specified agricultural produce". It was urged and in our opinion, rightly that before a transaction of sale, as set out in Section 17(iii)(b) of the Act, of an agricultural produce becomes exigible for the levy of market fee, the agricultural produce has to be a "specified agricultural produce" and that can be done by an appropriate notification under Section 5 read with Section 6 or under Section 8 of the Act and until that is done the agricultural produce even if it is so enumerated in the Schedule does not become "specified agricultural produce" and no market fee can

be levied on the transaction of sale of such agricultural product. It was urged that four steps have to be taken before an agricultural produce becomes a "specified agricultural produce" in respect of a Market Area. Undoubtedly, when in exercise of powers conferred by Section 5 the State Government published its intention to set up a Market Area by a notification in the Official Gazette, the State Government is simultaneously under an obligation to specify not only the Market Area that is its geographical limits or boundaries but must specify the agricultural produce quay (sic) such Market Area. After inviting objections both in respect of the Market Area and the agricultural produce, a further notification is required to be issued under Section 6 making the requisite declaration both in respect of the market Area as well as the agricultural produce. When these two steps are taken, the agricultural produce set out in the notification issued under Section 6 becomes specified agricultural produce in relation to Market Area notified in the notification. Section 8 confers power to alter the Market Area or the agricultural produce in respect of the altered Market Area. When these steps are taken then alone those agricultural produces enumerated in the notification under Section 6 or under Section 8 would assume and acquire the mark or character of "specified agricultural produce", on the sale transaction of which market fee can be levied by the Market Committee. Proceeding along it was urged that even though a notification as issue under Section 4-A on January 20, 1982 amending the Schedule in respect of legumes, in the absence of a notification under Section 8 making that agricultural produce so introduced in the Schedule as specified agricultural produce, those agricultural produce would not acquire the character of specified agricultural produces quay (sic) Market Area and therefore, the respondents are not liable to pay any market fee thereon. If the amended Schedule introduced by the notification dated January 20, 1982 introduces fresh agricultural produces in the Schedule, the contention of Mr. Nariman must carry conviction because it was conceded that a fresh notification under Section 8 in respect of the legumes has not been issued. But the view which we have taken is that the entries under the heading 'legumes' in the Schedule as it stood prior to the amendment of January 20, 1982 comprehended both the whole grain of legumes and its split part that is dal. What was implicit has been made explicit and therefore, no fresh notification under Section 8 was necessary. Therefore, the contention has to be negatived. As that was the only contention canvassed before this Court in the second batch of appeals and as we find no merit in it, the second batch of appeals will also have to be allowed.

22. Lastly, the respondents contended that if the view taken by the High Court on the question that split grain of legume, that is dal was not comprehended in the whole grain of legume as set out in the Schedule and therefore, the same was not a specified agricultural produce is held not to be correct and accordingly the judgment of the High Court would have to be upset, all the matters may be remitted to the High Court for disposing of other contentions canvassed on behalf of the respondents who were petitioners in the High Court as the High Court declined to examine them, as the writ petitions were allowed on this one narrow contention which according to the High Court went to the root of the matter.

23. Before the High Court, the respondents raised various contentions. Most of them were repelled by the High Court, but the petitioners succeeded on the narrow continuations herein set out. It was said by Mr. Shanti Bhushan referring to the writ petition in which he appeared that there were other contentions which the respondents wanted to canvass but which the High Court declined to examine. It may be that there might be some other contentions which the respondents wanted the High Court to examine and the High Court having held in favour of the respondents on one point may have declined to examine the same. Therefore, while allowing the appeals, all the matters are remitted to the High Court. The High Court may examine contentions other than those which were dealt with in the judgment from which the present batches of appeals were preferred. All these contentions which have been negatived by the High Court and in respect of each one of them no

attempt was made to support the judgment of the High Court before this Court, those contentions may not be permitted to be reopened. The remand is limited to those questions which find their place in the writ petitions and which the High Court declined to examine.

24. But as the respondents have failed on almost all major contentions, they need not have the benefit of a discretionary order of any stay against levy of market fee any more. With these limitations the matters are remitted to the High Court.

25. All the appeals accordingly succeed and are allowed to the extent herein indicated with costs.

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