Plywood Association and Others Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: March 10, 2011

Acts Referred: Bihar Agricultural Produce Markets Act, 1960 â€" Section 15, 2, 2(1), 27, 3

Citation: (2011) 3 JCR 79

Hon'ble Judges: Bhagwati Prasad, C.J; D.N. Patel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J

1. Present Letters Patent Appeal has been preferred against the judgment delivered by the learned Single Judge in Civil Writ Jurisdiction Case No.

4230 of 2000 dated 7th December, 2001 whereby, writ petition preferred by the present"" Appellants has been dismissed and therefore, the

present Letters Patent Appeal has been preferred.

2. Important issue raised in this Letters Patent Appeals:

Whether market fee can be levied and collected u/s 27 of Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to for the sake of

brevity as the Act, 1960''), by the Respondents-Dhanbad Market Committee on plywood, ply board and ply without any notification issued by the

State Government under Sections 3 and 4 of the Act, 1960 in relation to plywood, ply board and ply.

3. Factual Matrix

(i) Bihar Agricultural Produce Market Act brought into force with effect from the year, 1960 with a view to have organized markets of agricultural

and allied commodities.

(ii) The Act was enacted on 6th August, 1960 to provide for the better Regulation of buying and selling of agricultural produce and the

establishment of markets for agricultural produce in the State of Bihar (old Bihar) and for the matter connected therewith.

(iii) Appellant No. 1 is an Association of dealers situated in district of Dhanbad and Bokaro of the State of Jharkhand. Appellant Nos. 2 to 15 are

dealers of Dhanbad, who are dealing in finished manufactured products namely plywood, ply board and ply.

(iv) The State vide S.O. No. 2561 dated 31st August, 2000 added plywood, ply board, ply patti, core and veneer in the schedule appended to

the Bihar Agricultural Produce Markets Act, 1960 u/s 39 of the said Act. By virtue of this notification, the Market Committee started realising

market fee from Appellants and Ors. in respect of sale/purchase of plywood, ply board, ply patti, core, fali and veneer. Wood" was already

notified as Item No. XII Miscellaneous at Serial No. 15, "Bamboo" at Item No. 14 and "Wood Dhoop" at Item No. 16. These entries were

already in existence before 31st August, 2000. As the Market Committee has issued notices in December, 2000 demanding market fees from the

Appellants, a writ petition was preferred which was dismissed and therefore, the present appeal has been preferred mainly on the ground that

without issuing notifications under Sections 3 and 4 of the Act, 1960, market fees cannot be imposed and levied from the Appellants.

4. Arguments of the Appellants.

(i) It is submitted by the counsel for the Appellants, Mr. R.K. Agrawal, that Sections 3 and 4 prescribes issuance of notification and declaration of

the market area for exercising control over purchase, sale, storage and processing of agricultural produce in any market area. Unless and until

notifications have been issued under Sections 3 and 4 of the Act, 1960, market fee cannot be imposed and levied by the Market Committee.

(ii) It is further submitted by the counsel for the Appellants that previously also, the Schedule to the Act, 1960 has been amended by the State

Government and thereafter, notifications have been issued under Sections 3 and 4 and thereafter only, the market fees has been levied. Unless the

regulatory provisions have been invoked, No. market fee can be levied from the Appellants.

(iii) Counsel for the Appellants has relied upon several decisions including The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., ;

Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others, ; Govindlal Chhaganlal Patel Vs. The Agricultural Produce

Market Committee, Godhra and Others, ; Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., .

(iv) It is also submitted by the counsel that under Sections 3 and 4, opportunity of hearing is enshrined. Traders must be given opportunity to raise

objections before imposing and levying market fees upon sale/purchase of added commodity in the Schedule, to the Act. 1960.

