

CGST/Rajasthan GST/Market fee : Even under GST regime State Government of Rajasthan has power to charge market fee under provisions of Rajasthan Agriculture Produce Marketing Act, 1961 from dealers engaged in sale and purchase of timber

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HIGH COURT OF RAJASTHAN

Imarti Lakdi Vyapari Sansthan, Jodhpur

v.

State of Rajasthan*

SANGEET LODHA AND DINESH MEHTA, JJ.

D.B. CIVIL WRIT PETITION NO. 1451 OF 2018

OCTOBER 29, 2018

Section 9, read with section 174, of the Central Goods and Services Tax Act, 2017/Section 9, read with section 174, of the Rajasthan Goods and Services Tax Act, 2017 - Levy and collection of tax - Members of petitioner-society were engaged in purchase and sale of timber, i.e., imarti lakdi - Petitioner filed writ petition seeking a declaration to effect that State of Rajasthan had no power to charge tax/cess payable under provisions of Rajasthan Agriculture Produce Marketing Act, 1961 from its members - Whether State Government of Rajasthan has power to charge market fee from members of petitioner even after promulgation of Goods and Services Tax Act - Held, yes [Para 15] [In favour of revenue]

(NR)

FACTS

- The members of petitioner-society were engaged in purchase and sale of timber, *i.e.*, imarti lakdi.
- The petitioner filed a writ petition seeking a declaration to the effect that the State of Rajasthan had no power to charge tax/cess payable under the provisions of Rajasthan Agriculture Produce Marketing Act, 1961 from its members.

HELD

- The entire edifice of the petitioner's case is based on the assumption that the impugned levy under the Act is a 'cess'. Such foundation is clearly contrary to the very provisions of the Statute and law on the subject. [Para 6]
- Levy under section 17 of the Act is a 'fee'. [Para 7]
- It is a settled proposition of law that the State can levy market fee under the relevant provisions of a statute, enacted in exercise of powers available to it under Entry No. 66 of the Second List of the VII Schedule. It has also been settled by the Supreme Court in the case of *Sreenivasa General Traders v. State of Andhra Pradesh* AIR 1983 SC 1246 that irrespective of the fact, whether a dealer carries on business or

trade in the market yard or not, the agriculture produce brought by such dealer in the notified area is exigible to market fee, leviable under the Act. [Para 8]

- Adverting to the second argument of the petitioner that timber is a forest product and not an agricultural produce attracting cess or fee, suffice it to observe that this stand too is totally contrary to the provisions contained in the Act. Section 2(i) unequivocally provides that items mentioned in the Schedule shall be treated to be an agricultural produce. Product 'timber' has been specifically enumerated at Serial No.9 of Schedule appended with the Act. This being the fact situation, the timber or *imarti lakdi* is unquestionably an agricultural produce, exigible to *mandi* fee under the Act. [Para 9]
- Moving on to the last point of the petitioner that after promulgation of Goods and Services Tax Act, the levy of cess under the Act cannot continue, even this argument is misconceived. [Para 11]
- The Constitution (One Hundred and First Amendment) Act, 2016 was enacted by the Parliament with the intent to consolidate number of indirect taxes which were levied by the Union and States with the intention to reduce the Goods and Services Tax by giving concurring taxing power to Union and States for levying GST on every transaction of supply of goods or services both. There was a clear objective of the aforesaid constitutional amendment that with the introduction of GST, not only the indirect taxes but the cesses and surcharges levied on goods and services shall also be subsumed in it. [Para 12]
- On the advent of GST regime with respect to the Indirect Taxes, under Entry No. 66 of concurrent list, all earlier taxes being levied and collected by the Central Government such as Central Sales Tax, Services Tax, Excise Duty, etc. have been brought under one umbrella *viz.* Central Goods and Services Tax Act, 2017; whereas the State levies such taxes as Sales Tax, Entry Tax, etc. have been subsumed in the State GST Act. Both those enactments contain a repeal and saving provision in the form of section 174, enumerating various taxes which have been done away with. [Para 13]
- By a combined effect of section 174 of the Central Goods and Services Tax Act and section 174 of the Rajasthan GST Act, the levy governed by only those enactments have been abolished, which have been enlisted in said sections. The market fee leviable under the Act neither finds mention in any of the repeal and saving provisions, nor can it be so done, as the market fee is leviable under a separate enactment under the State's power to legislate under Entry 66 of the List II of the VII Schedule. [Para 14]
- In view of the aforesaid, the writ petition deserved to be dismissed. [Para 15]

CASE REVIEW

Sreenivasa General Traders v. State of Andhra Pradesh AIR 1983 SC 1246 (para 8) and *Vishwakarma Timber Mart v. State of Rajasthan* 1984 WLN 402 (para 10) followed.

