IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.09.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.13147 and 13148 of 2013
and M.P.Nos.1 & 1 of 2013

M/s.Suguna Foods Limited,
Rep. by tis General Manager Finance & Taxation,
5th Floor, Jaya Enclave,
No.1057, Avinashi Road,
Coimbatore – 641 018. ... Petitioner in both W.Ps.

Vs.

1. The Secretary,
Tamil Nadu Marketing committee,
1841, Tiruchy Road,
Ramanathapuram,
Coimbatore – 641 0145.

2. The Superintendent,
Regulated Market Committee,
Udumalpet.

3. The Joint Director of Regulated Market,
O/o. Agriculture Marketing and Agri Business,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai.

4. The Commissioner,
Regulated Market,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai.

5. The Director,
Agricultural Marketing Agri Business,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai. ... Respondents in both W.Ps.

PRAYER in W.P.No.13147 of 2013: Writ Petition has been filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 5th respondent vide his letter No.MCS2/20277/2012, dated 04.03.2013, quash the same as illegal and violative of Article 19(1) (g) of the Constitution in as much as it holds that Market fee is payable in respect of purchase of any notified agricultural produce effected by the petitioner from outside the notified market area.

PRAYER in W.P.No.13148 of 2013: Writ Petition has been filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Order Na.Ka.No.446/2011, dated 16.04.2013 passed by the 2nd respondent, quash the same as the same is illegal without jurisdiction and violative of Article 19(1)(g) of the Constitution of India and consequently forbear the respondent from in any manner enforcing the provisions of the Tamil Nadu Agricultural Produce Marketing (Regulation), Act, 1987, and the Rules made thereunder or Byelaws by any Marketing Committee in respect of purchase of any notified agricultural produce effected by the petitioner from outside the notified market area.

For Petitioner : Ms.R.Charulatha
for M/s.Lakshmi Kumaran

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

C O M M O N   O R D E R

The orders impugned dated 04.03.2013 and 16.04.2013 state that the writ petitioner is liable to pay marketing fee for the purpose of procuring and selling notified agricultural products.

2. Ms. R.Charulatha, learned counsel appearing on behalf of the writ petitioner forcibly contended that the writ petitioner is not liable to pay marketing fee as per the provisions of Tamil Nadu Agricultural Produce Marketing (Regulation), Act, 1987. To substantiate the said contention, the learned counsel appearing for the petitioner contended that the writ petitioner is procuring agricultural products from Pazhani, which is not a notified marketing area. When the procurements are made in the area which is not notified, the writ petitioner is not liable to pay marketing fee under the provisions of the Act. Thus, the impugned order is erroneous and in violation of provisions of the said Act. It is further contended that the writ petitioner is procuring the notified agricultural products for their usage at Udumalpet, wherein the factory of the writ petitioner is situated. Hence, the petitioner is not liable to pay marketing fee under the Act.

3. The learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that the writ petitioner has filed the present writ petitions based on erroneous interpretation of the provisions of the Act.

4. The writ petitioner is denying the responsibility of paying the market fee in accordance with the provisions of the

Act. The writ petitioner is not agreeing to pay the market fee either for their procurement in Pazhani or in the selling place at Udumalpet. At the outset, the writ petitioner is totally denying their liability.

5. The learned Special Government Pleader further states that the writ petitioner is continuously placing orders from Udumalpet. The suppliers are at Pazhani and the suppliers in turn are delivering the goods in Udumalpet in the place of the writ petitioner. Thus, the entire process of sale completes at Udumalpet and therefore, it is to be construed that the writ petitioner is coming within the purview of the provisions of the Act and thus, the writ petitioner is liable to pay marketing fee as per the rules in force.

6. This apart, the writ petitioner has registered their company as Traders under Section 8(1) of the Tamil Nadu Agricultural Produce Marketing (Regulation), Act, 1987. As per Section 8 of the said Act, every person to whom a licence is granted under sub-section (1) shall comply with the provisions of the Act, the rules and bye-laws made under the Act and the conditions specified in the licence.

7. Rule 25 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Rules, 1991, deals with grant of license and Rule 26 deals with renewal of license.

8. It is contended that the petitioner being the purchaser of the notified agricultural produce within notified marketing area as per Section 24(1) of the Act, the petitioner is liable to pay marketing fee for agricultural produce bought or sold or for export within 30 days from the date of its arrival in the notified market area. Thus, the very contentions of the writ petitioner are incorrect and the petitioner is liable to pay marketing fee. Let us now look into Section 24 of the said Act, which 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 nor exceeing 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 30 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 sub-section, 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 I. - 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.

Clause 24(1) provides 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 30 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.

9. This Court is of an opinion that the writ petitioner is a Company. Admittedly, they are procuring the agricultural produce from Pazhani. It is clarified by the learned Special Government Pleader that the writ petitioner-Company is placing orders from Udumalpet, which is a notified area and the orders received by the suppliers are honoured and the goods are delivered at Udumalpet in the place of the writ petitioner. Therefore, the entire sale process has been completed at Udumalpet. Thus, the writ petitioner is liable to pay marketing fee either at Pazhani or at Udumalpet, and they cannot evade payment in totality.

