

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **23.09.2016**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**W.A.Nos.69 and 70 of 2012
and M.P.Nos.1 and 1 of 2012**

GTN Enterprises Limited
Spinning Division,
Dharmapuram Road,
Indira Nagar,
Tungavi (P.O)
Udumalpet - 642 203.

.... Appellant in W.A.No.69 of 2012

Patspin India Limited,
2/85-B Udumalai,
Tirupur Road,
Ponneri, Kottamangalam (P.O)
Udumalpet - 642 201.

.... Appellant in W.A.No.70 of 2012

Vs.

1. The Superintendent
Regulated Market Committee,
Coimbatore Market Committee,
Udumalpet - 642 126.
2. State of Tamil Nadu
Rep. by Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai - 600 009.

.... Respondents in both the WAs

Writ Appeals filed under Clause 15 of Letters Patent,
against the Common order of this Court, dated 14.10.2011 made in
W.P.Nos.2650 and 2651 of 2009.

For Appellants : Mr.Vijay Narayan, Senior counsel
for Mr.R.Parthiban

For Respondents : Mr.C.Manishankar, AAG
assisted by
Mr.V.Jayaprakash Narayanan, Spl.G.P

COMMON JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

These two intra court appeals arise from the common order of the learned single Judge, dated 14.10.2011 in W.P.Nos.2650 and 2651 of 2009.

2. The appellants as writ petitioners moved this Court under Article 226 of the Constitution of India for the issue of a writ of mandamus, directing the respondents or their men from demanding or 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.

3. The issues in both the writ petitions are one and the same and both the writ appeals are also against the common order passed in two writ petitions and hence, common order is being passed in both these writ appeals.

4. The brief facts of the case are as follows :

(i) The appellants / petitioners companies are engaged in the manufacture of cotton yarn. In the process of manufacture, cotton waste is generated and the appellants / petitioners, apart from selling of such cotton waste to various buyers in Tamil Nadu, export certain quantities of cotton waste to various importers in foreign countries.

(ii) As per Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (herein after referred to as "the Act"), market fee is levied for the sale of such cotton waste by the market committee. The appellants pay the market fee for the sale of cotton waste within the State. But the market committee is not entitled to levy market fee for the cotton waste exported by the appellants. The above act is a State law and the State cannot make a law imposing tax on the sale or purchase of goods where the sale or purchase takes place in the course of the import of goods or export of the goods to or from the Territory of India.

(iii) By virtue of Article 286 of the Constitution of India, no law of a State shall impose or authorise imposition of tax

on the sale or purchase of goods, where such sale or purchase takes place in the course of export of goods out of the territory of India. Though the amount demanded is not a tax but is a market fee, the same principle will apply in respect of fee also, as the State has the power to make a law in respect of fee as per entry 66 of List II. Therefore, the appellants claim that the demand of market fee on cotton waste in the course of export of goods is totally unauthorized by law, unconstitutional, ultra vires and liable to be set aside.

5. The respondents contend that as per Section 24(1) of the said Act, market fee is liable to be levied on the goods brought for processing, if not processed or exported from the notified market area within 30 days from the date of its arrival.

6. The principle applicable to tax cannot be applied to the levy of the market fee. Section 24 of the Act has been upheld by this Court, in its order, dated 28.04.1994 in W.P.No.2429 of 1992.

7. The learned single Judge, after elaborately analysing the divergent contentions of both sides, including the legal principles enumerated by the Hon'ble Supreme Court as far as

market fee under the State Act and Article 286 of the Constitution, as to the restriction of sales tax, has dismissed the writ petitions. Aggrieved by the order, the writ petitioners have preferred these writ appeals.

8. The learned Senior counsel appearing for the appellants contends that applying principle of Article 286 of the Constitution of India, the marketing committee, as per Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 is not entitled to levy the market fee on the cotton waste, the appellants are exporting to the foreign importers.

9. The learned Additional Advocate General appearing for the respondents per contra contends that principle under Article 286 of the Constitution cannot be applied in levying market fee, which is entirely different from tax and the learned single Judge has rightly dismissed the writ petitions.

10. There is no dispute that the appellants / petitioners running textile mills are engaged in the manufacture of cotton yarn. In the process of manufacture, cotton waste generated is sold to various buyers in Tamil Nadu. Apart from that they also export the

cotton waste to the importers in the foreign countries. The demands of market fee made by the marketing committee are with respect to the cotton waste brought for processing and were not exported within 30 days.

11. The only question that arises for consideration is whether the principle of Article 286 of the Constitution is applicable as far as market fee is concerned.

12. Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 reads as follows :

"24. Levy of fee by market committee : (1) The market committee shall levy a fee on any notified agricultural produce bought or sold in the notified market area at a rate not less than one rupee, but not exceeding two rupees for every hundred rupees of the aggregate amount, for which the notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration :

Provided that when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not processed or exported therefrom within thirty

days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into such notified market area for buying and selling, and shall be subject to the levy of fee under this section on the value of the agricultural produce, as if it had been bought and sold therein."

13. Article 286 of the Constitution of India reads thus :

"Art. 286 (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, insofar as it imposes, or authorises the imposition of, -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods,

being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,
be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may by law specify."

14. The Constitution Bench of the Supreme Court in **Belsund Sugar Co., Ltd., v. State of Bihar**, reported in **(1999) 9 SCC 620**, has held 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."

15. The Constitutional Bench of the Supreme Court in **ITC Ltd., v. Agricultural Produce Market Committee**, reported in **(2002) 9 SCC 232**, overruling the earlier Judgment in *ITC Ltd., v. State of Karnataka* (1985 Supp SCC 476), upheld the legislative competence of the State to enact the legislation providing for the

levy and collection of market fee and upheld the Market Act enacted by the State as valid.

16. Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 was challenged before this Court in W.P.No.2429 of 1992 and the same has been upheld. Therefore the market fee is different from tax and Section 24 of the Act, which provides to levy the market fee has been upheld as valid.

17. Article 286 of the Constitution of India imposes restriction as to imposition of tax on the sale or purchase of goods. The object underlying the exemption from sales tax given in clause (Art. 286) is to avoid double taxation of the foreign trade of the country, which is of so great importance to the Nation's Economy. Article 286 is intended to ensure that sales tax imposed by the States do not interfere imports and inter-state trade and commerce, which are matters of national concern and the taxation of which is beyond the competence of the State. Levying market fee as per Section 24 of the Act cannot be equated with the sales tax.

18. The legislature thought fit not to levy market fee for the goods brought and processed or exported within 30 days and

added proviso clause to Section 24 to that effect. Therefore, the demand of market fee under Section 24 of the Act made on the cotton waste, which was stocked beyond 30 days within the notified market area from the appellants / petitioners is valid one.

19. The learned single Judge has rightly dismissed the writ petitions and it does not warrant any interference by this Court and accordingly, the writ appeals are liable to be dismissed.

In fine, both the writ appeals are dismissed, confirming the order of the learned single Judge, dated 14.10.2011 made in W.P.Nos.2650 and 2651 of 2009. Consequently, connected miscellaneous petitions are also dismissed. No costs.

(A.S., J.) (P.K., J.)
23.09.2016

Index : Yes

tsvn

To

1. The Superintendent
Regulated Market Committee,
Coimbatore Market Committee,
Udumalpet - 642 126.
2. The Secretary to Government,
State of Tamil Nadu
Agriculture Department,
Fort St. George,
Chennai - 600 009.

**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

tsvn

**Pre-Delivery Common
Judgment in
W.A.Nos.69 and 70 of
2012**

23-09-2016