5. Arguments of the Agricultural Produce Market Committee:

(i) It is submitted by the counsel for the Agriculture Produce Market Committee that originally, commodity "Wood" has already been specified in

the Schedule to the Act. 1960 and now vide S.O. No. 2561 dated 31st August, 2000 plywood, ply board, ply patti, core and veneer have been

added in the Schedule in exercise of powers u/s 39 of the Act. Appellants are dealing in plywood, ply board and ply within the market area. It is

submitted by the counsel for the Market Committee that for every additional item in the Schedule there is No. legal requirement of publication of

the notification under Sections 3 and 4 of the Act. Once the market'' area is fixed, there is No. need of the publication of the notifications again and

again. Section 4-A and 4-B have been inserted in the Act, 1960 by Bihar Act 4 of 1993. This amendment has been brought into effect from 6th

August, 1960. Counsel for the Market Committee has also relied upon several decisions including reported in 1999 (3) PLJR (SC) 93; (2001) 3

SCC 135 and Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., .

(ii) It is also submitted by the counsel for the Market Committee that in fact, Wood'' includes plywood, ply board and ply. Entry of ''Wood'' was

already in existence prior to the year 2000 for which there was already a notification under Sections 3 and 4 and therefore, in view of the decisions

as stated hereinabove, the Appellants are liable to make the payment of market fees. Now Section 4-A and 4-B have been inserted and therefore,

after insertion of these sections for every addition of item in Schedule to the Act, 1960 there is No. need for issuance of notification under Sections

3 and 4 and hence also, the Appellants are liable to make the payment of market fees.

(iii) Counsel for the Market Committee has also taken this Court to various provisions of the Act, 1960 and pointed out that ''Market Area defined

u/s 2(i) is a bigger area wherein, ''Principal Market Yard'' is situated as defined u/s 2(0) and ''sub-market yard'' is a much smaller area as defined

u/s 2((t). Notifications under Sections 3 and 4 are necessarily to be issued when for the first time the Government intends a Regulation in purchase,

sale, storage and processing of agricultural produce in such area as may be specified in the notification. Once the market area is fixed by the

notification for every addition of the entries in the Schedule u/s 39, notification under Sections 3 and 4 is not required.

6. Arguments of the State Counsel:

(i) It is submitted by the counsel for the State that looking to the provisions of the Act, 1960 especially Section 2(1)(a) and looking to the decisions

rendered by the Hon''ble Supreme Court reported in 1999 (3) PLJR (SC) 93 and 2001 3 SCC 135, ''Wood'' includes plywood, ply board and

ply. Agricultural produce means, all produce of agriculture, whether processed or non-processed, manufactured or not. Plywood, ply board and

ply is a processed wood or manufactured out of wood and hence, the Appellants are liable to make the payment of market fees because entries

''Wood'' was already in existence prior to 2000.

(ii) It is further submitted by the counsel for the State that Schedule has been amended in the year, 2000 by S.O. No. 2561 dated 31st August,

2000 in plywood, ply board, ply patti, core and veneer added in the Schedule in exercise of powers u/s 39 of the Act. For every addition of the

entries there is No. need of any notification under Sections 3 and 4 to be issued by the State looking to the provisions of Sections 4-A and 4-B

inserted in the Act. Previously, several notifications have been issued under Sections 3 and 4 because of the law declared by the Court was

otherwise. Now, a judgment has been delivered by Hon''ble Supreme Court in the case of Sasa Musa Sugar Works etc. etc. Vs. State of Bihar

and others etc., and looking to paragraph Nos. 30, 31 and 32, there is No. need of issuance of notification under Sections 3 and 4 for every

addition of entries in the Schedule. Opportunity of being heard as envisaged under Sections 3 and 4 has not been contemplated for addition of

entries in the Schedule in exercise of powers u/s 39 of the Act and hence, the Appellants are liable for payment of the market fees under the

provision of the Act, 1960.

Reasons:

7. The Objects and Reasons of the Act, 1960 are as under:

The importance of properly organised markets of agricultural and allied commodities, though long recognised, has once again been emphasised by

the Planning Commission. They have recommended that all the States which have not done so should review the present position and draw up

suitable programmes for regulating all important wholesale markets during the Second Plan. The need for legislation for regulating markets is all the

greater in Bihar where the agriculturists have to depend In a large measure on the mercy of middlemen to whom they are obliged to sell their

produce as soon as the harvesting season is over. The Arhatiyas and wholesale buyers enter into a secret understanding to exploit the unwary

agriculturists and they prevent him from having correct information as to the current sale prices of agricultural produce with the result that the

agriculturist seldom gets a fair share of the price paid by the consumer for his produce. The main object of having regulated markets is to secure to

the cultivator better prices, fair weighment and freedom from illegal deductions. A fair deal for his produce is a good incentive for an agriculturist to

adopt improved agricultural programme.

