IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 05.01.2018

CORAM:
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.1229 to 1232 of 2011 and
M.P.Nos.1,1,1 and 1 of 2011

Ramavilas Tobacco Company
Rep. by its Partner V.Parthiban
Bhavanisagar Road,
Punjaipuliampatti. ...Appellant in W.A.No.1229/2011

Taj Agencies
Rep. by its Managing Partner M.Saffiyulla
Marker Road, Punjaipuliampatti,
Erode District. ...Appellant in W.A.No.1230/2011

M.M.A.Mohamed Sulthan and Sons
Rep. by its Managing Partner M.Saffiyulla
Marker Road, Punjaipuliampatti,
Erode District. ...Appellant in W.A.No.1231/2011

M/s.E.S.Mydeen & Co.,
Rep. by its Managing Partner E.S.M.P.Kaleel
20, Potramarikulam North,
Kumbakonam,
Tanjore District. ...Appellant in W.A.No.1232/2011

Vs

1.The Secretary,
Erode District Agricultural Marketing Committee,
Erode.

2.The Superintendent,
Erode District Agricultural Marketing Committee,
Punjaipuliampatti. ...Respondents 1 and 2 in W.A.Nos.1229 to 1231 of 2011

1.The Secretary
Periyar Regulated Marketing Committee,
Erode.

2.The Superintendent,
Periyar Regulated Marketing Committee,
Dharapuram - 638 656. ...Respondents in W.A.No.1232 of 2011

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent to set aside the common order dated 01.02.2011 made in W.P.Nos.45554 of 2002, 399, 412 and 454 & 14008 of 2003.

PRAYER IN WP NO.4555/2002:

Writ petition filed under Article 226 of the constitution of india seeks for the relief of issuance of *writ of certiorari to call for the proceedings of respondent dated 2.12.2002 made in Ku.No.59/02 quash the same*

PRAYER IN WP NO.3990/2003:

Writ petition filed under Article 226 of the constitution of india seeks for the relief of issuance of *writ of certiorari to call for the proceedings of respondent dated 2.12.2002 made in Ku.No.59/02 quash the same*

PRAYER IN WP NO.412/2003:

Writ petition filed under Article 226 of the constitution of india seeks for the relief of issuance of *writ of certiorari to call for the proceedings of respondent dated 2.12.2002 made in Ku.No.59/02 quash the same*

PRAYER IN WP NO.454/2003:

Writ petition filed under Article 226 of the constitution of india seeks for records *pertaining to the proceedings of the respondent in notice No. 59 of 2002 dt. 17.12.2002 and quash the same*

PRAYER IN WP NO.714 & 14008/2003:

Writ Petition filed under Article 226 of the constitution of india seeks for the relief of issuance of *writ of mandamus to forbearing the respondents from restraining the respondents from insisting the production of statement of accounts and levyhing and demanding of fees for the period prior to the Judgment of Supreme Court rendered in I.T.c. Ltd. Vs. State of Karnataka and others as reported in AIR 2002 Sc pg 854 for receiving application in form No.Iand grant licence as contemplated under sec. 8 of the TamilNadu Agricultural produce marketing (Regulation) Act read with Rules 25 and 26 of Tamil Nadu Agricultural produce Marketing(Regulation) Rules 1991*

For Appellants : Mr.R.Krishnamoorthy
Senior Counsel for
Mr.S.Elamurugan

For Respondents: Mr.Anandhamurthy
Addl.Govt.Pleader for R1
Mr.V.Jayaprakash Narayanan for R2

J U D G M E N T
(made by K.K.SASIDHARAN,J.)

The learned single Judge (R.Banumathi,J. as her Lordship then was) by following the Constitution Bench judgment of the Hon'ble Supreme Court in I.T.C. Limited v. Agricultural Produce Market Committee and others [AIR 2002 SC 852] dismissed the writ petitions filed by Ramavilas Tobacco Company and others, by directing them to obtain registration under the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 and making the position clear that the traders have to pay the licence fee for the period from 1994 - 95 till 2001-2002 by producing any of the supporting documents like sales tax returns/income tax returns or atleast a statement of voluntary disclosure of the actual turn over. Feeling aggrieved by the common order dated 1 February, 2011, the unsuccessful writ petitioners are before this Court.

2. The appellants are traders in tobacco. The tobacco would be purchased from the agriculturists by the traders and they would transport the products to their godown situated at various places.

3. The Government of Tamil Nadu enacted the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, to regulate the trade in agricultural products. The Act provides for constitution of Marketing Committee and grant of license to carry on business in agricultural produce. The licensees were required to pay the prescribed fees on the value of the produce dealt with by them.

