SUPREME COURT OF INDIA

Agricultural Produce Market Committee

Vs.

Biotor Industries Ltd.

C.A.Nos.3130-3131 of 2008

(G.S. Singhvi and V. Gopala Gowda JJ.)

29.11.2013

JUDGMENT

V. GOPALA GOWDA, J.

1. These appeals have been directed against the common judgment and order dated 24.04.2007 passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal Nos. 139 of 2006 and 195 of 2006 in Special Civil Application No. 13606 of 2005 with Civil Application No. 514 of 2006 and Civil Application No. 1380 of 2006 filed by the appellant-Agricultural Produce Market Committee, Baroda (for short "APMC") as it is aggrieved by the dismissal of its Letters Patent Appeal No.195 of 2006. The High Court allowed Letters Patent Appeal No. 139 of 2006 preferred by the respondent-Company. Both the Letters Patent Appeals were filed against the order dated 22.12.2005 of learned single Judge passed in Special Civil Application No.13606 of 2005 whereby the learned single Judge substantially set aside the order dated 19.4.2005 of the Revisional Authority and partly allowed the application filed by the APMC by framing questions of law.

2. The brief facts of the case are stated below to appreciate the rival claims of the parties and to find out as to whether the appellant-APMC is entitled for the relief sought for in these appeals:

> The appellant-APMC was constituted pursuant to Notification issued on 14.1.1958 under the provisions of the Bombay Agricultural Produce Markets Act, 1939 and the area of Baroda city and Baroda Taluk of Baroda District was declared as the market area for the purpose of Gujarat Agricultural

Produce Markets Act, 1963 (hereinafter referred to as "the Act"). The respondent-Company, manufacturing castor oil from out of the castor seeds purchased by it comes under the jurisdiction of the market area of the APMC and therefore, it is liable for paying the market fees/cess for the trading activities carried out by it in the market area. APMC levied market fee on the castor seeds bought by the Company on the basis that castor seeds were brought within the market area of APMC. The respondent-Company contested the said levy by filing Revision Application No. 2 of 2005 under Section 48 of the Act before the State Government contending that castor seeds were brought into the market area of the APMC, Baroda as provided under sub-rule (2) of Rule 48 of the Gujarat Agricultural Produce Market Rules, 1965 (for short "the Rules") and no fees are leviable on agricultural produce brought from outside the market area into the market area for use therein by the industrial concern situated in the market area. The State Government vide its order dated 19.04.2005 decided the Revision Application No. 2 of 2005 in favour of the respondent-Company by setting aside the order dated 27.12.2004 issued by the APMC levying the market fee.

3. The APMC filed a Special Application No. 13606 of 2005 under Articles 226, 14 & 19 of the Constitution of India before the High Court against the said order of the State Government. The learned single Judge of the High Court after hearing the parties at length partly allowed the said application holding that the sale of the castor seeds in question took place within the market area of APMC, Baroda, therefore, APMC was right in levying the market fee on the castor seeds purchased by the respondent within the market area of APMC. The learned single Judge in respect to exemption clause in sub-rule 2 of Rule 48 held that the said exemption was available to the agricultural produce brought by the industrial concern itself from outside the market area into the market area of APMC and the exemption was not available where the castor seeds were bought within the market area by the seller and sold to the industrial concern within the market area. As such the learned single Judge upheld the plea of APMC for levy of market fee on the castor seeds purchased by the respondent-Company. In respect to the levy of market fee on de-oiled cake by APMC the learned single Judge accepted the contention urged on behalf of the respondent- Company and held that de-oiled cake could not be treated as oil cake, and therefore, it was not eligible for levy of market fee since it was not mentioned in the Schedule. Both the respondent-Company as well as the APMC being aggrieved by the judgment and order dated 22.12.2005 of the learned single Judge preferred Letters Patent Appeal No.139 of 2006 and Letters Patent Appeal

No. 195 of 2006 respectively. The Division Bench of the High Court allowed the appeal preferred by the respondent-Company and dismissed the appeal preferred by the APMC and stated that as soon as the agricultural produce, namely, castor seeds, bought by the representatives of the Company, is brought from outside the market area into the market area, after payment of octroi on such produce in their capacity as owner of the goods, the same would be treated as completion of sale outside the jurisdiction of the market area. The Division Bench of the High Court, therefore, held that the collection of market fees from the respondent- Company by APMC is contrary to the provisions of the Rules, namely, Rule 48, sub-rule (2) of the Rules, which grants exemption to agricultural produce brought from outside into market area by the industrial unit for its own use. On the second issue, the High Court held that the by-product, namely, de-oiled cake contains less than 1% oil and is not notified in the Schedule as per Section 2(i) of the Act and hence, the above product being totally different from oil cake, there is no liability upon the respondent- Company to pay the market fees. Hence, the present Civil Appeals.