The Act, 1960 was enacted for the purposes of Regulation of sale, purchase, storage and processing of particular agricultural produce mentioned

in the Schedule appended to the Act. The act also establishes the markets for agricultural produce and for matters connected therewith.

8. Sections 3 and 4 and the Notification issued thereunder:

(i) It is contended vehemently by the counsel for the Appellants that unless notifications have been issued under Sections 3 and 4, No. market fees

can be levied for the items in the Schedule appended to the Act, 1960. Sections 3 and 4 of the Act read as under:

3. Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area--(I)

Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare

its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the

notification.

(2) A notification under Sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a

period of not less than two months to be specified in the notification, shall be considered by the State Government.

4. Declaration of market area--(1) After the expiry of the period specified in the notification issued u/s 3 and after considering such objection and

suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by

notifications, declare the area specified in the notification u/s 3 or any portion thereof to be a market area for the purposes of this Act, in respect of

all or any of the kinds of agricultural produce specified in the notification u/s 3.

(2) On and after the date of publication of the notification under Sub-section (1), or such later date as may be specified therein, No. municipality or

other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or

within a distance thereof to be notified in the Official Gazette in this behalf set up, establish, or continue, or allow to be set up, established or

continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions

of this act, the rules and bye laws.

Explanation-xxxxxxxx

(3) Subject to the provisions of Section 3, the State Government may at any time by notification exclude from a market area any area or any

agricultural produce specified therein or include in any market area of agricultural produce included in a notification issued under Sub-section (1).

(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed.

(ii) It is also contended by the counsel for the Appellants that opportunity of being heard ought to be given before imposing and levying market fees

or addition of the entries in the Schedule. This contention is not accepted by this Court mainly for the reason that notification under Sections 3 and

4 will be required not for every additional entries in the Schedule, but, it requires when, for the first time the State declares its intention of regulating

the purchase, sale, storage and processing of agricultural produce and for that objections/suggestions will be invited and after the expiry of the

period specified in the notification issued under Sections 3, the objections and suggestions will be considered and after holding such inquiry, the

State Government may by notification declared the area specified in the notification under Sections 3 or any portion thereof to be a market area u/s

4. Thus, once the market area is fixed u/s 4, there is No. need of notification under Sections 3 and 4 for each and every item now to be added in

the Schedule, after insertion of Section 4-A to the Act, 1960. Counsel for the Appellants have pointed several notifications issued under Sections 3

and 4 issued from 1966 to 1992. All these notifications issued under Sections 3 and 4, which are referred to by the counsel for the Appellants, are

as under:

List of Notifications issued by the State Government from time to time u/s 3 as well as u/s 4 of the Markets Act in respect of Dhanbad market

Committee, prior to insertion of Section 4-A to the Act, 1960.

Sl. Notifications Notifications For regulation of sale, purchase,

No. issued u/s 3 issued u/s 4(1) storage and processing of the

& 4(3) agricultural produce mentioned

below.

(1) (2) (3) (4)

1. No. 6011 Agri. S.O. 159 datedPaddy, Rice, Wheat, Maize,

11 dated 5.2.70/22.4.70Gram (whole and dal), Barley,

14.4.66/18.5.66(Annexure-10 Khesari (whole and daft, Masoor

(Annexure-9 at at page 103) (whole and dal), Arhar (whole

page 96) and dal) Urad (whole and dal),

Arhar (whole and dal), Peas

(whole and dal), Moong (whole

and dal), Gur, Rape and

Mustered Seed, Mustard oil,

Cauliflowers, Onions, Cabbages,

Table Potatoes, Beans and

Tomatoes.

