
GTN Enterprises Limited, Spinning Division, Dharmapuram Road, Indira Nagar, Tungavi (P.O.) Udumalpet-642203 and Patspin India Limited, 2/85-B, Udumalai, Tirupur Road, Ponneri, Kottamangalam (P.O.) Udumalpet-642201 Vs The Superintendent, Regulated Market Committee and State of Tamil Nadu

Writ Petition No"s. 2650 and 2651 of 2009 and M.P. No"s. 1,1,2 and 2 of 2009

Court: Madras High Court

Date of Decision: Oct. 14, 2011

Acts Referred:

Central Sales Tax Act, 1956 â€” Section 5, 5(3)#Constitution of India, 1950 â€” Article 286#Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 â€” Section 2(20), 2(23), 24, 24(1), 3

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Vijay Narayan and Mr. R. Parthiban, for the Appellant; G. Sankaran, for R1 and Mr. R. Ravichandran, AGP for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The two Petitioner companies, who are engaged in the manufacture of Cotton Yarn in Tungavi and Kottamangalam Villages in Udumalpet Taluk

have filed the writ petitions, seeking for a direction to forbear the Respondents from demanding and levying market fee on the sale of Cotton

Waste, where such sale takes place in the course of export of Cotton Waste out of the territory of India.

2. When these matters came up for admission on 19.02.2009, this Court without admitting the writ petitions granted an order of interim injunction

restraining the Respondents from demanding and levying market fee on the sale of cotton waste. The interim order granted initially for a limited

period came to be extended from time to time.

3. Aggrieved by the grant of interim order, the Regulated Market Committee, Coimbatore at Udumalpet, the first Respondent herein filed vacate

stay application in M.P. No. 2 of 2009 in both the writ petitions and the same were yet to be taken up.

4. Heard the arguments of Mr. Vijay Narayan, learned Senior Counsel leading Mr. R. Parthiban, Learned Counsel for the Petitioners, Mr. G.

Sankaran, Learned Counsel for the first Respondent and Mr. R. Ravichandran, learned Additional Government Pleader for the second

Respondent State.

5. The contentions raised in the two writ petitions were identical. The two Petitioners were running textile mill engaged in the manufacture of cotton

yarn. In the process of manufacture, Cotton Waste generated is sold by the Petitioners to various buyers in Tamil Nadu. On the sale of the Cotton

waste, market fee is levied by the first Respondent in terms of Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act,

1987 (for short TNAPMR Act). It was contended that only if sale or purchase takes place within the notified market area, the first Respondent

will get jurisdiction to levy market fee. The Petitioner mills apart from the sales to various buyers in Tamil Nadu are also exporting certain quantities

of cotton waste to different importers in foreign countries. On such exports, market fee cannot be levied under the provisions of the TNAPMR

Act. The TNAPMR Act is made by the State Legislature and it cannot impose tax on sale or purchase of goods where the sale or purchase takes

place in the course of imports or exports of goods to or from the Territory of India. Article 286 of the Constitution prohibits the State legislature in

imposing such tax. However, the first Respondent issued orders claiming market fee on the value of Cotton waste exported by the Petitioners.

Thereafter, a consolidated order was also issued on the Petitioners. The Petitioners objected to the demands. Notwithstanding their objection, the

levy is insisted.

6. The Petitioners earlier filed a writ petition before this Court challenging the order of the first Respondent. This Court granted an interim stay on

condition that the Petitioners should deposit 50% of the amount demanded. The Petitioners have also complied with those orders. But however,

since demands were made for subsequent months, the Petitioners could not raise these issues. Therefore, they were allowed to withdraw the writ

petition. When subsequent levies were made, they have come forward to file the present writ petitions, challenging the action of the first

Respondent in levying market fee on export of Cotton waste. Heavy reliance was placed upon the embargo made under Article 286 of the

Constitution.

