SUPREME COURT OF INDIA

Edward Keventer Pvt. Ltd.

Vs.

Bihar State Agricultural Marketing Board

C.A.No.2503 of 1998

(V. N. Khare and Doraiswamy Raju, JJ.)

11.04.2000

JUDGEMENT

V. N. KHARE, J. :-

1. The appellant herein is a company registered under the Indian Companies' Act and has its head office and factory outside the State of Bihar. The company manufactures fruit drinks and markets it under the brand name of 'Frooti' and 'Appy' in the State of Bihar through its agents. The Bihar Legislature has enacted an Act known as 'Bihar Agricultural Produce Market Act, 1960' (hereinafter referred to as the Act). The object of the Act is to provide better regulation of buying and selling of agricultural produce and the arrangement of market for agricultural produce in the State of Bihar. Under Section 27 of the Act, the Market Committee set up under the Act has power to levy and collect market fee on the agricultural produce, which are specified in the Schedule and are bought or sold in the market area. It is not disputed that the entire district of Patna is declared as a market area. Section 2(1)(a) of the Act defines agricultural produce which runs as under :

" 'Agricultural produce' means all produce whether processed or non-processed, manufactured or

not, of Agriculture, Horticulture, Plantation, animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule".

2. Under Section 39 of the Act, the State Government by a notification is empowered to add, amend, or cancel any of the items of the agricultural produce in the Schedule as required by Section 2(1)(a) of the Act. In the Schedule, as contemplated under Section 2(1)(a), mango and apple are specified under the caption 'fruits' as items Nos. 1 and 13 respectively. The respondents treating 'Frooti' and 'Appy' as mango and apple products issued a notice dated 28-3-89, requiring the appellant to pay market fee on the products marketed under the brand name 'Frooti' and 'Appy', failing which action under the Act would be taken. Under such circumstances, the appellant challenged the aforesaid demand by means of a writ petition under Article 226 of the Constitution. However, the said writ petition was dismissed and Letters Patent Appeal filed against the judgment of the learned single Judge was also dismissed. It is in this way the appellant is in appeal before us.

3. The short question that arises for consideration in this case is, whether the products which are ready to serve beverages under the brand name 'Frooti' and 'Appy' fall under the description of mango and apple, specified in the Schedule. The contention of the learned counsel for the appellant is that, both the fruit drinks are not covered by the Schedule, whereas the contention of the respondents' counsel is that the products being the mango and apple juices are covered under the item 'mango' and 'apple', as specified in the Schedule.

4. The appellant has described the manufacturing process of beverages 'Frooti' and 'Appy' as under :

"Frooti and Appy are fruit drinks and manufacturing process of both are cumbersome. It is alleged that one of the ingredients of Frooti is mango pulp and not mango which is procured by the appellant as raw material from outside agencies. Similarly, one of the ingredients of Appy is apple concentrate and not apple. The pulp is first passed through a filter and stored in beverage tank. Similarly sugar in proportionate quantity is processed in the form of syrup after heating it to a certain temperature and then cooling it. Demineralised water is then added to the sugar syrup to the extent that it attains a certain 'brix' content. Meanwhile in the beverage tank requisite amount of citric acid, non alcoholic beverage base (NABB), other permitted additives, sodium citrate, vitamin C are added. Thereafter the sugar syrup and the mixture in the beverage tank are mixed in proportionate quantity. Thereafter the said mixture is passed through homogeniser and crushed at a very high pressure to disintegrate all the fibres, which are present in the beverage mixture. After homogenisation, the mixture is then required to be passed through pasteuriser where it is heated to a temperature between 95 to 100 degrees centigrade for killing all the bacteria and micro organism, if there be any. Subsequently, the said mixture is passed through a cooling channel for cooling down to the room temperature and passed through pipe lines into the steriliser of the tetra brik aseptic packaging machine for packing the beverage in tetra brik packs of 200 ml size which requires high technical expertise. The paper which is used for the packaging, consists of seven layers of materials which include aluminium foil, laminated polythene etc. for taking care of asepticity ensuring high

safety and required life for the produce. The 200 ml pack is then packed in the packaging machine and which passes through the conveyor system on way to the tray packing machine, where it is accumulated in trays. The said tray containing the fruit drink pack is then shrink wrapped by means of the shrink wrapper machine. After everything is completed, the fruit drink packs are kept under incubation for a period of seven days for detection of growth of any microorganism through a microbiological analysis . Simultaneously, organoliptic test is also conducted for testing the colour and taste of the beverage. After all that the 'Frooti' and 'Appy' are ready for being delivered in the market.