10. Admittedly, the writ petitioner is denying the liability in toto. When the products purchased are already notified and the writ petitioner has registered their company as Trader within the meaning of the provisions of the Act, the writ petitioner is liable to pay marketing fee as per the Rules.

11. In this regard, it is relevant to cite the judgment of this Court in the case of Thiruvannamalai Chamber of Commerce by its Secretary, T.V. Subramiam Vs. Director of Agricultural Marketing, Tiruchi and another in W.P.No.16691, 18472 and 18253 of 1990. The relevant portions in respect of the issue raised in this writ petition are extracted hereunder:-

> "Goods purchased in a non-notified area and

brought into a notified area: In so far as this category is concerned, the sub mission of the learned Senior Counsel for the petitioner is that since the services are not rendered by the market committee outside the notified area within the goods were purchased from outside the notified area, the goods should not suffer the levy. In my view , the above contention is not acceptable as the notified area to facilitate the sale of the notified commodities in thew notified area to facilitate the sale of the notified commodities in the notified area, and when the goods are sold under the provisions of section 24 of the agricultural produce Act within the notified area, it would attract the levy. Further, as held by this Court in Raja Palyam Paruthi Panchu sangam's case cited supra. While upholding the Provisions of Section 24 of the Agricultural Produce Act. This Court has held, that there exists a perfect correlation between the levy of fees and the services rendered by the market committee. This court after examining the nature of the activities carried on by the market committee and various duties performed by it, came to the conclusion that there is a correlation between the levy of fees and the the activities carried on by the market committees and therefore, the second respondent in my view, is quite justified in levying fees under section 34 of the Agricultural Produce Act in respect of goods purchased in a non-notified area and brought to a notified area for sale, if the goods are sold or deemed to be sold.”

12. In view of the fact that the writ petitioner is a registered Trader under the provisions of the Tamil Nadu Agricultural Produce Marketing (Regulation), Act, 1987, and procured from the place, which is not notified and brought to the place, which is notified, they are liable to pay marketing fee in accordance with the procedures comtemplated. They cannot either evade liability or seek exemption in this regard.

13. In yet another judgment in the case of Vishnuram Textiles Limited Vs. The Superintendent of Market Regulated Market in W.P.No25573 of 2007, this Court has held as follows:-

“However the issue raised by the petitioner in this Writ petitioner in this Writ Petition has been squarely answered by this Court in W.P.Nos.2650 and 2651 of 2009 in GTN Enterprises Limited and another reported vs. the superintendent, Regulated market

Committee and another reported in CDJ 2011 MHC 5512. In paragraph No.20 of the order, it is observed as follows:

"20. The petitioners are Traders within the meaning of the TNAPMR Act and the definition is held to be not merely action of purchasing of particular goods, but it comprises of wide range of activities. In interpreting the similar provision found in Karnataka Agricultural Produce Marketing (Regulation) Act, the Supreme Court Vide its judgement G.Giridhar Prabhu v. agricultural produce Market Committee reported in (2001) n3 SCC 405, in paragraph 17 observed as follows:

17. We are unable to agree with the submissions of Mr. Sarangan. As can be seen from the Preamble the Act is to provide for better regulation of marketing of agricultural produce. In the Act certain exemptions have been given either to an importer or an exporter or a trader. These exemptions, therefore, have been given to the producer because the producer is the person who produces the main agricultural produce. The main agricultural produce, which may be a notified agricultural produce, could then be converted into various other notified agricultural produces by subjecting the same to a process of manufacture. The person who so processes or would not be a producer. To be noted that an importer imports or causes goods to be imported into the market area for the purpose of selling, processing manufacturing or for any other purpose, except for one's own domestic consumption. Thus, it is clear that a person who imports would not be a producer. The import would be for the purpose of selling or processing or manufacturing or for any other purpose except for one's own domestic consumption. Similarly the term "exporter" makes it clear that an exporter is not a producer. A trader is also a person who buys notified agricultural produce for the purpose of selling or processing or manufacturing or for any other purpose except for the purpose of domestic consumption. The definition of the term "trader" is not a restrictive definition. It is buys for domestic or personal consumption, then he would not be a trader. It is only when a person buys manufacturing that he would become a trader. Thus a person may buy, process or manufacture and then sell. When he processes or manufactures notified agricultural

produce. Thus, by way of examples a person may buy milk and through processes make them into butter and/or cheese or a person may buy hides and skins and by a process make it into leather. However, merely because a distinct and separate notified agricultural produce comes into existence does not mean that the person who brought, processed and sold ceases to be a trader. The term "trader" encumbrances (sic embraces) not just the purchase transaction but the entire transaction of purchase, processing, manufacturing and selling."

14. In view of the legal principles and in view of the provisions of the said Act, the writ petitioner is liable to pay marketing fee as per the rules in force. Thus, the writ petitions are devoid of merits and stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
   Tamil Nadu Marketing committee,
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Thiru Vi Ka Industrial Estate,
Guindy, Chennai.

+2cc to Mr.Lakshmi Kumaran, Advocate SR.NO.63592
+2cc to Mr.V.Jayaprakash Narayanan, Advocate SR.NO.62027

sm:26.9.2018

W.P.Nos.13147 and 13148 of 2013
and M.P.Nos.1 & 1 of 2013