2. S.O. 949 dated S.O. 1385 All the agricultural produce

29.6.74 dated 9.9.74 included in the Schedule u/s 2(1)

(Annexure-9/A (Annexure-5 at(Ka)of the Act.

at page 99) page 42)

3. S.O. 997 dated S.O. 2045 dt. Jai, Jau Ka Atta (Barley Flour),

5.6.76 24.12.76 GhotiJau, Makai ka Atta (maize

(Annexure-9/B (Annexure-10 flour), Saboodana, Mudi, Bale,

at page 102) /A at page Mausami, Singhara

105) (chhilkasahitevambinachhilka ka

haraevamsukha), Satalu, Khira,

Kakri, Sahjan, Oal, Kanda,

Kundari, Aruhi, Khowa, Dahi,

Chuni, Chokarevam Tea (leaf

evam dust). Aforesaid items were

added in the Schedule by

Notification dt. 21.1.1976.

4(i) S.O. 1471 datedS.O. 149 datedAll the agricultural produce

14.10.81 22.1.82 included in the present Schedule

(Annexure-4 at (Annexure-5/Au/s 2(1)(ka) of the Act.

page 34) & 5/B at page

46&48)

(i) S.O. 458 dated S.O. 1187 dt. Do

20.3.1982 29.10.1984

(Annexure-5

/D at page 50)

5. No. 3028 datedS.O. 229 dt. Do

12.5.92 31.8.1992

(Annexure-4/B (Annexure-5 /E

at page 37) at page 52)

(iii) Bihar Agricultural Produce Markets Act, 1960 has been amended by Bihar Act 4 of 1993 and new Sections 4-A and 4-B have been inserted

with retrospective effect i.e. with effect from 6th August, 1960. By virtue of this amendment after 1996, there is No. need of issuance of

notification under Sections 3 and 4 for every addition of entry in the Schedule appended to the Act. If the State intends to change "Market Area"

[as defined in Section 2(1)], for any new entry in the Schedule, then only notifications under Sections 3 and 4 are required to be issued.

9. Amendment in the Act, 1960 by Bihar Act 4 of 1993 and Insertion of Sections 4-A and 4-B:

(i) Provision after 1993 of the Act, 1960 are now different by the virtue of insertions of Sections 4-A and 4-B by amending Act of Bihar Act 4 of

1993. This amendment has been made effective from 6th August, 1960. Sections 4-A and 4-B are as" under:

4-A. Sections 3 and 4 not to apply to Section 3.9.--(1) The provisions of Sections 3 and 4 snail not apply to the exercise of powers by the State

Government u/s 39 to amend the schedule by addition of any item of agricultural produce not specified therein.

(2) The State shall not order the deletion of any item in exercise of its power u/s 39 without giving an opportunity for hearing to the affected parties.

4-B. Validating of Market fee levied and collected.--Notwithstanding any judgment, decree or order of any Court to the contrary: any market fee

levied and collected shall be deemed to be valid as if such levy and collection was made under the provisions of this Act as amended by this Act

and notification No. 730, dated 2nd May, 1977 shall be deemed never to have been issued and No. suit or other legal proceedings shall be

maintained or continued in any Court for the refund of the fee collected under the provisions of this Act and No. Court shall entertain any

proceedings challenging the fee recovered or the continued levy and recovery of the fee merely on the ground that liability has ceased on the issuing

of the notification No. 730 dated 2nd May, 1977.

(Emphasis supplied)

In view of the aforesaid Sections inserted by Bihar Act 4 of 1993, now for addition of any item of agricultural produce, in the Schedule, provision

of Sections 3 and 4 are not applicable. It may happen that entries in the Schedule require to be modified looking to the static need of the society.

Modification may be brought by an addition or deletion of the entries in the Schedule in exercise of powers u/s 39. Looking to the provisions of

Section 4-A wherever any item is added in the Schedule in that situation Sections 3 and 4 are not applicable, but, so far as the deletion of entries is

concerned, while exercising powers u/s 39, it cannot be done without giving an opportunity of hearing to the affected parties.

(ii) It has been held by the Hon"ble Supreme Court in Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., in paragraph Nos. 30

and 32 as under:

30. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the

parties, it appears to us that unless agricultural produce is included in the Schedule to the Markets Act, the provisions of the Act have No.

application to such produce. An agricultural produce may find its place in the Schedule to the Markets Act as originally included by the Legislature,

or it may subsequently be added to the Schedule u/s 39 of the Act. Section 39 is the only provision in the Act which authorises the State

Government to add any item to the Schedule of the Act or delete any item therefrom. Section 39 being an independent provision, it does not

require sustenance from other sections. It operates on its own strength.

