

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2018

CORAM:

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

A.S.No.1004 of 2009

M/s. S.K.M. Animal Feeds and Foods
(India Limited, Having its Registered Office
in Nanjai Uthukkuli, Erode Taluk, Rep.
by its Authorised Agent, N.Shanmugam. ... Appellant / Plaintiff
Vs.

1. The Chairman
Erode District Market Committee,
31, A.B.S. Complex,
E.V.N.Road, Mettur Road,
Erode - 638 009.

2. The Secretary
Erode District Market Committee,
31, A.B.S. Complex,
E.V.N.Road, Mettur Road,
Erode - 638 009.

3. The Superintendent
Erode Market Committee,
6, I Gandhipuram,
Karungalpalayam,
Erode - 638 003.

4. The Superintendent
Erode Market Committee,
Thuyam Poondurai - 638 115,
Erode District.

5. The Superintendent
Erode Market Committee,
Elumathur - 638 104,
Erode District.

.. Respondents / Defendants

Appeal Suit filed under Section 96 of the Code of Civil
Procedure, against the Judgment and Decree, dated 31.03.2008

made in O.S.No.75 of 2007 on the file of the Additional District Court, Fast Track Court No.I, Erode, Erode District.

For appellant : Mr.S.Nagarajan
For respondents : Mr.G.Sankaran

JUDGMENT

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

This Appeal Suit has been filed by the plaintiff against the Judgment and Decree by the Additional District Court / Fast Track Court No.I, Erode, dated 31.03.2008 in O.S.No.75 of 2007.

2. The plaint averments in brief are as follows :

(i) The plaintiff company used to purchase four items of cereals which are defined as agricultural produce under the Tamil Nadu Agricultural Produce Marketing (Regulation) Act and Rules for manufacturing process of feeds and food for cattle and poultry. The company effects purchase of the aforesaid four agricultural produce from out of the Erode notified market area. Such purchases were termed as purchase done by the plaintiff without permits in its Form 9 Returns and paid the cess amounts to the defendants. The present suit is in relation to the purchase made as above. The above agricultural commodities were brought into Erode notified area only for the purpose of processing and they were utilised within a span of 30 days.

(ii) As per proviso to Section 24 (1) of the Act, if the plaintiff is able to show that the agricultural commodities brought was only for the purpose of processing and such processing was done within 30 days from the date of its arrival, he is not bound to pay any fee. But mistakenly the plaintiff paid the fee from the year 1983 for the commodities brought for processing and therefore the plaintiff claims from the defendants to refund excess collection restricting from 1993.

3. The averments made in the written statement filed by the third defendant and adopted by other defendants are as follows :

(i) The object of the market committee is to help the farmers and to promote the sale of agricultural produce. For more than 15 years, the plaintiff has voluntarily paid the market fee in the prescribed manner and obtained receipts. The proviso to Section 24 (1) of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (herein after referred to as "the Act") is not attracted to the present case because the agricultural commodities were purchased and brought and the end products have also been sold for profits. The plaintiff has also

not produced any document to show that the commodities brought were also processed within 30 days.

(ii) The plaintiff purchased the notified agricultural produce from agriculturist within the notified area without valid permit and without paying the market fee to the concerned regulated market and made use of the same for producing cattle feed or poultry feed. The plaintiff admitting its liability submitted Form-9 and paid the fee to the third defendant. The plaintiff company has paid only the fees due by them for the purchase of agricultural produce. The suit is also barred by limitation and therefore the suit is liable to be dismissed.

4. The trial Court framed necessary issues and after analysing the oral and documentary evidence of both sides dismissed the suit. Aggrieved by the same, the plaintiff has come forward with this Appeal Suit.

5. The learned counsel appearing for the appellant vehemently contends that as per proviso to Section 24 (1) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, the plaintiff company brought the agricultural produce only for processing and after processing, sent it out within 30 days and therefore, the plaintiff company is not liable to pay any fee. But the plaintiff mistakenly paid the fee and therefore, the fee already paid from 1993 to Feb 2002, which comes to Rs.36,84,619/- plus interest. The learned counsel further contends that the trial Court without properly appreciating the evidence and legal position dismissed the suit and therefore, the judgment of the trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent per contra contends that agricultural commodities were purchased in the notified market area from the farmers without permit and without paying the market fee and therefore proviso to Section 24 (1) of the Act cannot be availed of by the plaintiff. Further the plaintiff has not filed any document to show that the commodities were processed within 30 days. The plaintiff company rightly paid the market fee as per law and the trial Court has rightly dismissed the suit by appreciating both oral and documentary evidence and legal position.

7. The Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 was enacted to regulate the buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce in the State of Tamil Nadu.

8. The plaintiff company seeks the benefit under proviso to Section 24 (1) of the Act. Quoting section 24 (1) will be helpful to analyse the issue involved in this Appeal, which is

extracted below :

"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 marked 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.

Explanation I - For the purposes of this subsection, all notified agricultural produces taken out or proposed to be taken out of a notified market area shall, unless the contrary is proved, be presumed to be bought or sold within such area.