7. In reply to the stand of the Petitioners, the first Respondent in their counter affidavit dated 14.01.2009 stated that the validity of the Act was

upheld by a Division Bench of this Court in W.P. No. 2429 of 1992 dated 28.04.1994. The entire area of Coimbatore District has been declared

as notified area in respect of Cotton, Groundnut, Tobacco etc. u/s 4(1) of the TNAPMR Act. The term "Cotton" will include Cotton Kappas,

Cotton Lint, Cotton Waste as per schedule prescribed u/s 2(20) r/w Section 65 of the Act. The Petitioner Mills are licensees of the first

Respondent's Committee for purchasing, Stocking, Processing, Selling and Weighing in Cotton and Cotton Waste under the TNAPMR Act and

TNAPMR Rules, 1991. u/s 24(1) of the TNAPMR Act, the Market Committee is entitled to levy and collect fee on the notified agricultural

produce on advalorem basis at the rate of 1 % per every Rs. 100/- of the aggregate amount for which the notified agricultural produce (in the

present case cotton waste) is bought or sold or not exported within Thirty Days from the date of arrival from outside the State. The fee will have to

be paid by the Purchaser. In case, if the Purchaser cannot be identified, the fee shall be paid by the Seller.

8. It was further stated that the Supreme Court vide its judgment in Civil Appeal Nos. 3982 to 3984 of 1999 dated 02.03.2001 has held that the

traders are liable to collect Market fee from their purchasers and pay it to the Marketing Committee. The said decision has been followed

subsequently in various judgments of this Court. The Petitioners are collecting Market fee on sale of Cotton Waste from their purchasers and

paying Market Fee collected to the Respondent. They are also keeping Cotton Stock more than 3 months requirement of the Mills. The Petitioners

Mills are bringing Cotton lint from outside the State and the Country as per monthly cotton returns submitted by them to the Respondent and they

have reported the sale of Cotton Waste in those documents. While the Petitioners have paid for the sales within the State, they have not paid the

Market fee in respect of sale to the purchasers outside the Mill. The action of the Petitioners are in violation of Section 24(1) of the TNAPMR Act

because the Petitioners are purchasing Cotton Lint for the purpose of manufacturing Cotton Yarn only and not for export. When Cotton Yarn is

manufactured, up to 12 to 15% of Cotton lint comes out as Cotton Waste from various departments within the Spinning Mill. Such Cotton Waste

is being collected by the Mill Department wise and it is sold. This process will take more than 30 days from the time of arrival of the Cotton Lint

from outside the State or other country. The Committee is empowered to collect market Fee on the Agricultural Produce bought or sold or not

exported within 30 days from the date of arrival to the Petitioners Mill. The burden of proof that any notified agricultural produce is not liable for

the levy of fee is heavily on the Petitioners.

9. It was also submitted that the Petitioners in their earlier writ petition challenging such levy were directed to pay 50% of the levy as a condition

for grant of stay. After getting the stay and depositing 50%, they withdrew the miscellaneous petitions and further, they sought for time to deposit

the balance 50%. Instead of the paying the amount, they have come forward to file the present writ petitions and it is unfair on the part of the

Petitioners. Reliance placed upon the judgment of the Supreme court relating to commercial tax has no relevance to the case on hand. The Cotton

Waste generated by the Textile Mill is not a separate crop and it is covered by the Schedule u/s 2(20) of the TNAPMR Act. The Cotton Waste

collected in the Petitioners Mill Premises is only for sale and it is not brought from other state for the purpose of export. Therefore, there was no

case made out for interfering with the demand notice issued by the first Respondent.