4. It is the case of the APMC that on 31.3.2004, the Director of APMC, Baroda and Rural Finance, Gujarat State, in exercise of the power vested in him under the Act, issued Notification including castor seeds and castor cake in the regulated agricultural produces of APMC, Baroda. On 19.4.2004 the Notification issued by the APMC, Baroda through its Director was published in the daily newspaper intimating that the trading of those produces is liable for paying of market fees/cess to the APMC, Baroda. On 28.6.2004 the APMC issued notices to the respondent-Company asking it to produce the accounts for the period 19.4.2004 to 30.11.2004 in respect of the goods being used in the mill and further asked to obtain license from Market Committee for the year 2004-2005. The respondent-Company failed to submit the accounts and further failed to obtain license within the stipulated period as mentioned in an earlier letter dated 28.6.2004, and therefore, the APMC sent the reminder to the respondent-Company and asked to comply with the direction. Vide letter dated 7.12.2004 the respondent- Company submitted monthly statement for the period 19.4.2004 to 30.11.2004 in respect of the purchases of castor seeds made by the Company. APMC on the basis of the details provided by the respondent-Company prepared a statement showing the names of the suppliers, weight, price, quantity and amount paid by the company as per the weighment made by the Company which clearly shows that as per bills, different parties were selling castor seeds to the respondent-Company for which weighment was done at the mill site in the market area Baroda and payment made to the parties as per the weighment done by the respondent-Company. On 27.12.2004 on the basis of statement submitted by the respondent-Company, the APMC assessed the market

cess for the purchases of the castor seeds in the market area in respect of the same being used for processing and converting them into castor oil and oil cake and on the basis of assessment the respondent-Company was directed to pay the market cess of [pic] 1,27,46,349.38 within a period of 10 days.

5. Being aggrieved by the said assessment made by APMC on 27.12.2004, the respondent-Company preferred Revision Application No. 2 of 2005 under Section 48 of the Act before the State of Gujarat on 05.01.2005 challenging the decision of the APMC directing it to pay the market cess as per its letter dated 27.12.2004. To the said Revision Application, APMC filed its reply on 23.01.2005. The respondent-Company filed rejoinder on 23.02.2005 to the reply filed by the APMC. The Deputy Secretary, (Appeal) allowed the Revision Application No. 2 of 2005 by its cryptic order dated 19.04.2005 and set aside the order dated 27.12.2004 passed by APMC. It is the case of the APMC that the Revisional Authority erroneously arrived at the conclusion that Rule 48(1) is not applicable and wrongly held that Rule 48(2) was applicable to the fact situation and further wrongly held that no market fee is to be paid by the respondent-Company on the de-oiled cake.

6. Being aggrieved by the order of the Revisional Authority dated 19.4.2005 in Revision Application No. 2 of 2005 of the Revisional Authority, the APMC preferred Civil Application No. 13606 of 2005 before the learned single Judge of the High Court of Gujarat. The learned single Judge after hearing the parties vide its order dated 22.12.2005 set aside the order of revision in so far as the levy of market fee on the castor seeds is concerned holding that the sale did take place within the market area and therefore APMC was authorized to charge fee from the respondent- Company for such purchase and partly allowed the application. However, the learned single Judge, with respect to the levy of fee on the de-oiled cake which was sold by the respondent-Company held that it is the by-product in the course of manufacturing of castor oil and therefore, it is not an agricultural produce and not liable to levy of market fee.

7. Being aggrieved by the said judgment dated 22.12.2005, the respondent-Company filed Letters Patent Appeal No. 139 of 2006 on 18.1.2006 before the Division Bench of the Gujarat High Court challenging the findings of learned single Judge that market fee is exigible on the purchase of castor oil seeds by the industrial concern. The APMC also being aggrieved by the said order dated 22.12.2005 of learned single Judge filed Letters Patent Appeal No. 195 of 2006 for rejecting of claim of APMC, Baroda for market fees/cess on de-oiled cake. The Division Bench of the High Court on 24.4.2007 after hearing the parties allowed

the appeal of the respondent- Company and dismissed the appeal of the APMC, Baroda after setting aside the order of the learned single Judge holding that Rule 48(2) is applicable and that the castor seeds were brought from outside the market area. The Division Bench upheld the rejection of the Special Civil Application No. 13606 of 2005 filed by the APMC, Baroda not accepting the case pleaded by it that market fee is levied on de-oiled cake which is a by-product sold by it and is not exigible goods as it is not an agricultural produce. Aggrieved by the common judgment, present appeals are filed.

8. On the basis of the legal grounds urged in these appeals questioning the correctness of the findings and reasons recorded by the Division Bench of the High Court on both the points which have been formulated by it, the following points would arise for the consideration of this Court in these appeals:-

1) Whether the APMC, Baroda is liable to claim the market fee on the castor seeds purchased by the respondent-Company on the plea that the same were purchased within the market area of APMC, Baroda which castor seeds are used by the said industrial concern for manufacture of castor oil within the market area of APMC, Baroda?

2) Whether purchase of the castor seeds for use of the respondent industrial concern for manufacturing castor oil falls within Rule 48(2) of the Rules to get exemption from payment of market fee?

3) Whether the Division Bench was justified in setting aside the finding of fact recorded by the learned single Judge, holding that the castor seeds purchased by the respondent-Company are within the market area of APMC?

4) Whether the Division Bench is justified in recording the finding on point No.2 in connection with LPA No. 195 of 2006 that the respondent concern is not liable to pay any market fee on the de-oiled cakes sold by it which are stated to be the by-product in the course of manufacturing castor oil which is not one of the items enumerated in the Schedule to the Act and notification issued by the Directorate?

5) What order?