Explanation II - In the determination of the amount of the fee payable under this Act, any fraction of ten paise less than five paise shall be disregarded and any fraction of ten paise equal to or exceeding five paise shall be regarded as ten paise."

9. As per Section 24 (1) of the Act, if any notified agricultural produce is bought or sold in the notified market area, the market committee is entitled to levy a fee as prescribed. As per proviso, even if any agricultural produce is brought into any notified market area for the purpose of processing only or for export and sent after processing or exported within 30 days from the date of arrival, it shall be presumed to have been brought into for buying and selling until the contrary is proved.

10. The case of the plaintiff company is that it effected purchases of notified agricultural produce from the Erode notified market area without permits and paid the cess amount to the defendants in Form 9 Returns. The plaintiff claims refund of the amount so paid. It is also not the case of the plaintiff

that the produce were not sold after processing. As rightly pointed out by the trial Court, the documents produced by the plaintiff company evince that the agricultural produce were purchased in Erode marketing area.

11. It is needless to say that proviso to Section 24 (1) of the Act will lend a helping hand only when the notified agricultural produce is brought for processing or exporting and sent within 30 days from the date of arrival without any transaction of sale.

12. In this case the plaintiff company purchased the notified agricultural produce only from the Erode notified marketing area without paying any market fee at the time of purchase and the plaintiff company paid the market fee to the third defendant at the time when the commodities were brought for purchasing. Since sale transaction takes place twice, 1) by purchasing the raw notified agricultural produce and 2) by selling the end product after processing, the plaintiff company is not entitled to invoke the benefit under proviso to Section 24 (1) of the Act.

13. It is also pertinent to note that there is absolutely no document to show that the processing was done within 30 days from the date of arrival of the produce. It is also to be noted that the claim is barred by limitation. Therefore, the trial Court has rightly dismissed the suit and this Court does not find any reason to interfere with the Judgment and Decree of the trial Court and accordingly, the Appeal Suit is liable to be dismissed.

In fine, this Appeal Suit is dismissed with costs, confirming the Judgment and Decree, dated 31.03.2008 made in O.S.No.75 of 2007 on the file of the Fast Track Court No.I, Erode, Erode District.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

tsvn

To

The Additional District Judge,
Fast Track Court No.I
Erode, Erode District.

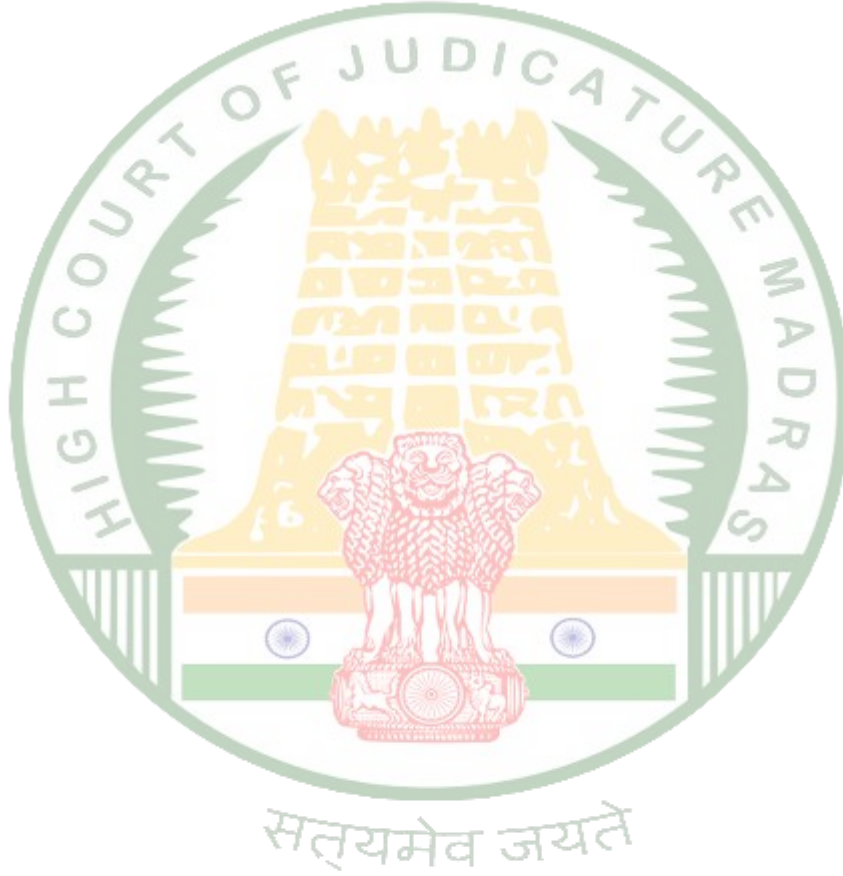
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The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Nagarajan, Advocate SR.No.7329
+1cc to Mr.G.Sankaran, Advocate SR.No.7397

A.S.No.1004 of 2009

KS (CO)
GN(28/03/2018)



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