10. Mr. Vijay Narayan, learned Senior Counsel in emphasising the prohibition contained under Article 286 of the Constitution referred to the

judgment of the Supreme Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, . In interpreting the object behind

Article 286 of the Constitution, in paragraph 40, the Supreme Court held as follows:

40... the Constitution-makers in Article 286 enacted restrictions on the power of the State Legislatures in regard to the imposition of tax on the sale

or purchase of goods and these restrictions were fourfold:

(1) State Legislatures were restrained from imposing a tax on the sale or purchase of goods where such sale or purchase took place outside the

State;

(2) The State Legislatures were restrained from imposing a tax on the sale or purchase of goods where such sale or purchase took place in the

course of the import of the goods into or export of the goods out of the territory of India;

(3) The State Legislatures were restrained from imposing a tax on the sale or purchase of any goods where such sale or purchase took place in the

course of inter-State trade or commerce except in so far as the Parliament might by law otherwise provide;

and (4) The State Legislatures were restrained from imposing a tax on the sale or purchase of any such goods as had been declared by Parliament

by law as essential for the life of the community unless such law had been reserved for the consideration of the President and had received his

assent.

These were the four restrictions which were put upon the powers of the State Legislatures to impose a tax on the sales or purchases of goods and

were imposed with different objectives in view.

11. The learned Senior Counsel further relied upon the subsequent judgment of the Supreme Court in State of A.P. Vs. National Thermal Power

Corporation Ltd. and Others, , wherein the Constitution Bench judgment of the Supreme court in Bengal Immunity"s case (cited supra) came to be

followed and in that judgment, they also dealt with the sale of goods in terms of the Central Sales Tax Act, 1956 vis-a-viz, the definition found in

Article 286 regarding levy of tax by State legislature. In paragraphs 15 and 16, the Supreme Court observed as follows:

15. The Central Sales Tax Act, 1956 was enacted to formulate principles for determining -when a sale or purchase of goods takes place in the

course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection

and distribution of taxes on sale of goods in the course of inter-State trade or commerce etc., as the preamble to the Act states. Clause (d) of

Section 2 defines ""goods"" (unless the context otherwise requires) to include all materials, articles, commodities and all other kinds of movable

properties, but not including newspapers, actionable claims, stocks, shares and securities. Section 3 of the Act, placed in Chapter II thereof,

provides as under:

CHAPTER

II FORMULATION of PRINCIPLES FOR DETERMINING

WHEN A SALE OR PURCHASE of GOODS TAKES

PLACE IN THE COURSE of INTER-STATE TRADE OR

COMMERCE OR OUTSIDE A STATE OR IN THE

COURSE of IMPORT OR EXPORT

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.-A sale or purchase of goods shall be

deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1.-Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of

Clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2.-Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods

from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

16. At this juncture, it would be appropriate to have a view of the legislative history. Explanation to Clause (1) of Article 286 generated some

controversy which led to the constitution of a larger Bench (seven-Judge strength) in *Bengal Immunity Company Ltd. v. State of Bihar* 3. The

larger Bench ruled by majority that an inter-State sale or purchase continues to be so irrespective of the State where the sale can be held to be

located under the general law or by the fiction created by the Explanation appended to Clause (1) of Article 286. The situs of a sale or purchase is

wholly irrelevant so far as its inter-State character is concerned. The larger Bench further ruled that until Parliament by law made in exercise of the

powers vested in it by Clause (2) of Article 286 provides otherwise, no State can impose or authorize the imposition of any tax on sales or

purchases of goods when any sales or purchases take place in the course of inter-State trade or commerce. To put in other words, it was held that

Explanation to Article 286(1) as it existed prior to the Sixth Amendment could not be applied for the purpose of interpreting Clause (2) of Article

286.

12. The learned Senior Counsel contended that the term "in the course of export" was given a wider connotation so as to include not only the

activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities. Reliance was

placed upon the following passage found in paragraph 10 of the judgment of the Supreme Court in *Ferro Alloys Corporation Ltd. Vs. Union of*

India and Others, :

10. Before we do so, we should make reference to the judgment of this Court upon which both sides have relied, namely, the Constitution Bench

judgment in *Mohd. Serajuddin v. State of Orissa* 1. This was the judgment that occasioned the amendment of Section 5 so as to introduce Sub-

section (3) therein. Analysing earlier decisions of this Court, various principles were laid down in *Serajuddin case*¹ to ascertain which was the sale

which occasioned the import. It was said that the sale which was to be regarded as exempt was the sale which caused the export to take place or

was the immediate cause of the export. To establish an export, a person exporting and a person importing were necessary elements and the course

of export was between them.