Answer to Point Nos. 1 to 3

9. The point Nos. 1 to 3 are answered together as they are inter-related with each other by assigning the following reasons:

> It would be necessary for this Court to refer to the definition of 'Agricultural Produce' under Sections 2(i) and provisions relating to levy of market fee under Section 28 of the Act and under Rule 48(1) of the Rules for the purpose of appreciating the factual matrix with reference to the rival legal contentions urged on behalf of the parties:- "2(i)-"agricultural produce" means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule.
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> Section 28: The market committee shall, subject to the provisions of the rules and the maxima and minima from time to time prescribed levy and collect fees on the agricultural produce bought or sold in the market area:
>
> Provided that the fees so levied may be collected by the Market Committee through such agents as it may appoint.
>
> Rule 48: Market fees:- (1) The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the by-laws subject to the following minima and maxima vis.,
>
> 1) rates when levied ad valorem shall not be less than 30 paise and shall not exceed [pic]2 (two) per hundred rupees.
>
> 2) Rates when levied in respect of cattle, sheep or goat shall not be less than 25 paise per animal and shall not exceed [pic]4 per anmimal.
>
> Explanation- For the purposes of this Rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.
>
> (2) No fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area of for export and, in respect of which declaration

has been made and a certificate has been made and a certificate has been obtained in Form V:-

Provided that if such agricultural produce brought into the market are for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the by-laws subject to the maximum and minimum specified in sub-rule (i):

Provided that no fee shall be payable on a sale or purchase to which sub-section (3) of Section 6 applies."

10. It is an undisputed fact that the respondent-Company is an industrial concern which has been undertaking manufacture of castor oil out of the castor seeds which are declared as agricultural produce in the Schedule to the Act vide notification issued by the Directorate of APMC, Baroda.

11. It is the case of the respondent-Company that the demand and assessment made and levying the market fee on the castor seeds for the period from 19.04.2004 to 30.11.2004 is erroneous as castor seeds were purchased from outside the market area of APMC, Baroda and the same were brought for the use of the industrial concern which is situated within the market area of APMC, Baroda for the purpose of using the same for manufacturing of the oil. In this regard, the APMC has called upon the respondent-Company to produce the accounts for the period 19.04.2004 to 30.11.2004 in respect of the goods being used in the mill and was further asked to obtain license from the Market Committee for the year 2004-2005. On 07.12.2004, the respondent-Company submitted monthly statement for the aforesaid period in respect of the purchases made of castor seeds by the company. The APMC on the basis of details provided by the respondent- Company prepared the statement showing the names of the suppliers, weighment, quantity of the agricultural produce goods purchased and amount paid by the company to its trader as per the weighment made by the company. According to the committee, the purchases made by the company clearly show, as per the bills issued to different parties for castor seeds sold to the respondent-Company, that the weighment of castor seeds was made at mill site in Baroda and payment was made to the parties as per the weighment done by the respondent-Company. Therefore, on the basis of the assessment, the respondent-Company was directed to pay the market cess of [pic]1,27,46,349.38 vide its order dated 27.12.2004. The respondent-Company

aggrieved by the said assessment order preferred Revision Application No. 2 of 2005 under Section 48 of the Act before the State of Gujarat questioning the correctness of the assessment order made by the APMC. The Deputy Secretary (Appeal) after hearing the parties passed a cryptic order dated 19.04.2005 by allowing the Revision Application and setting aside the order of assessment of the market Committee dated 27.12.2004. While allowing the Revision Application, the Revisional Authority arrived at the conclusion that Rule 48(1) of the Rules is not applicable and held that Rule 48(2) will be applicable to the fact situation. The correctness of the same was challenged before the learned single Judge of the High Court of Gujarat by filing a petition under Article 226 of the Constitution i.e. Special Civil Application No. 13606 of 2005.

12. The learned single Judge after giving opportunity to the respondent- Company and hearing both the learned counsel appearing on behalf of the parties has held that castor seeds have been bought within the market area of APMC, therefore, sub-rule (1) of Rule 48 is applicable to the fact situation and not sub-rule (2) of Rule 48 upon which reliance was placed by the respondent-Company's counsel. In arriving at the said conclusion the learned single Judge has referred to the factual aspects with reference to certain documents such as invoices, bill receipts etc. exchanged between the respondent-company and its suppliers of castor seeds. The bill issued by one Manish Trading Company of Naroda, Ahmedabad dated 03.05.2004 for supply of 150 bags of castor seeds weighing 75 kilos each was examined. The rate charged was [pic]305/- per 100 kg. The total quantity shown was 112.50 quintals and the total amount claimed was [pic]1,71,562/-. In the said bill dated 03.05.2004, it was indicated that payment was yet to be made. At page 28 to the compilation, there is a purchase voucher/remittance note issued by the respondent-Company. It is not in dispute that the said purchase voucher/remittance note pertains to the same consignment transported by the Manish Trading Company under the bill dated 03.05.2004. The purchase voucher indicates that the quantity of the castor seeds received was short by 37.50 kilos. Weight of bags of 150 kilos was also deducted from the quantity of castor seeds. The agreed rate of [pic]305/- for 100 kilos remained constant and the respondent-Company therefore agreed to remit a total amount of [pic]1,70,991/- to the Manish Trading Company referred to supra. To the query from the court, the learned counsel appearing on behalf of the company, on instructions, made submissions that consignments were received from the sellers within the market area for the purpose of finding out shortfall or pilferage and the payment is made to the extent of actual quantity received. The learned single Judge has also referred to the total quantity of castor seeds weighing 112.50 quintals which was transported to the respondent-Company

by Manish Trading Company and it had made payment after weighing consignment and after finding out the correct weight of the castor seeds received by it.

