

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos.17001 & 17033 of 2009

COMMON ORDER :

The petitioners challenge demand notice R.O.C.No.100/07, dated 17.06.2009, issued by 1st respondent as illegal, arbitrary and unconstitutional.

2. The issue arises under Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. The impugned demand calls upon the petitioners to pay Rs.1,75,136/- in W.P.No.17001 of 2009 and Rs.2,82,450/- in W.P.No.17033 of 2009. Sri K.Rajanna appearing for petitioners challenge the impugned demand on two grounds, namely, that the 1st respondent did not consider the explanation together with documents submitted by the petitioners and conclusions are presumed only to sustain the demand impugned in the writ petitions. According to him, the 1st respondent shall have to consider the purport of G.O.Rt.No.1139, Agriculture and Cooperation (AM-IV) Department, dated 15.09.2008, and thereafter, if a finding is recorded that the exemption granted through instant Government order is not attracted to the case on hand, then the demand on merits arises. He strongly places reliance on the following preposition in the decision reported in **Advanta India Ltd., Bangalore v. State of**

Andhra Pradesh & others^[1]:

“For the foregoing reasons, the writ petitions are ordered, with the following directions:

- (a) *Seeds developed and manufactured by the petitioners and sold as certified or labelled seeds, are not subject to levy of market fee, and the demand notices issued therefor are set aside.*
- (b) *Vegetable seeds are not covered by the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, and are not subject to levy of market fee.*
- (c) *Such part of the product, grown out of foundation seed, by a farmer, chosen by the seed manufacturers, as is not sold and used as seed, shall be liable to be levied the market fee. For this purpose, the Executive Heads of the Market Committees, shall be entitled to require the Seed Manufacturers, operating within the notified area, to furnish the relevant particulars and take consequential steps.”*

3. There is no representation for respondents on 26.04.2016 as well as today.

4. With the assistance of Sri K.Rajanna, I have perused the demand notice, explanation, G.O.Rt.No.1139, dated 15.09.2008 and the decision of this Court in the case of **Advanta India Ltd.** (supra).

5. The counter of 1st respondent, no doubt, makes an attempt to justify the demand impugned in the writ petitions. This Court is of the view that the impugned demand is an order passed by the 1st respondent. The order must speak for itself for the conclusions the 1st respondent draws in the impugned demand notice. The reasons cannot be sub-planted through the stand in the counter affidavit. Therefore, the additional reasons

stated in the counter affidavit need not be considered by this Court for examining the other objections raised by the petitioners. From the material it appears that the 1st respondent has not given required consideration to the explanation submitted by the petitioners, implication of G.O.Rt.No.1139, Agriculture and Cooperation (AM-IV) Department, dated 15.09.2008 and also the directions issued by this Court in the case of **Advanta India Ltd.** (supra). The above aspects require examination of record and also disputed questions of fact. Instead of embarking upon inquiry, this Court is of the view that the impugned demand can be set aside and matter is remanded to 1st respondent for consideration afresh within two months from the date of receipt of a copy of this order. I am satisfied the following order would meet the ends of justice.

6. Impugned demand in R.O.C.No.100/07, dated 17.06.2009 is set aside and the matter is remanded to 1st respondent for consideration afresh as indicated above. The petitioners are given liberty, if so advised, to submit explanation within four weeks from the date of receipt of a copy of this order. The 1st respondent completes the inquiry and passes appropriate orders within Eight weeks from the date of receipt of a copy of this order.

Writ petitions are ordered as indicated above. No order as to costs.

As a sequel, pending miscellaneous applications, if

any, shall stand closed.

S.V. BHATT, J

27th April 2016
ajr

[\[1\]](#) 2005 (3) ALD 245