4. In view of the judgment of the Hon'ble Supreme Court in I.T.C. Ltd. vs. State of Karnataka [1985 Suppl (1) SCC 476], the traders were not paying the prescribed fee to the Marketing Committee. The said judgment was overruled by the Constitution Bench in I.T.C. Limited v. Agricultural Produce Market Committee and others [AIR 2002 SC 852], (in short ITC-II case).

5. The Erode District Agricultural Marketing Committee subsequent to the Constitution Bench judgment in ITC - II case issued notices to the appellants calling upon them to pay the licence fee. The individual notices were challenged by the appellants before the writ court. Since there was no indication in the judgment of the Hon'ble Supreme Court in ITC - II case that it would apply only prospectively, the learned single Judge directed the appellants to pay the licence fee from 1994 onwards. Since a contention was taken by the appellants that it would not be possible for them to produce the returns regarding the business for the period 1994-95 to 2002-2003, the learned single Judge taking into account the submissions made by

the learned counsel for the Marketing Committee allowed the appellants to produce any of the documents showing the actual turnover or at least a self declaration. Feeling aggrieved by the said common order, the appellants have come up with this appeals.

6. The learned counsel for the appellants by placing reliance on the minority judgment in I.T.C. Ltd. vs. State of Karnataka [1985 Suppl (1) SCC 476], contended that the Supreme Court has made it clear that there is no requirement to pay licence fee for the earlier period. According to the learned counsel, such being the position, the learned single Judge was not correct in directing the appellants to pay the licence fee retrospectively. No further contentions were raised before us.

7. We have also heard the the learned counsel for the respective respondents.

8. The only question that arises for consideration is as to whether the appellants are liable to pay the market fee for the period from 1994-95 till 2002-2003 pursuant to the judgment in ITC - II case.

9. Before the learned Judge, the appellants have raised a question with regard to retrospective levy, on the ground that it would not be possible for them to produce the returns for the back period.

10. The Supreme Court in ITC - II case made the legal position very clear that the State legislatures are competent to levy market fee on the sale of tobacco in a market area. In view of the said judgment, the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 is constitutionally valid.

11. The appellants avoided payment of market fee by projecting the views expressed by the Hon'ble Supreme Court in I.T.C. Ltd. vs. State of Karnataka [1985 Suppl (1) SCC 476]. The judgment was overruled by the Constitution Bench by judgment dated 24 January 2002 in ITC -II case (AIR 2002 SC 852).

12. The appellants have come up with a contention that there was no express opinion given by the Constitution Bench with respect to the collection of licence fee for the interregnum period from 1994-95 till 2002-2003. The judgment in ITC - II case clarified the legal position with regard to levy of market fee on tobacco. While declaring the Law in ITC - II case, the Supreme Court nowhere stated that it would apply only prospectively. The Doctrine of Prospective ruling must be expressly stated in the judgment, as otherwise, it would apply to all cases.

13. The minority view expressed in paragraph 35 of ITC - II case is relied on by the learned counsel for the appellants to contend that the Supreme Court made it clear that the Marketing Committee would not be entitled to collect market fee even for the past period. There is absolutely no basis in the said contention. The Supreme Court in the said paragraph referred to the interim order granted initially, which was modified on 27 February, 1989 with regard to the payment of market fee during the currency of the appeals. Since two of the learned Judges of the Constitution Bench declared that the law enacted by the State Government is invalid, a direction was given not to collect the market fee from the traders in tobacco. However, the majority of the learned Judges of the Bench disagreed with the said view and upheld the validity of the Act. In view of the decision rendered by the Supreme Court by taking the majority view, the appellants are not correct in placing reliance on the observation made in paragraph 35 with regard to the interim order, which was subsequently modified by the Hon'ble Supreme Court.

14. The learned single Judge considered the difficulty expressed by the appellants in the matter of production of returns for the period from 1994-1995 till 2001-2002 and permitted them to produce at least a voluntary disclosure statement. In fact, even the Market Committee agreed for production of any such document to assess the market fee payable for the earlier period. The direction given by the learned single Judge was in accordance with the decision of the Supreme Court in ITC - II case. We are therefore the view that the appeals are liable to be dismissed.

15. In the up shot, we dismiss the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Erode District Agricultural Marketing Committee,
Erode.

2.The Superintendent,
Erode District Agricultural Marketing Committee,
Punjaipuliampatti.

3.The Secretary
Periyar Regulated Marketing Committee,
Erode.

4.The Superintendent,
Periyar Regulated Marketing Committee,
Dharapuram - 638 656.

+1cc to Mr.V.JAYAPRAKASH NARAYANAN, Advocate, S.R.No. 1639
+4cc to Mr.S.EALMURUGAN, Advocate, S.R.No. 1059

W.A Nos.1229 to 1232 of 2011

KAN(CO)
TR(12/02/2018)