13. On the basis of the said material facts the learned single Judge arrived at the conclusion that the respondent-Company placed order for purchase of castor seeds from its suppliers from outside the market area but no payment was immediately made for the same. On the demand of the respondent-Company, the quantity of castor seeds so requisitioned by it was transported by the supplier which was received by it within the market area. It is an undisputed fact that the consignment so received was weighed by the Company within the market area. Thereafter, on finding out the exact weight of castor seeds received by it, the payment at the agreed rate was made by the Company to the supplier. Therefore, the learned single Judge came to the conclusion on the basis of appreciation of the aforesaid facts and held that the sale was not effected till the consignment was received by the respondent-Company and the same was weighed within the market area. The learned single Judge has rightly rejected the assertion made by the learned counsel on behalf of the Company holding that in case of shortfall or loss or damage during transport, the seller could claim damage from the transporter and that would further demonstrate that the respondent-Company did not become owner of the goods till it took the physical delivery thereof, weighing the same and satisfying itself about the quantity received by it. It was held that it was not a mere formality to find out the quantity by it but it has the essential element of making payment depending on the extent of quantity received and in case of any drastic shortfall in the quantity, the issue would be between the supplier and the transporter. Further finding was recorded that if against the quantity of 100 quintals of castor seeds supplied by the trader, the respondent-Company received only half of it on account of loss, damage or pilferage, the company would make payment only for such quantity leaving it for the trader to recover the damages from the transporter. There would also be a case where on account of some untoward and unforeseen circumstances, such as natural calamity or theft, the respondent-Company did not receive the full quantity of castor seeds, the payment shall be made only for the quantity received by it and not for the entire quantity to be supplied by the trader. The learned single Judge has further rightly recorded the finding of fact that when the castor seeds reach the market area, it was weighed by the Company and payment thereof was agreed to be made to the tune of quantity received and till then the castor seeds continue to be in the ownership of the seller. The Company becomes the owner of the property only once the exact weight of the castor seeds was ascertained and purchase

voucher was obtained. The learned single Judge rightly held that APMC is justified in contending that the sale of castor seeds did take place within the market area and the appellant was authorized to charge fees from the respondent-Company for such purchase. Therefore, the learned single Judge held that the castor seed was bought by the respondent-Company within the market area of APMC, Baroda and therefore Rule 48(1) of the Rules is applicable to the fact situation and not Rule 48(2) as contended by the counsel. The said conclusion was arrived at after referring to the provisions of Sections 19, 20 and 21 of the Sale of Goods Act, 1930 and the Privy Council judgment in Hoe Kim Seing v. Maung Ba Chit[1]. Sections 19, 20 and 21 of Sale of Goods Act are extracted hereunder:-

> "19. Property passes when intended to pass.-
>
> (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
>
> (3) Unless a different intention appears, the rules contained in Section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.
>
> 20. Specific goods in a deliverable state.- Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.
>
> 21. Specific goods to be put into a deliverable state.- Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof."

The above judgment of the Privy Council is referred to by this Court in the decision of Agricultural Market Committee v. Shalimar Chemical Works

Limited[2] wherein the learned single Judge rightly extracted the following paragraph from the said judgment and it is worthwhile to extract the same hereunder :-

"40. In order that Section 20 is attracted, two conditions have to be fulfilled:

i) the contract of sale is for specific goods which are in a deliverable state; and

ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, "Unless a different intention appears" occurring in Section 19(3). In Hoe Kim Seing v. Maung Ba Chit, it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case."

14. Therefore, the learned single Judge on the basis of documents which are all admitted documents came to the right conclusion and held that the castor seeds were bought by the respondent-Company within the market area. Therefore, APMC has rightly made assessment of market fee and levied the same as per Section 28 of the Act, which assessment order has been erroneously set aside by the Revisional Authority without proper appreciation of facts and applying the relevant provisions namely, Section 28 and Rule 48(1) and came to the erroneous conclusion and held that the goods bought were brought from outside the market area for the purpose of manufacturing oil by the Company in its factory. Therefore, the contention that these are not exigible, was rightly set aside by the learned single Judge and it was held that the respondent-Company is liable to pay market fee which is cess on the purchase of castor seeds, justifying the claim of the APMC. The order dated 22.12.2005 was questioned by the Company filing Letters Patent Appeal No.139 of 2006 and that order was erroneously set aside by the Division Bench by answering the point No.1 in favour of the Company after referring to Rule 48(2) and erroneously applying the aforesaid judgments. The learned single Judge rightly placed strong reliance on the said judgment referred to supra and came to the right conclusion and held that the sale of goods of castor seeds is within the market area of APMC. The learned Division Bench on the other hand,

further placed strong reliance upon Rule 48(2) by placing reliance upon Form No. V of the Rules, which is the Form of declaration and certificate produced by the Company which were found from pages 79 to 86 which are totally irrelevant for the purpose of finding out whether the goods i.e. the castor seeds were bought by the Company within the market area of APMC or not.

15. The factual matrix is supported by the documents produced at Annexure 'F' to the Special Civil Application No. 13606 of 2005 which are the documents of the respondent-Company which have been extensively referred to by the learned single Judge in his judgment at para 11 to come to the conclusion holding that the castor oil seeds were bought by the respondent- Company within the market area of APMC and, therefore, he has rightly held that Rule 48(2) is not applicable to the fact situation as claimed by the respondent-Company and the reliance placed upon Form No. V which is the Form of declaration and certificate obtained from the APMC seeking exemption from payment of market fee on the castor seeds brought by it from outside APMC area, is contrary to the material evidence on record and therefore, the Division Bench has gravely erred in reversing the finding of fact recorded by the learned single Judge on proper appreciation of undisputed material evidence on record and recorded the finding of fact with reference to Sections 19, 20 and 21 of the Sale of Goods Act and the judgment of Privy Council referred to supra which has been referred to by this Court in the Shalimar Works Ltd. case (supra) wherein the learned single Judge rightly came to the conclusion that the castor seeds were purchased by the Company in the market area for the relevant period in question in respect of which the assessment order was passed levying the market fee and directing the Company to pay the same was legal and valid. The same came to be erroneously set aside by the Revisional Authority without proper application of mind and law to the fact situation and the same was then set aside by the learned single Judge of the High Court. The said findings of the learned single Judge have been erroneously set aside by the learned Division Bench at the instance of the respondent-Company in LPA No.139 of 2006. Therefore, we have to hold that the said finding of the Division Bench in reversing the legal and valid finding of fact recorded by the learned single Judge on proper appreciation of facts and undisputed evidence on record and rightly applying the provisions of the Sale of Goods Act referred to supra and Rule 48(1) is erroneous. Therefore, we have to set aside the said order passed in LPA No. 139 of 2006 and restore the order of the learned single Judge passed in special civil application No. 13606 of 2005 and allow the C.A. No. 3130 of 2008.