CASES REFERRED TO

Sreenivasa General Traders v. State of Andhra Pradesh AIR 1983 SC 1246 (para 8), *Vishwakarma Timber Mart v. State of Rajasthan* 1984 WLN 402 (para 10).

H.R. Soni for the Petitioner.

JUDGMENT

1. The petitioner, a Society registered under the provisions of Society Registration Act, 1958 (hereinafter referred to as 'Petitioner Society') has preferred the present writ petition, seeking a declaration to the effect that respondent-State has no power to charge tax/cess payable under the provisions of Rajasthan Agriculture Produce Marketing Act, 1961 (hereinafter referred to as the 'Act of 1961') from its members.
2. Mr. Soni informing that the members of petitioner society are engaged in purchase and sale of timber (Imarti Lakdi), asserted that they are having their shops and godowns etc. outside the Mandi yard and they do not avail any of the facilities or services provided by the respondent - Mandi.
3. Having laid the factual foundation, learned counsel contended that the cess on purchase and sale of timber from the members of the petitioner society is illegal, as the same is not an agricultural produce. While maintaining said argument, he contended that after the introduction of Goods and Service Tax, the impugned cess cannot continue. In a bid to lend support to such argument, he invited attention of the Court towards a booklet published by the State Government, which contain an information that after imposition of GST, all cesses and surcharges levied by the State Government and Central Government shall be done away with.
4. It has also been a contention of learned counsel that as the shops and godowns of the members of petitioner society are not situated in the Mandi yard and because they do not avail any of the facilities or services provided by the respondent-Agriculture Market Committee, such levy and recovery of Mandi cess from the members of the petitioner society is arbitrary and violative of Article 14 of the Constitution of India on the one hand and is a fetter on their right to carry on trade and business, which stand guaranteed by Article 19 (1) (g) of the Constitution of India.
5. We have heard learned counsel for the petitioner and perused the material available on record.
6. At the outset, we may observe that the entire edifice of the petitioner's case is based on the assumption that the impugned levy under the Act of 1961 is a 'Cess'; such foundation is clearly contrary to the very provisions of the Statute and law on the subject.
7. Levy under Section 17 of the Act of 1961 is a 'fee'.
8. It is a settled proposition of law that the State can levy market fee under the relevant provisions of a statute, enacted in exercise of powers available to it under Entry 66 of the second list of the VIIth Schedule. It has also been settled by Hon'ble the Supreme Court in the case of *Sreenivasa General Traders v. State of Andhra Pradesh* AIR 1983 SC 1246 that irrespective of the fact, whether a dealer carries on business or trade in the market yard or not, the agriculture produce brought by such dealer in the notified area is exigible to market fee, leviable under the Act. The relevant excerpts from the said judgment runs as under:—

'22. There is a fallacy underlying the argument that since the services are rendered by the market committees within the market proper, there is no liability to pay a market fee on purchase or sale taking place in the notified market area but outside the market. The contention does not take note of the fact that the establishment of a regulated market for the purchase or sale of notified agricultural produce, livestock or products of livestock is itself a service rendered to persons engaged in the business of purchase or sale of such commodities. The duty of a market committee constituted under Sub-section (1) of Section 4 of the Act does not end with establishing such number of markets in the notified market area under the first part of Sub-section (3) but also extends to the providing of such facilities in the market as the Government may from time to time by general or

special order specify under the second part of Sub-section (3). In exercise of their powers under Section 33 of the Act, the State Government have framed the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969. Chapter V relates to 'Regulation of trading'. It would appear that Rules 48 to 53 are the machinery provisions for controlling the trade in notified agricultural produce, livestock and products of livestock in a notified area while Rules 54 to 73 impose restrictions on the carrying on of all such trade in such area. It is clear from the provisions of Section 15 of the Act that the services to be rendered by the market committee and facilities to be provided are not confined to the market proper but extend throughout the notified area.