The introduction of a third party dealing independently with the seller on the one hand and with the importer on the other broke the link between

the two for then there were two sales, one to the intermediary and the other to the importer. The first sale was not in the course of export because

the export commenced with the intermediary. The expression "sale" in Section 5 of the Central Sales Tax Act had the same meaning as in the Sale

of Goods Act, 1930. The expression "in the course" implied not only a period of time during which the movement was in progress but postulated a

connected relation. Sale in the course of export out of the territory of India meant a sale taking place not only during the activities directed to the

end of exportation of the goods out of the country but also as part of or connected with such activities. Directions given to place the goods on

board a ship pursuant to the contract of sale were not in the course of export because, in the given case, the export sale was an independent one

with a foreign buyer. In such cases, the taking of goods from the Appellant's place to the ship was completely separate from the transit pursuant to

the export sale.

13. The learned Senior Counsel further contended that the nature of transaction i.e. whether it is inter-state or intra-state would depend upon the

factual scenario of the case under examination. He placed reliance upon the judgment of the Supreme Court in *State of Orissa and Another Vs.*

K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., and referred to the passages found in paragraphs 12 to 18.

14. Mr. G. Sankaran, Learned Counsel appearing for the first Respondent Regulated Marketing Committee submitted that in respect of levy on

agricultural produce brought within the territorial jurisdiction of the Committee, it is only the State legislature which is competent to pass laws and

even the Parliament does not have power. While dealing with the levy and collection of Market Fee on sale of Tobacco in market area covered by

the Bihar Agricultural Produce Markets Act, 1960 and Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, the Supreme Court

upheld the legislative competence of the State legislature and overruled the earlier judgment in I.T.C. Ltd. and Others Vs. State of Karnataka and

Others, . The view of the majority of the Constitution Bench in the decision reported in I.T.C. Limited Vs. The Agricultural Produce Market

Committee and Others, found in paragraph 201, is as follows:

201. In keeping with the conclusions of the majority, expressed in the judgments of Sabharwal, Ruma Pal and Brijesh Kumar, JJ., it is held that:

(1) ITC case¹ was not correctly decided.

(2) The State Legislatures are competent to enact legislation providing for the levy and collection of a market fee on the sale of tobacco in a market

area. Consequently, the Markets Acts enacted by the States are valid.

(3) The State legislations and the Tobacco Board Act, 1975, to the extent that they relate to the sale of tobacco in market areas, cannot coexist

and the former prevail over the latter.

15. The Learned Counsel further submitted that the levy charged by the Marketing Committee constituted under the TNAPMR Act is only a fee

and not a tax. In this context, he referred to the judgment of the Constitution Bench of the Supreme court in The Belsund Sugar Co. Ltd. Vs. The

State of Bihar and Others Etc., . Reliance was made to the following passage found in paragraph 105, which is as follows:

105... It has to be kept in view that the market fee levied under the Market Act is a ""fee"" and not a ""tax"". The Market Act insofar as it enacts

Section 27 levying market fee is referable to Entry 66 of the State List read with Entry 47 of the Concurrent List. Both of them deal with topics of

legislation pertaining to fees in respect of the matters enumerated in the respective lists.

16. The Learned Counsel further submitted that even if it is a fee collected by Marketing Committee, there need not be any element of Quid pro

quo in the services rendered by the Committee. For that purpose, he placed reliance upon a Division Bench judgment of this Court in Raja Palyam

Paruthi Panchu Sangam and Vs. State of Tamil Nadu and others etc. etc., . After referring to paragraph 23 from the said judgment, he submitted

that correlation between the levy of fees and services rendered is one of general character and not of mathematical exactitude. All that is necessary

is that there should be a reasonable relationship between the levy of fee and services rendered. Even such relationship need not be direct but a

mere casual relation may be enough. Neither the incidence of fee nor the services rendered need be uniform.