Answer to Point No. 4

16. The point No. 4 is answered against the APMC upholding the order of the learned single Judge affirmed by the Division Bench of the High Court in dismissing the Letters Patent Appeal No. 195 of 2006 of the appellant by assigning the following reasons :-

> It is an undisputed fact that oil cake is included in the Schedule as an agricultural produce which is exigible agricultural produce in terms of section 2(1)(i)of the Act. Sub-rule (iv) therein contains oil seeds. Item No. 8 therein is castor seed and Item No. 11 therein is oil cakes.
>
> The oil cake is the exigible agricultural produce for the purpose of levying market fee upon such produce. On the basis of the factual and rival contentions and on the basis of material evidence produced by the parties the learned single Judge has arrived at the finding held at paragraph 23 with regard to the process undertaken by the respondent-Company for extraction of castor oil from the castor seeds purchased by it. The by- product which is produced by the respondent-Company is de-oiled cake which contains less than 1% of castor oil and castor seeds have to undergo a complex process so as to extract maximum possible oil out of it. At the first stage, after cleaning and separating raw seeds from husk etc. the castor seeds are crushed through mechanical devices to extract oil from the same. After the mechanical process which is involved in extracting substantial amount of oil in the oil cake, the residual product is the de- oiled cake which is sold in the market. The same does not fall under the head of oil cake. The process which is adopted for the purpose of getting the said by-product of de-oiled cake has been extensively referred to in the paragraph 23 of the order of the learned single Judge and it is worthwhile to extract the same hereunder:-
>
> "23.The process undertaken by respondent no.2 for extraction of castor oil from the castor seeds purchased by it is not seriously in dispute. The fact that ultimately by-product which respondent no.2 claims to be de-oiled cake which the respondent no.2 sells in the market and on which the petitioner is seeking to levy market fee contains less than 1% castor oil is also not seriously in dispute. The respondent no.2 has explained the complex process through which the castor seeds are made to undergo so as to extract maximum possible oil out of it. At the first stage after cleaning and separating raw seeds from husk etc., the castor seeds are crushed through mechanical devices to extract oil from the same. This mechanical process

would obviously leave substantial amount of oil in the oil cake which may come into existence after extraction of oil. If this residual product was sold by respondent no.2 in the market, same would squarely fall under the head of oil cake. To that extent there is no serious dispute raised by the respondent no.2 also. However, respondent no.2 does not sale the oil cake which comes into existence by extracting oil from castor seeds through the above mentioned mechanical process. The oil cake so produced is made to undergo further extensive sophisticated and complex process by which instead of leaving 10% oil contents in the oil cake, the percentage of residue of the oil is brought down to less than 1%. By sophisticated means of operation, the wastage of oil is minimised and the oil extraction percentage is improved. Ultimately therefore, final by-product which comes into existence and which is sold by the respondent no.2 in the market is de-oiled cake having less than 1% oil contents. It can thus be seen that oil cake and de-oiled cake are two separate products. By very nature of terminology used for both products it would indicate that oil cake would contain the residue of oil seeds which would also include some percentage of oil. It is only when almost entirely the oil cake is devoid of oil contents that it is labeled as de-oiled cake. Gujarat Sales Tax Act also takes cognizance of two different products namely oil cake and de-oiled cake. I am only drawing further support from these entries contained in Gujarat Sales Tax Act and not for the purpose of interpretation of the term so defined in the said Act. As noted said Act does not define the term oil cake. From the available material on record, such as difference in the contents of oil in oil cake and de-oiled cake, cognizance of different terms namely oil cake and de- oiled cake in the Gujarat Sales Tax Act, the difference in the process of oil extraction which would lead to by-product of the oil cake and de-oiled cake, the certificate produced on record by the respondent no.2 indicating the difference of percentage of oil contents in oil cake and de-oiled cake, it can be seen that two are independent, separate and distinct products and so understood in common parlance as well. The term “oil cake” contained in the Schedule therefore, in my opinion would not include deoiled cake. The attempt on the part of the petitioner- Agriculture Produce Market Committee to levy market fees on sale and purchase of such de- oiled cake in my opinion is not permissible. Schedule to the Act specifies oil cake as one of the agricultural produces on which market fee can be charged. In view of my conclusion, that term oil cake does not include deoiled cake, I find that petitioner is not authorised to charge market fees on the de-oiled cake sold by the respondent no.2. The difference in process which would lead to obtaining oil cake and

> de-oiled cake was also noticed by Hon'ble Supreme Court in the case of State of A.P. and others v. M/s. Modern Proteins ltd.[3] on which reliance was placed by the learned advocate for the respondent no.2. It was noted that groundnut seeds obtained after the process of decortication are of high grade quality, rich in proteins but free from harmful materials processed in the expeller and the outcome is groundnut oil and groundnut oil cake. The groundnut oil cake again is pressed through the solvent in which "food hexane" is sprayed resultantly groundnut oil and groundnut de-oiled cakes are obtained."

