THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.5211 OF 2015

ORDER:

Heard the learned counsel for petitioner and the learned Standing Counsel for respondents.

2. The petitioner is a license holder for carrying on cashew business within the Agricultural Market Committee area of the third respondent. It purchased raw cashew from BURKINAFASO i.e., outside the country and getting the stock through a vessel (High Seas basis) through Agricultural Commodities & Finance, FZE Liaison Office, Dubai, under valid consignment/bills. The petitioner has to submit a return of turnover of business to the respective Agricultural Market Committee under Section 12-A of the Andhra Pradesh (Agricultural Produce & Livestock) Act, 1966 (for short, the Act) and upon submission of the return, the third respondent has to assess the levy of market fee on the purchase and sale of trade under Section 12-B of the Act. For the assessment of levy of market fee, the petitioner was furnishing the accounts including the particulars of purchase outside the notified area of the respondents. In view of threats on the petitioner, the petitioner was constrained to pay market fee even for the stock purchased outside the country which is contrary to the provisions of the Act. Though an alternative remedy of appeal is provided under Section 12 of the Act against the assessment order passed by the assessing authority, since it is mandatory to deposit the fee levied under Section 12-E(2) of the Act, the extraordinary jurisdiction of this Court is invoked. Thus the Writ Petition was filed challenging the action of the respondents in levying and collecting market fee on the cashew purchased by the petitioner industry outside the notified area.

3. A counter-affidavit is filed by the third respondent stating that the second respondent prepared an assessment order on the basis of monthly returns submitted by the petitioner. If the petitioner had any objection on the returns, it should have filed an exemption petition before the competent authority under Section 12-E of the Act. The petitioner had also an alternative remedy of filing an appeal. The present Writ Petition was filed based on invoice bills, but not on any demand notice. It is further stated that the petitioner did not furnish any accounts to prepare an assessment order even though the third respondent made several oral requests and also sent a copy for production of evidence under Section 17-C of the Act. The present Writ Petition is filed on the assumption that the invoice bills are the assessment orders and accordingly, the third respondent sought dismissal of the Writ Petition.

4. The said counter is supplemented by a letter dated 03.03.2015 addressed to the learned Standing Counsel stating that the petitioner had not submitted any returns properly and not paid any market fee, though it is having annual turnover of Rs.566.19 crores for the year 2013-2014 as per the records of the Commercial Tax Department.

5. Learned counsel for the petitioner relied on a decision of a Division Bench of this Court in **Modern Nutrition Company, Hyd. v. Agrl. Market Committee**[1] and **Agricultural Market Committee v. Shalimar Chemical Works Ltd.**[2] and unreported decisions of this Court in W.P.No.1459 of 2009 & batch dated 12.11.2014 and W.P.No.10797 of 2007 dated 19.06.2009. He contended that the purchase of cashew took place outside the market area of the third respondent and such transaction does not attract the levy of market fee. Learned Standing Counsel for the respondents, on the other hand, submitted that the Writ

Petition is premature in view of the fact that the petitioner did not submit his returns and no demand notice was issued to the petitioner. He further submitted that if the petitioner claims any exemption from payment of market fee, it is open for the petitioner to file such a petition before the competent authority under Section 12-E of the Act, but on the basis of the invoice bills even before issuance of demand notice by the third respondent, it cannot approach this Court.

6. This Court carefully perused the material papers filed along with the Writ Petition and noticed that the petitioner filed copies of the invoices in order to show that the purchases were made outside the country, but as held by this court, whether the sale was concluded beyond the market area or not is a question of fact that has to be considered by the concerned Market Committee on the basis of evidence adduced by the party. There is no demand notice that is challenged in the present Writ Petition. As and when the petitioner produces evidence before the third respondent claiming any exemption and upon consideration of the said evidence, the cause of action arises. This Court cannot give a declaration with regard to the liability of the petitioner or otherwise on the basis of the invoices filed in the present Writ Petition. The third respondent had to take a decision in accordance with the provisions of the Act. It is premature to consider the issue raised in the present Writ Petition and hence the decisions on which the petitioner relied have no relevance at this stage.

7. The Writ Petition is, accordingly, dismissed as premature. There shall be no order as to costs. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 02.07.2015
TJMR

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[1] 1996 (4) ALD 801 (D.B.)

[2] (1997) 5 SCC 516