32. For drawing up the field of control by specifying agricultural produce in the Schedule so that control in respect of the same under other

provisions of the Act is made, No. hearing has been prescribed by the statute. In our view, such hearing is not contemplated because it may not

always be feasible or even desirable to give hearing for determining which produce is to be included in the Schedule. The wisdom in selecting the

field of control by including the produce in the Schedule was exercised initially by the legislature and thereafter such wisdom has been left to the

discretion of the delegated authority namely the State Government. It may be noted here that such hearing in the matter of selecting the field of

control by adding items is also not contemplated in the Essential Commodities Act.

(Emphasis Supplied)

In view of the aforesaid decision, No. hearing has been prescribed by the statute for drawing upon the field of control by specifying an agricultural

produce in the Schedule.

(iii) The argument which is canvassed today, was already canvassed in the aforesaid decision, which is referred to in paragraph No.24 (iv) of the

judgment. It was also argued in the aforesaid judgment that unless and until the provisions of Sections 3 and 4 and 15 are complied with, No.

market fees can be levied and as Section 4-A dispenses with the requirement of complying with the provisions of Sections 3 and 4 before market

fee can be validly levied on an agricultural produce, it is bad and void of being repugnant to the scheme of the Act and valuable rights of citizens

under Sections 3 and 4 have been taken away. This contention has not been accepted by the Hon"ble Supreme Court and it has been held in

paragraph 30 and 32, which are reproduced hereinabove, that hearing is not contemplated.

(iv) Section 39 of the Act reads as under:

39. Power to amend the schedule-- The State Government may, by notification, add, to amend or cancel any of the items of agricultural produce

specified in the Schedule.

In the facts of the present case, powers have been exercised for adding the agricultural produce viz. plywood, ply board, ply etc. in the schedule

while exercising powers u/s 39 and looking to the provisions of Section 4-A, the provisions of Sections 3 and 4 shall not apply while exercising

powers of the State u/s 39. The market area is not altered which is already notified by the State Authorities. Appellants are dealing in the

agricultural produce within the market area and therefore, there is No. need for issuance of fresh notifications every time under Sections 3 and 4

for every addition of entry of agricultural produce in the Schedule. All the notifications pointed out by the counsel for the Appellants, which have

been issued under Sections 3 and 4 are prior to the amending Act of 1993 and prior to the decision of Sasa Musa Sugar Works (supra), there is

not a single notification under Sections 3 and 4 issued by the State after the amendment in the Act, 1960 i.e. there is not a single notification issued

by the State under Sections 3 and 4 for addition of the entries in the Schedule after Section 4-A is inserted in the Act i.e. after 1993.

10. Addition of Entry u/s 39:

(i) Entry Wood" was added in the Schedule by Memo No. 2028 dated 12th February, 1972. For this item under Sections 3 and 4 the

notifications have been issued as admitted by the counsels for both the sides. Section 2(1)(a) defines agricultural produce. This definition reads as

under:

2(1)(a) ""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.

(Emphasis Supplied)

(ii) Thereafter, in the year 2000 by S.O. No. 228 dated 23rd October, 2000, plywood, ply board, ply etc. have been inserted in the Schedule

while exercising powers u/s 39 of the Act. Thus, despite the entry of the word "Wood" plywood, ply board etc. have been added in the year

2000, in fact, looking to the definition of "agricultural produce" Wood" includes plywood/ply board/ply, because "agricultural produce" means all

the produce whether processed or non processed, whether manufactured or not of agriculture, horticulture, plantation, animal husbandry, forest,

sericulture, pisciculture as specified in the Schedule. Annexure-7 to the petition gives manufacturing process upon wood. Grounds canvassed in the

writ petition are to the effect that wood and plywood/ ply board/ply are different. Therefore, plywood/ply board/ply are not covered in the entry of

Schedule viz. "Wood". This contention is diagonally opposed to the definition of "Agricultural Produce" given in Section 2(1)(a), therefore is not

accepted. The new item might have been manufactured from agriculture or forest. Sometimes it may be "commercially" another item, as per

concept of Excise Act. There may be change in physical appearance or chemical combination. But looking to wider definition of "Agricultural

Produce" all the produce, irrespective of fact that it (new product) is processed or manufactured of (out of) Agriculture or Horticulture or

plantation, animal husbandry, forest, sericulture, pisciculture, it (new product), will be "Agricultural produce", for all the purposes of the Act, 1960.