17. Further reference was made to the Gujarat Sales Tax Act wherein the oil cake and de-oiled cake are considered to be two different products from the entries contained in the said Act and the Schedule. The said entries are referred to for the purpose of interpretation of the terms so defined in the said Act. The term oil cake is not defined in the APMC Act and further on the basis of the available material on record which elaborates the difference in the contents of oil in oil cake and de-oiled cake, cognizance of different terms namely, oil cake and de-oiled cake in the Gujarat Sales Tax Act, difference in the process of oil extraction which would lead to by-product of the oil cake and de-oiled cake, we have to hold that de-oiled cake is a completely different product than oil cake. Also we have to refer to the judgment of this Court in the case of State of A.P. and Ors. v. Modern Proteins Ltd.[4] on which strong reliance was placed by the respondent-Company wherein in the said case, it was noted that the groundnut seeds obtained after the process of decortication are of high grade quality, rich in proteins but free from harmful materials processed in the expeller and the outcome is groundnut oil and groundnut oil cake. The groundnut oil cake again is pressed through the solvent in which "food hexane" is sprayed resultantly groundnut oil and groundnut de-oiled cakes are obtained. On the basis of the said decision and applying it to the fact situation on hand with regard to the process adopted for obtaining by- product of de-oiled cake, it is clear that it is different from the oil cake as it contains oil less than 1% and it is not included in the Schedule for the purpose of charging market fee, therefore, the learned single Judge accepting the case against levying the market fee on the de-oiled cake, rejected the prayer in this regard in Special Civil Application No. 13606 of 2005. The same was questioned in the Letters Patent Appeal filed by the APMC that has been examined by the Division Bench with reference to rival legal contentions and it has answered the said point against the APMC by extracting paragraph No. 23 from the judgment of the learned single Judge.

18. The by-product obtained out of the manufacturing process is not oil cake but is de-oiled cake after undergoing the process which would lead to obtaining de-oiled cake. After noticing the judgment of the Supreme Court in the case of Modern Proteins Ltd. (supra), the learned single Judge came to the conclusion that de-oiled cake containing less than 1% oil is not mentioned in the Schedule as per Section 2(1)(i) of the APMC Act as 'agricultural produce' by the authority and further held that the above produce is totally different from the oil cake. Therefore, no market fee can be levied by the APMC to be paid by the respondent-Company. The said finding of fact of the learned single Judge has been rightly concurred with by the Division Bench of the High Court. The same was sought to be set aside by the APMC. We have carefully examined the correctness of the concurrent finding of fact arrived at by the Division Bench on this aspect of the matter. We are in agreement with the view taken by the High Court of Gujarat in holding that the by-product of the manufacture in producing the oil from the castor seeds is only de-oiled cake and is not one of the Schedule items in the Notification for the purpose of levying market fee. Therefore, we do not find any good reason whatsoever to interfere with the concrete finding of fact on this aspect of the matter. Hence, we have to affirm the concrete finding of fact recorded by the learned single Judge and of the Division Bench of the High Court. We do not find any valid and cogent reasons to arrive at a different conclusion other than the view taken by them as the said view is based on a proper appreciation of the factual matrix and the statutory provisions as de-oiled cake is not mentioned in the Schedule to the Act and the Notification. The item which is mentioned is oil cake which is different and distinct from the de-oiled cake as distinguished by this Court in the Modern Proteins Ltd. case referred to supra. The High Court has rightly applied the said decision to the fact situation. Therefore, we are of the view that the said finding of fact recorded by the High Court is legal and valid. The same does not call for interference. Accordingly, the appeal of the APMC on this aspect of the matter must fail as we are affirming the order of the Division Bench of the High Court on the levy of the market fee on de-oiled cake by directing that the amount in relation to the market fee levied on de-oiled cake is to be reduced.

19. For the reasons recorded by us on the point Nos. 1 to 3 in C.A. No. 3130 of 2008 the APMC must succeed. Accordingly, we allow the appeal and set aside the order of the Division Bench of the High Court in Letters Patent Appeal No. 139 of 2006 and uphold the levy of market fee on the castor seeds purchased by the respondent-Company for the period in question, and it is liable to pay the said market fee.

20. For the reasons recorded in answer to the point No. 4, we dismiss the C.A. No. 3131 of 2008 filed by APMC, Baroda against order passed in Letters Patent Appeal No. 195 of 2006, upholding the order of the learned single Judge which was affirmed by the Division Bench of the High Court.

21. In view of the aforesaid reasons, Civil Appeal No.3130 of 2008 is allowed and Civil Appeal No.3131 of 2008 is dismissed. There will be no order as to costs.

(G.S. Singhvi, V. Gopala Gowda JJ.)
29.11.2013

JUDGMENT
V. GOPALA GOWDA, J.

22. This matter is connected to the Civil Appeal Nos. 3130-3131 of 2008 upon which we have pronounced the judgment today.

23. The appellant-APMC herein challenged the correctness of the judgment dated 10.2.2009 passed by the Division Bench of Gujarat High Court in Letters Patent Appeal No. 1383 of 2008 in Special Civil Application No. 9705 of 2008 with Civil Application No. 13651 of 2008 whereby it has dismissed the Special Civil Application holding that the same lacks merit and also vacated interim relief granted by the learned single Judge of High Court. Being aggrieved, the APMC filed this Civil Appeal framing certain questions of law and urging grounds in support of the same, praying to set aside the impugned judgment and order and to pass such other order as may be deemed fit and proper in the circumstances of the case.