17. The Learned Counsel also contended that merely because the Petitioners exports a portion of the Cotton waste generated during the

manufacture of yarn from the Cotton lint that they are not bound to pay fee in respect of the goods sent for export cannot be accepted in the light

of Section 24(1) of the TNAPMR Act. The provision of Section 24 came to be interpreted by this Court in a batch of writ petitions in M/S. Sri

Ragavendra Traders rep. By its Partner A. Venkatachalam v. Salem Market Committee, rep. By its Special Officer and Ors. in W.P. No. 13521

of 1998 and batch cases. The matters were disposed of by a common order by S.S. Subramani, J. On 23.11.1998. Apart from holding that the

levy made by the Market Committee is only a fee and there is no element of quid pro quo involved in rendering service, the learned Judge in

Paragraph 18 observed as follows:

18 ...If we consider the scope of Section 24 of the Act, it can be safely concluded that even though the Petitioners may not receive cash at the

spot, if the goods are exported from the market area to other places, it is liable for levy. In this connection, the definition of "trader" as per Section

2(23) of the Act is also of some importance, according to which, "trader" means "a person who buys, sells, stocks, processes, treats or in any way

deals with any notified agricultural produce either for himself or as a partner or as an agent....

18. In the light of the rival contentions, it has to be seen whether the Petitioners had made out any case to seek for a direction as prayed for in the

two writ petitions.

19. The premises under which the two writ petitions were filed is largely based upon Article 286 of the Constitution. Article 286 as seen from the

earlier line of decisions deals only with levy of taxes and not a fee by the State legislature. The constitutional validity of constituting Agricultural

Produce Marketing Regulation has been upheld by the Supreme Court in more than one case. Even after holding that what was collected is only

fee, the element of quid pro quo has been negated in the line of decisions including the judgment in Agriculture Market Committee, Rajam and

Another Vs. Rajam Jute and Oil Millers Association, Rajam, . In paragraphs 21 and 23, the Supreme Court held as follows:

21. The observations noted above in Sreenivasa case⁴ have simplified our task to a great extent. It follows that while quid pro quo between levy of

fee and facilities provided in the notified market area is necessary, exactitude in such matters is neither required nor possible. The traditional view

about actual quid pro quo has undergone a sea change. The extent of service/amenities cannot have correlation with the fee levied. Secondly, the

market committees can continue their efforts for providing the amenities depending on availability of funds with them. It is not that all the required

services must be in place before a fee can be levied.

23. In the case in hand, the levy of market fee by the Market Committee was challenged only on the ground that no basic amenities or services

were provided in the notified market area and therefore the Market Committee had no right to levy, demand and collect the market fee. We have

noted from the evidence on record that the Market Committee had made provision for certain services and facilities in the notified market area and

efforts were being made for extending the services. The Market Committee had recently come into existence and completion of all the intended

services and facilities takes time. It has clearly emerged from the evidence of DW 1 that steps were being taken for extending the services and

facilities in the market area. The Plaintiff has led no evidence to contradict the Defendant's evidence. Whether particular services and amenities are

available at a given place and the extent thereof are questions of fact which require to be proved or demolished on the basis of evidence to be led

by the parties concerned. Since the Plaintiff has not led any evidence whether oral or documentary in support of its case, the Court is left with no

option but to accept the evidence of the Defendant which shows that some services and facilities in the notified market area were already available

while arrangements were being made for various other facilities and services. The foundation for the case set up by the Plaintiff is not available on

record. The law is well settled that though quid pro quo is required in relation to a fee which is charged and collected by a market committee, the

quid pro quo cannot be in exact proportion to the fee levied. Mathematical proportions are not possible in such matters. We have accepted that

some services and amenities were already provided for in the notified market area which fully justified the levy of market fee. We are thus unable

to agree with the finding of the High Court that the Market Committee had failed to provide any services or amenities in the notified market area.