(iii) It has been held by the Hon"ble Supreme Court in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., paragraph

Nos. 131 and 150 are as under:

131. So far as the manufactured rice out of such paddy is concerned, once manufacturing takes place within the market area, it would get

squarely covered by the wide sweep of the definition of Section 2(1)(a), as we have seen earlier. Even apart from that, rice is mentioned as a

separate Item 2 in the category of "Cereals" in the Schedule of the Market Act. It cannot be disputed that rice manufactured out of basic

agricultural produce "paddy" would also remain agricultural produce falling within the sweep of the Act. So far as the Regulation of sale and

purchase of rice within the market area is concerned. Section 15 of the Act applies to the transactions of licensed dealers dealing with such

agricultural produce in the market area. Hence the entire machinery of the Market Act will be applicable to regulate transactions of sale and

purchase of paddy by the rice mills within the market area as well as sale of rice by them within that area as all these transactions will have to take

place in the market yard or sub-market yards as per Section 15 of the Act. However, one grievance voiced by learned senior counsel for the

Appellants deserves to be noted before parting with the discussion in these appeals. He submitted that there is No. power and authority in the

Market Committee to insist that the location of the rice-milling industries also should be changed and must be shifted to the market yard. In this

connection, our attention was invited to the notice (p. 156 of the paper-book) as a specimen notice. In the said notice addressed to Janta Rice &

Flour Mills issued by the advocate acting on behalf of the Secretary, Agricultural Produce Market Committee, Chakulia, in the last but one

paragraph, the addressee was requested to shift the establishment of business in the main market yard at Dighi of the Agricultural Produce Market

Committee, Chakulia within 7 days.

150. At first blush, learned senior counsel for the Appellant, Shri Shanti Bhushan appeared to be on a firm footing when he submitted that the

legislative intention underlying the enactment of the Market Act was to protect the illiterate and unwary agriculturist from middlemen so that he may

not be exploited by them and may get appropriate price for his basic agricultural produce. But on a closer scrutiny, the said contention does not

appear to be well sustained. Section 2(1)(a) of the Market Act, as seen earlier, includes in the definition of agricultural produce not only the

primary produce grown in the field but also covers all processed or non-processed, manufactured or non-manufactured agricultural produce as

specified in the Schedule. In the light of the aforesaid wide sweep of this definition, it cannot be said that tea leaves which are produced in tea

gardens being primary agricultural produce would cease to be agricultural produce once they got processed. After plucked tea leaves are

processed by roasting them and then by subjecting them to further process of blending and ultimately packing them in suitable packets they still

remain all the same agricultural produce so manufactured out of the basic agricultural raw material "tea leaves", it is also not in dispute that tea (leaf

and dust). is a scheduled item-Once that is so, sale of manufactured tea in a packed condition within the market area would squarely attract the

charge u/s 27 of the Act which, as noted earlier, is widely worded. The moment the agricultural produce as defined by Section 2(1)(a), is bought

or sold in the market area, Section 27 would get attracted to cover such transaction. It is also pertinent to note that Section 15 Sub-section (1) of

the Act is applicable in the present case to cover such transactions of sale of packed tea within the market areas of the Market Committees

concerned governed by the Act. Save and except such quantity as may be prescribed for retail sale or personal consumption to be outside the

sweep of Section 15(1) of the Act, the rest of these sale transactions regarding manufactured agricultural produce would remain governed by the

sweep of the Act. On a conjoint reading of Section 2(1)(a) and Section 15 and the relevant entry in the Schedule, there is No. escape from the

conclusion that whether the manufactured agricultural produce has undergone manufacturing process within the market area or not or whether such

agricultural produce in its raw form is grown in the market area or outside or whether the processed "agricultural produce" is imported only for sale

within the market area, the applicability of the Act cannot be said to be ruled out to cover all these types of sale transactions. The question posed

by Shri Shanti Bhushan, learned senior counsel appearing for the Appellant for our consideration is No. longer res integra. A Constitution Bench of

this Court in the case of Ram Chandra Kailash Kumar and Company v. State of U.P., speaking through Untwalia, J., had to consider the question

of imposition of market fee under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 on transactions of purchase and sale of agricultural

produce in the market area. While considering this question, various contentions raised by traders operating in the agricultural market in U.P. were

listed in para 9 of the Report. Contentions 9 and 23 listed in para 9 of the Report are relevant for our purpose. Contention 9 reads as under: (SCC

p.38, para 9)