5. A perusal of Section 2(1)(a) unambiguously shows that the agricultural produce which are to be covered by the sweep of the Act necessarily has to be specified in the Schedule. If any agricultural produce is not specified in the Schedule, it goes beyond the purview of the Act and respondent has no power to levy fee on such produce. In the Schedule under caption 'fruits' mango and apple have been specified as agricultural produce. We further find in the Schedule that under caption 'cereals' wheat is specified at item No. 3, whereas 'wheat atta' 'sujji' and 'maida' which are the products of wheat are separately specified at item Nos. 14, 15 and 16, respectively. This shows that the agricultural produce 'wheat' has been treated as a separate agricultural produce as compared to its own product manufactured out of 'wheat' namely, 'atta', 'sujji' and 'maida'. 'Atta', 'sujji' and 'maida' are basically the agricultural products of 'wheat'. Similarly, the Schedule shows that under the caption 'Animal Husbandry Product', milk excluding liquid milk is specified at Item No. 19 whereas 'butter', 'ghee', 'cream' 'chena' and 'khoya' which are manufactured out of milk are separately specified at items Nos. 7, 8, 16, 17 and 19 respectively. Under caption 'miscellaneous', 'mango pickles' is specified at item No. 18. 'Mango pickles' is a product of mango, which is a fruit; and specified in Schedule but 'mango pickles' have been specified separately. This shows basic ingredients may be the same but the end product which is known differently is treated as a separate item. It is true that 'Frooti' and 'Appy' are manufactured out of mango pulp and apple concentrate, but after the mango pulp and apple concentrate are processed and beverages are manufactured, the products become entirely different items and the fruits mango and apple loose their identity. In common parlance, these beverages are no longer known as mango and apple as fruits. In other words, after processing mango pulp and apple concentrate, although the basic character of the mango pulp and apple concentrate may be present in beverages, but the end products are not fruits i.e. mango and apple which are specified in the Schedule. Our views also find support from a Constitution Bench decision of this Court in the case of Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620 : (1999 AIR SCW 3074 : AIR 1999 SC 3125) wherein it was held that Lactodex and and Raptakos which are baby foods do fall under the description milk, specified in the Schedule of the Act. Under such circumstances, we find that the products like 'Frooti' and 'Appy' which are ready to serve beverages not being specified in the Schedule are not covered by the term agricultural produce, as defined in Section 2(1)(a) of the Act.

6. Learned Additional Solicitor General then cited a decision of this Court in the case of Krishi Utpadan Mandi Samiti v. M/s. Shankar Industries, 1993 Supp (3) SCC 361 (2) : (1993 AIR SCW 762) for the proposition that the meaning of 'agriculture produce' in the definition is not restricted to any products of agriculture specified in the Schedule, but also include such items which come into being in the processed form, and has strongly relied para 12 (of Supp SCC) : (Para 9 of AIR) of the said decision, which reads as under :

"We have considered the arguments advanced on behalf of the parties and have perused the record. A perusal of the definition of agriculture produce under Section 2(a) of the Act shows that apart from items of produce of agriculture, horticulture, viticul-ture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, the definition further 'includes admixture of two or more such items'and thereafter it further includes taking any such item in processed form' and again for the third time the words used are 'and further includes gur, rab, shakkar, khandsari and jaggery'. It is a well settled rule of interpretation that where the legislature uses the words 'means' and 'includes' such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included in such definition. Thus the meaning of 'agricultural produce' in the above definition is not restricted to any products of agriculture as specified in the Schedule but also includes such items which come into being in processed form and further includes such items which are called as gur, rab, shakkar, khandsari and jaggery."

We are of the view that the said decision is wholly inapplicable to the present controversy. In the Uttar Pradesh Act, the agricultural produce is defined as under :

"Section 2(a) '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."

7. The controversy in the case of Krishi Utpadan Samiti (1993 AIR SCW 762) (supra), was whether gur-lauta and raskat and rabgolawat and salawat, which are products of molasses, are agricultural produce. This Court while interpreting words 'means' and 'includes' used in the definition, was of the view that these words have to be given wider meaning and processed item of a goods specified in Schedule would be agricultural produce. In U. P. Act, the definition of 'agricultural produce' provided that any processed item of a specified goods is an agricultural produce. Such is not the definition of 'agricultural produce' in the Bihar Act with which we are concerned in the present case.

8. For the reasons aforestated, we are of the view that the product 'Frooti' and 'Appy' not being specified in the Schedule, the respondent had no authority to demand any fee from the appellant on marketing the said products. Consequently, the order and judgment of the High Court is set aside and the appeal is allowed. There shall be no order as to costs.

Appeal allowed.