The findings of the High Court are accordingly set aside. The appeal is allowed. As a result of this, the suit filed by the Plaintiff, Respondent herein,

shall stand dismissed. There will be no order as to costs.

Therefore, once the bar under Article 286 is not available for the fee levied by the local Marketing Committee (like the first Respondent), the fact

that the petitioners is exporting a portion of the Cotton waste generated while manufacturing yarn will not take away their obligation to pay the fee

to the local Marketing Committee.

20. The Petitioners are Traders within the meaning of the TNAPMR Act and the definition is held to be not merely action of purchasing of

particular goods, but it comprises of wide range of activities. In interpreting the similar provision found in Karnataka Agricultural Produce

Marketing (Regulation) Act, the Supreme court vide its judgment G. Giridhar Prabhu and Others Vs. Agricultural Produce Market Comtt., , in

Paragraph 17 observed as follows:

17. We are unable to agree with the submissions of Mr Sarangan. As can be seen from the Preamble the Act is to provide for better Regulation of

marketing of agricultural produce. In the Act certain exemptions have been given to the producer which exemptions have not been given either to

an importer or an exporter or a trader. These exemptions, therefore, have been given to the producer because the producer is the person who

produces the main agricultural produce. The main agricultural produce, which may be a notified agricultural produce, could then be converted into

various other notified agricultural produce/s by subjecting the same to a process or manufacture. The person who so processes or manufactures a

different notified agricultural produce would not be a producer. To be noted that an importer imports or causes goods to be imported into the

market area for the purpose of selling, processing, manufacturing or for any other purpose, except for one's own domestic consumption. Thus, it is

clear that a person who imports would not be a producer. The import would be for the purpose of selling or processing or manufacturing or for

any other purpose except for one's own domestic consumption. Similarly, the term ""exporter"" makes it clear that an exporter is not a producer. A

trader is also a person who buys notified agricultural produce for the purpose of selling or processing or manufacturing or for any other purpose

except for the purpose of domestic consumption. The definition of the term ""trader"" is not a restrictive definition. It is not restricted to a person who

only buys. If a person buys for domestic or personal consumption, then he would not be a trader. It is only when a person buys for the purpose of

selling or processing or manufacturing that he would become a trader. Thus a person may buy, process or manufacture and then sell. When he

processes or manufactures notified agricultural produce which he had bought, it may change its character and become another notified agricultural

produce. Thus, by way of examples, a person may buy milk and through processes make them into butter and/or cheese or a person may buy

hides and skins and by a process make it into leather. However, merely because a distinct and separate notified agricultural produce comes into

existence does not mean that the person who bought, processed and sold ceases to be a trader. The term ""trader"" encumbrances (sic embraces)

not just the purchase transaction but the entire transaction of purchase, processing, manufacturing and selling.

21. It was rightly stated by the Respondent that the Petitioners stocked Cotton lint more than 3 months the requirement and the Cotton waste

generated which constitute 10 to 15% of the manufactured yarn are sold by them in the open market to the traders both from inside and outside

the country. The mills are located within the Regulated Marketing Committee and once the products are sent out of the Marketing Committee by

way of sale, it is liable for levy of fee by the Marketing Committee and there is no distinction between the sale within the country and outside the

country. In the matter of payment of fee, as already held by this Court, even the export of goods from the Marketing Committee Area is liable for

levy by the Marketing Committee and if the buyers are not known to the Committee, then it is the Seller like the Petitioners who are obliged to pay

the levy as per the demand made by the Committee. The Petitioners by praying for the issuance of writ in the nature of mandamus cannot forbid

the Respondents from levying fee on the export of Cotton Waste and any direction given will be in contravention of the law made by the State

legislature.

22. In view of the above, no case is made out by the Petitioners. Accordingly, both the writ petitions will stand dismissed. However, there will be

no order as to costs. Consequently, connected miscellaneous petitions are closed.