9. (9) No. market fee could be levied on goods not produced within the limits of a particular market area and if produced outside and brought in

such area.

Contention 23 reads as under: (SCC p.39, para 9)

9. (23) Fee can be charged only on those transactions in which the seller is producer and not on any other transaction.

Repelling these contentions, the Constitution Bench held that market fee could be levied on transactions of sale of goods even though such goods

are produced outside the State of Uttar Pradesh or outside the market area of that particular Market Committee, provided the transactions of sale

take place within the limits of that market area. It was also held that, on the other hand, there was No. provision in the Act or the rules to limit the

operation of the law in a particular market area only in respect of the agricultural produce produced in that area.

(Emphasis Supplied)

Thus, the ''tea'' manufactured out of ''tea leaves'' has been held to be an agricultural produce, even though ''manufactured tea'' is obtained by

several processes performed upon the ''tea leaves''.

in view of the aforesaid decision Wood'' includes plywood, ply board, ply because it is a produce by processing the wood. It is manufactured out

of wood.

(iv) Similarly, it has been held by the Hon''ble Supreme Court in the case of Park Leather Industry (P) Ltd. v. State of U.P. and Ors., reported in

(2001) 3 SCC 135, in paragraph Nos. 5, 19, 20 and 21 as under:

5. The question which had been raised in the writ petitions and which is raised here is whether the term ''hides and skins'' includes ''tanned

leather''. Mr. Sudhir Chandra has submitted that admittedly the term tanned leather'' has not been used either in the Act or in the Schedule. He

admits that u/s 2(a), not just the items which have been specified in the Schedule but also an admixture of two or more such items or any of those

items in a processed form, would also be included. He, however, submits that tanned leather is not ''hide or skin'' and is not derived by processing

''hide'' or ''skin''. He submits that tanned leather'' is a manufactured commodity. He submits that ''tanned leather'' is an entirely different commodity

from ''hide'' or skin''.

19. We have considered the arguments of both the parties. In our view it is clear that the interpretation has to be on the basis of the expression

''agricultural produce'' as set out in Section 2(a) of the said Act. In so determining decisions based on different statutes, statutes such as sales tax

laws can be of No. assistance. All the cases relied upon by Mr. Sudhir Chandra are cases under the taxing statutes where the interpretation has

been given on the basis of the terms as defined in those statutes.

20. A perusal of Section 2(a) of the said Act makes it clear that an agricultural product would be a product which is specified in the Schedule or

one which is admixture of two or more items and would also include any such item in a processed form. In our view It makes No. difference, for

the purposes of the said Act, that the item concerned is a different commodity from the one which is included in the Schedule. It is possible that by

virtue of an admixture of two or more items or by virtue of processing a different commodity or item may come into existence. Even though a

different commodity may come into existence, it would still be an ''agricultural produce''. This is best illustrated by sugarcane which is in Schedule

A Item VIII at Serial No. 14. From sugarcane, ''rab'' and ''gur'' are manufactured. They are already different commodities or iteMs. Yet they are

all included. The specific inclusion of items like gur, rab, shakkar, khandsari and jaggery'' is to make it clear that merely because it becomes a

different item or commodity it is not excluded.

21. We see No. reason to go into the difference between ''manufacturing'' and ''processing''. In the strict sense of the terms there may be a

difference. However, we are not required to go into these differences as, in our view, it is very clear, from what has been set out by the Appellants

themselves in their affidavit that for hide and skin to be converted into leather or tanned leather all that is required is a process. It is a process of

cleaning, curing and adding preservatives. That it is a process has been held by this Court in the case of State of T.N. v. Mahi Traders. We are

also of the'' view that the finished product i.e. ''tanned leather'' even though it may have changed in physical appearance or chemical combination

and even though it may commercially be a different item still remains a ''hide'' or a ''skin''.