We find that Chinnappa Reddy, J. speaking for himself and Jeevan Reddy, J. in *Immidiseti Ramakrishnaiah & Sons, Anapalli, represented by I. Ramakrishana Rao and Ors. v. The State of Andhra Pradesh*, represented by its Secretary, Food & Agricultural by Penta Kota Sitaram and Ors. I.L.R. [1976] A.P. 878 repelled a similar contention and observed :

The argument proceed on the assumption that sales and purchases of notified agricultural produce, livestock and products of livestock in a notified market area could take place even outside the market. That is an unfounded assumption. Section 7(6) of the Act prohibits sales or purchases of notified agricultural produce, livestock and products of livestock outside the market. It says "notwithstanding anything in Sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area outside the market in that area." Another unfounded assumption of the learned Counsel was that the activities of the market committee and the facilities provided by it were confined by Act to the market area only. The establishment, maintenance and improvement of the market is one of the purposes for which the market committee fund might be expanded under Section 15 of the Act. The other services such as the provision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock, schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to schemes for such extension or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agricultural produce, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc., are not services which are confined to the market area only. They are services which are required to be performed by the market committee and which may be rendered throughout the notified market area without being confined to the market.'

9. Adverting to the second argument of the petitioner that timber is a forest product and not an agricultural produce attracting cess or fee; suffice it to observe that this stand too is totally contrary to the provisions contained in the Act of 1961. Section 2 (i) of the Act of 1961, unequivocally provides that items mentioned in the Schedule shall be treated to be an agricultural produce. Product 'timber' has been specifically enumerated at Serial No.9 of Schedule appended with the Act of 1961. This being the fact situation, the timber or 'Imarti Lakdi' is unquestionably an agricultural produce, exigible to Mandi fee under the Act of 1961.

10. Our aforesaid view is fully fortified by the judgment of Division Bench of this Court in the case of *Vishwakarma Timber Mart v. State of Rajasthan* 1984 WLN 402, which reads as:—

'Under the definition of "agricultural produce" it cannot be said that the 'timber' is wholly unconnected with the agricultural produce and, therefore, no ground is made out for striking down this item. In any case the timber (imarti lakdi) is a notified item in the Schedule and comes within the legislative competence and is covered by the words "or otherwise" in the Schedule, as defined in the definition of "agricultural produce'.

11. Moving on to the last point of the petitioner that after promulgation of Goods and Service Tax, the levy of cess under the Act of 1961 cannot continue; we are constrained to observe that even this argument is misconceived.

12. The constitution (One Hundred and First Amendment) Act, 2016 was enacted by the Parliament with the intent to consolidate number of indirect taxes which were levied by the Union and States with the intention to reduce the Goods and Services Tax (GST) by giving concurring taxing power to Union and States for levying GST on every transaction of supply of goods or services both. There was a clear objective of the aforesaid constitutional amendment that with the introduction of Goods and Services Tax, not only the indirect taxes but the cesses and surcharges levied on goods and services shall also be subsumed in it.

13. On the advent of GST regime with respect to the Indirect Taxes, under entry 66 of concurrent list, all earlier taxes being levied and collected by the Central Government such as Central Sales Tax, Service Tax, Excise Duty etc. have been brought under one umbrella viz. Central Goods and Service Tax Act, 2017; whereas the State levies such taxes as Sales Tax, Entry Tax etc. have been subsumed in the State GST Acts. Both those enactments contain a repeal and saving provision in the form of Section 174, enumerating various taxes which have been done away with.

14. By a combined effect of Section 174 of CGST Act and RGST Act, the levy governed by only those enactments have been abolished, which have been enlisted in said sections. The market fee leviable under the Act of 1961 neither finds mention in any of the repeal and saving provisions, nor can it be so done, as the market fee is leviable under a separate enactment under the State's power to legislate under Entry 66 of the List-II of the VIIth Schedule.

15. Viewed from any angle, we do not find any substance in the petitioner's case. The writ petition is therefore dismissed in limine.

s.k. jain

*In favour of revenue.