24. The brief necessary facts for the purpose of examining the legality and validity of the impugned order are stated herein:-

25. The appellant-APMC had filed Special Civil Application No. 9705 of 2008 under Articles 14, 19, 21 and 226 of the Constitution of India before the learned single Judge of the High Court impleading the respondent- Company and the State of Gujarat as parties, seeking relief for the issue of writ of certiorari or any other appropriate writ, order or direction, to set aside order dated 30.6.2008 passed in Revision Application No. 69 of 2008 by respondent No.2–the State (Revisional Authority) and further sought for declaratory relief to declare that the APMC is entitled to levy market fee on the respondent-Company for purchase of castor

seeds as per the demand notices dated 5.3.2008 and 15.4.2008 given to the respondent- Company. Further, by way of amendment to the prayer column, it has sought for declaratory relief to declare Rule 48(2) of the Gujarat Agricultural Produce Markets Rules, 1965 (for short "Rules") as ultra vires of Sections 28A and 59 of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act") urging various facts and legal grounds. The amended Sections were added to the Act vide the Gujarat Agricultural Produce Markets (Amendment) Act, 2007.

26. The learned single Judge of the High Court after hearing the learned counsel for the parties passed an interim order on 13.11.2008 in Special Civil Application No. 9705 of 2008 referring to Section 28(1) of the Act and amended Section 28(2)(a),(b),(c),(d) & (e) of the Act and issued Rule to examine the correctness of Rule 48(2) in view of the amendment to the Act incorporating Section 2(a) to Section 28 of the Act and directed the respondent-Company by giving directions, particularly direction Nos. 2 and 3 which are extracted hereunder :-

> "(2) Respondent No.2 deposits 50% of the outstanding market fees with this Court and furnishes an undertaking before this Court for the remaining 50% of the amount to the effect that they shall pay up the remaining market fees with interest as and when it is so ordered by this Court. Such amount shall be invested, if deposited, by the Registrar in the FDR initially for a period of two years, renewable further with the State Bank of India, Gujarat High Court Branch, Ahmedabad.
>
> (3) Respondent No.2 shall be at liberty to comply with either of the conditions within two months from the date of intimation and calculation of the Market Fees recoverable by the Market Committee from respondent No.2."
>
> Further, at paras 14 and 15 of the order dated 13.11.2008 of learned Single Judge, certain observations were made, which read thus:-
>
> "14. It is also observed and directed that it would be open to the petitioner to make representation to the State Government, which is Rule Making Authority, for amendment of the Rule 48 in light of the amended provisions of Section 28 of the Agriculture Produce Market Committee. If such representation is made, the pendency of this petition, shall not operate as a

bar to the Rule Making Authority for bringing about amendment, as may be permissible in law.

15. It would be open to either side to move this Court for final hearing if the rules are amended or the matter before the Apex Court is finally decided, whichever is earlier."

The correctness of this interim order dated 13.11.2008 was challenged by the respondent-Company by filing Letters Patent Appeal No. 1383 of 2008 urging various legal contentions. The Division Bench examined whether sub- section (2)(a) added to Section 28 of the Act by amendment Act No. 17 of 2007 has the effect of taking away the substratum of the Division Bench judgment dated 24.4.2007 passed in Letters Patent Appeal No. 139 of 2006 in connected matters. The Division Bench after referring to certain relevant facts and Rule 48(2) of the Rules, came to its conclusion on the basis of the judgment rendered by the Division Bench of High Court in the Letters Patent Appeal No. 139 of 2006 and connected matters for the interpretation of Section 28 of the Act read with Rule 48(2) of the Rules. The relevant paragraph 8 from the Division Bench judgment rendered in the aforesaid Letters Patent Appeal filed by the respondent-Company is extracted hereunder:-

"8. Section 28 of the Act empowers the Market Committee to levy and collect fees on notified agricultural produce bought or sold in the market area, subject to the provisions of the Rules and at the rate maxima and minima, from time to time prescribed. Thus, the power of the Market Committee to levy prescribed fees is envisaged in the above section. In juxtaposition to the above section, it is necessary to refer to Rule 48 of the Rules, and more particularly Rules 48 and 49, placed in Part VI with heading 'Fees, Levy and Collections', pertaining to market fees. Rule 48, sub-rule (1) and the explanation is highlighted by the learned Single Judge and discussion has taken place on the basis of certain material available on record with regard to sale of castor seeds by one Manish Trader of Ahmedabad to the Company and after relying upon Sections 19 to 22 of the Sale of Goods Act, the learned Single Judge found that sale does take place within the market area and, therefore, the Company is liable to pay market fees. However, sub- rule (2) of Rule 48 of Part VI of the Rules clearly prescribes that no fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial

concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been obtained in Form V. Thus, the above sub-rule (2) of Rule 48 nowhere prescribes that agricultural produce brought from outside the area of market committee has to be by the industrial concern itself. The preceding word is 'brought' and not 'bought'. Even the facts of the present case are examined, nowhere it is mentioned that purchase took place within the area of the market committee. In the affidavit in reply filed by the Company, it is clearly mentioned that purchase of castor seeds did take place outside the market area and no sale takes place within the market area. Even, weighment, etc. is also done outside the market area and bills are prepared accordingly and, that too, after selection by the representative of the Company. Not only that, but, the Company has produced bills of one Manish Traders at page 109 of Letters Patent Appeal No.195 of 2006, having numbered as Bill No.93, dated 3rd May 2004, is clearly indicative of the fact that sale does not take place within the area of Market Committee, Baroda. Besides, the octroi paid to the Baroda Municipal Corporation on the goods, namely, castor seeds imported and produced at page 107 is also suggestive of the fact that sale does not take place within the area of market committee. Even, the Company has produced number of forms prescribed under Rule 48, sub rule (2) from page 79 to 86, the fact not denied by the Market Committee, which also establishes the case of the Company with sufficient declaration and a certificate that the abovementioned agricultural produce, namely, castor seeds, has been brought from outside the limits of the market area and brought within the limits of market area for industrial purpose, and for production of castor oil and other byproducts. Thus, the Company fully complied with the requirement of Rule 48 of the Rules and is entitled for exemption from payment of market fees. Therefore, exercise undertaken by the learned Single Judge to find out the place of sale, so as to bring the case of the Company under Rule 48, subrule (1) of the Rules, is of no help and the finding, on that basis, arrived at by the learned Single Judge, will have to be quashed and set aside in the backdrop of the above discussion and the fact situation."

27. Thereafter the amended provisions of Sections 28A and 31D of the Act are referred to by the Division Bench along with Section 28(1) of the Act and Rule 48(2) of the Rules as well as sub-sections 2(a)and (b) of Section 28 of the amended provisions of the Act to come to the conclusion, that in view of the factual legal situation, the Revisional Authority had rightly interfered with the demand notices

issued by the APMC and therefore held that Civil Appeal filed by the APMC lacks merit and dismissed the same and the interim relief granted was set aside and consequently Rule was also discharged. The correctness of the same is challenged here by urging various questions of law and grounds in support of the same. The same need not be adverted to in this judgment for the reason that the learned Division Bench of the Gujarat High Court while examining the directions in interim order dated 13.11.2008 given in Special Civil Application No. 9705 of 2008 filed by the APMC has gone into the merits of the case. Considerable reliance was placed upon the Division Bench Judgment in Letters Patent Appeal No. 139 of 2006 by the counsel for the respondent- Company, contending that the amendment Act has not brought any change to Section 28 of the Act and further submitted that the Revisional Authority has rightly held that the APMC has no legal right to levy market fee on the respondent-Company. The appellant-APMC in this appeal has submitted that the Division Bench of the High Court, instead of examining the correctness of the discretionary powers exercised by the learned single Judge in Special Civil Application No. 9705 of 2008 and passing the interim order with certain observations, has passed the orders on merits of the civil application without adverting and examining the grounds urged in the petition, which approach of the Division Bench is not correct and it should not have pronounced decision on the merits of the Special Civil Application while examining the correctness of the interim order passed by the learned single Judge. The APMC has also sought declaratory relief to declare Rule 48(2) as ultra vires to Section 28A of the amended provision of the Act and submitted that the Division Bench of the High Court failed to appreciate the same and also that Section 28 of the Act deals with levy of market fee which is a mandatory provision that does not give any exemption to respondent-Company and as such a Rule cannot override provisions of the Act. The Division Bench of the High Court has simply affirmed the order of the Revisional Authority by setting aside the assessment order passed by the APMC vide notices dated 5.03.2008 and 15.4.2008 without awaiting the decision to be rendered by the learned single Judge on the legality and validity of the Rule 48(2) in the backdrop of Section 28, of the amended provision.

28. After hearing learned counsel for the parties, we have pronounced the judgment today in Civil Appeal No. 3130 of 2008 on similar demand notices demanding the market fee from the respondent-Company on the castor seeds bought in the market area for the purpose of manufacturing of oil. We hold that the demand for the market fee made by the APMC for castor seeds is justified as per the reasoning given in our judgment in the connected Civil Appeal No. 3130 of 2008, that the castor seeds were bought in the market area and not brought into the market area. It would suffice to say that the order dated 10.02.2009 of the Division

Bench of the High Court in Letters Patent Appeal No. 1383 of 2008 setting aside the order dated 13.11.2008 of the learned single Judge in Special Civil Application No. 9705 of 2008 and affirming the order dated 30.06.2008 of the Revisional Authority in Revision Application No.69 of 2008, without examining the correctness of Rule 48(2) of the Rules and applying the Division Bench Judgment rendered in Letters Patent Appeal No 139 of 2006 without considering the factual matrix and therefore, the same is liable to be set aside. Accordingly, we set aside the same and remand the matter to the High Court to place the matter before the roster of learned single Judge to examine the validity of Rule 48(2) of the Rules, as questioned with reference to Section 28A of the amended provision of Act No. 17 of 2007 and the impugned order of the Revisional Authority. The appellant may also approach the State Government to amend the Rules by deleting Rule 48(2) of the Rules. It is open for the appellant to either press the Special Civil Application to be decided on merits with regard to the validity of Rule 48(2) and also examine the impugned order of levying market fees on the goods purchased by the respondent-Company on the basis of facts and material evidence or to make revision application to the State Government seeking for the deletion of Rule 48(2) by amending the Rules with the above said observation.

29. This Civil Appeal is accordingly allowed in the above terms by setting aside the impugned order of the Division Bench and remanding the matter to the High Court to place the same before the roster of learned single Judge with a request to him to examine the validity of the impugned Rule if the APMC so desires and the impugned order passed by the Revisional Authority and decide the same on merits. The interim directions given by the learned single Judge by way of interim order dated 13.11.2008 directing to deposit 50% of the demanded amount towards the market fee is restored. If the company has not complied with that interim order, it shall comply with the same within two weeks from the date of receipt of the copy of this judgment.

[1] AIR 1935 PC 182
[2] AIR 1997 SC page 2502
[3] 1994 Supp (2) SCC 496
[4] (1994) Supp (2) SCC 496