(Emphasis Supplied)

Thus, a ''hide'' or a ''skin'', even though has undergone several processes and ''tanned leather'' is manufactured and, thus, even though there is

change in physical appearance, still ''tanned leather'' remains a ''hide'' or a ''skin''.

In view of this decision also plywood, ply board, ply retains characteristics of ''Wood'' and as per definition of ''Agricultural Produce'' u/s 2(1)(a),

ply wood, ply board, ply are covered by entry Wood'' which was already inserted earlier in the year, 1972.

(v) Likewise in Belsund Sugar Company Ltd. (supra), in para 121 it has been held that ""Atta"", ""Maida"" and ""Suji"" though are commercially

different items, but looking to definition under Sections 2(1)(a), they are ""agriculture produce"". Para 121 reads as under:

121. So far as the alternative contention is concerned, he submitted that even though wheat is an agricultural produce, atta, maida, suji

manufactured out of the same cannot be said to be agricultural produce as they are produce of the factory and not of an agriculturist. This

contention of Shri Ranjit Kumar also cannot be sustained for the simple reason that agricultural produce as defined by Section 2(1), as already

noted earlier, would include all agricultural produce whether processed, non-processed or manufactured out of any primary agricultural produce.

Wheat is a produce of agriculture, therefore, any product resulting after processing such basic raw material or which results after process of

manufacture is carried on qua such basic raw material would remain agricultural produce. Shri Ranjit Kumar fairly stated that he has not challenged

the vires of Section 2(1)(a) but in his submission Items 14 to 16 as found in the Schedule to the Act under the caption ''Cereals'' are wrongly

included as agricultural produce as they are not produce of agriculture. The moment the artificial definition of agricultural produce as aforesaid

holds the field, as a logical corollary these three disputed items would squarely get covered by the sweep of the term ''agricultural produce'' and

hence their inclusion in the Schedule enacted u/s 2(1) (a) as types of cereals cannot be found fault with. These were the only contentions canvassed

by Shri Ranjit Kumar in support of his appeals. As they fail the inevitable result is that all the civil appeals would be liable to be dismissed.

(Emphasis Supplied)

Thus, ''atta'', ''maida'' or ''suji'', even though manufactured out of the primary agricultural produce, it remains agricultural produce as per Section

2(1)(a) and is covered by Entry ''Cereals''. Sometimes it may be ''commercially'', another item, but, looking to the definition of ''agricultural

produce'', it (new item) remains agricultural produce, even though it is manufactured or processed out of the Agriculture, Horticulture, Plantation,

Animal Husbandry, Forest, Sericulture or Pisciculture.

(vi) Section 2(i) defines Market Area, Section 2(o) defines Market Yard and Section 2(t) defines Sub Market Yard.

In view of these three terminology used in the Act, 1960 market area is a bigger area. It includes market yard and sub yards. Once a market area

is already notified and declared u/s 4 of the Act, every time for every addition of the agricultural produce in the Schedule of the Act, 1960, there is

No. need of issuance of notification under Sections 3 and 4. If State, intends to change "market-area" for any item to be added in the schedule,

then only, notifications under Sections 3 and 4 are required, otherwise not. Appellants are admittedly dealing in plywood/ply board/ ply etc. within

the market area and as per Section 15 of the Act there are restrictions for dealing in agricultural produce. Much has been argued out on the basis

of Section 15 that every additional entries, there must be a notification u/s 4(1), but, this contention is not accepted by this Court looking to the

provisions of Section 4-A coupled with the fact that there is No. alteration or addition in the market areas already declared u/s 4.

11. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the Appellants are liable to make the payments of market

fees as contemplated by the Agricultural Produce Market Committee. No. error has been committed by the learned Single Judge while

appreciating the aforesaid legal position and we find No. error in the judgment rendered by the learned Single Judge in C.W.J.C. No. 4230 of

2000 dated 7th December, 2001.

12. There is No. substance in this Letters Patent Appeal, hence, the same is hereby, dismissed.

13. L.P.A. No. 18 of 2002 is also disposed of for the aforesaid reasons.