IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.39464 of 2006

Sri Vasudeva Textiles Ltd.,
rep. by its Chairman,
Unit I, Kovai Main Road,
Thekkupalayam Post Office,
Coimbatore 641 020. ...Petitioner

Versus

1.The Commissioner cum Secretary to Government,
Agricultural Production Department,
Fort St. George, Chennai-600 009.

2.The Secretary,
Coimbatore Market Committee,
Trichy Road, Ramanathapuram,
Coimbatore-641 045.

3.Superintendent of Market,
Regulated Market,
Sirumugai Road, Shastri Road,
Shastri Nagar,
Karamadai 641 101.
Coimbatore District. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to call for the records of the 1st respondent in G.O.No.212 dated 25.08.2006 and quash the same and forbear the respondents from collecting the cess under Sec.24(1) of the Act.

For Petitioner : Mr.Anirudh Krishnan
for M/s.Sarvabhauman Associates.

For Respondents : Mrs.K.Bhuvaneswari
for R1
Additional Government Pleader

Mr.S.Saravanan for RR2 & 3

ORDER

This writ petition has been filed to quash the G.O.No.212 dated 25.08.2006, passed by the 1st respondent and forbear the respondents from collecting the cess under Sec.24(1) of the Act.

2.The petitioner company is one among the various companies coming under the umbrella of M/s.Sangeeth Textiles and is engaged in the manufacture of cotton yarn. The petitioner Mill purchases cotton from the Cotton Corporation of India Ltd., which is a Central Government undertaking (hereinafter referred to as 'CCI'). The petitioner Mill and its group of companies regularly enter into contracts with various upcountry branches of the CCI. A sale contract dated 18.03.2004 was entered into by the petitioner with CCI at Warangal Branch in Andhra Pradesh. Since the sale being concluded within the notified area of the market committee at Warangal, the CCI has paid the necessary market fee/cess under the provisions of Andhra Pradesh (Agricultural Produce and Livestock) Markets Act 1966. Thereafter, the cotton selected by the petitioner at Warangal were sold to the petitioner by Cotton Corporation of India, Warangal Branch on payment of 10% of the value of cotton and then transported to the godown of the petitioner at Thekkupalayam, Coimbatore. Thereafter the stored cotton is utilized by the petitioner as and when there is need by paying the remaining price. Only for those cotton bales, which were approved and selected are dispatched to the godown of the petitioner company from Cotton Corporation of India Ltd, upcountry branch through carriers nominated by the petitioner Mill as per the terms of the sale contract/G.S.F Agreement, entered between the petitioner Mill and the CCI at Warangal and the CCI is entitled to collect 'Carrying Charges' in pre-estimated rates as specified in the sales contract. Since the sale was concluded at Warangal, the place of contract of sale is Warangal. While being so, the petitioner received a noticed dated 28.04.2005 and 13.05.2005 from the 3rd respondent calling upon to produce documents and records to decide on the ownership of cotton transferred from CCI. On receipt of the same, the petitioner produced necessary records on 10.05.2005. However, on 19.05.2005, the petitioner Mill received a communication from the 3rd respondent calling upon to furnish further documents pertaining to transportation of the cotton from Warangal to Thekkupalayam, insurance of the stocked cotton and payment of price of cotton. Thereafter on 08.06.2005, the petitioner Mill received a notice in Ref.No.221/2005 from the office of the 3rd respondent calling upon the petitioner to pay a sum of Rs.6,23,975/- as market fee under Section 24(1) of the Tamil Nadu Agricultural Produce (Regulation) Act (hereinafter referred to as 'the Act') stating that the sale of cotton was completed at the Petitioner's Mill at Thekkupalayam. Challenging the above said notice, the petitioner filed an appeal before the 3rd respondent, which was dismissed. As against the said order, the petitioner filed a revision petition before the 1st respondent viz.,Secretary, Government Agricultural Department. Pending revision, the petitioner filed writ petition in W.P.No.40454 of 2005, wherein this Court by an order directed the 1st respondent to pass orders on the revision petition within 12 weeks. In compliance to the order, the 1st respondent after careful consideration rejected the revision petition vide G.O.(Ms.) No.212, Agriculture (A.M.3) Department, dated 25.08.2006. Challenging, the said G.O., the petitioner has filed the present writ petition.

3.Heard Mr.Anirudh Krishnan, learned counsel for the petitioner, Mrs.K.Bhuvaneswari, learned Additional Government Pleader for the 1st respondent and Mr.S.Saravanan, learned counsel for respondents 2 and 3.

4.The learned counsel for the petitioner would submit that the entire transaction was concluded at Warangal and the CCI had paid the market fee to the Warangal Market Committee and thereafter the entire cotton bales were transferred to Coimbatore. Even as per Section 24(1) of the Tamil Nadu Agricultural Products Marketing (Regulation) Act of 1989, if any goods bought or sold within the area of demand, then the purchaser has to pay necessary market fee to the 3rd respondent. However, in the present case, the entire market fee was paid at Warangal, Andhra Pradesh and the demand to pay to the Tamil Nadu Government is an unsustainable one. Accordingly, he prays to quash the G.O. passed by the 1st respondent.

5.Mrs.K.Bhuvaneswri, learned Additional Government Pleader appearing for the 1st respondent submitted that a counter affidavit has been filed by the 1st respondent, wherein it is stated that the entire area of Coimbatore has been declared as notified area in respect of Cotton, Groundnut, Tobacco, Turmeric etc as per the provisions of Section 4(1) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987. The petitioner's Mill is situated at Thekkupalayam, Coimbatore and the said location falls within the notified market area of Karamadai Regulated Market. He further submitted that the petitioner had produced records for cotton purchases made during the year 2004 to 2005 for verification of the 3rd respondent on 10.05.2005 at Karamadai. On verification, it reveals that the petitioner has purchased the Cotton bales from CCI at Coimbatore Branch at petitioner's premises at Thekkupalayam, Coimbatore. He further submitted that the petitioner had purchased 10911.07 quintal of cotton lint during the year 2004-2005 at the premises of the petitioner from CCI, which has brought and stocked the cotton with due insurance policy in the name of CCI. Since the above purchase was done at the petitioner's premises as Thekkupalayam, Coimbatore, it attract section 24(1) of the Act. Therefore, the 3rd respondent sent notice demanding the fee.

6.Mr.S.Saravanan, learned counsel for the respondents 2 and 3 submitted that the G.S.F agreement between the petitioner and the CCI was made at one of the branch office of CCI situated at Coimbatore and the entire sale was concluded at the petitioner's Coimbatore premises. Therefore, the petitioner has to necessarily pay the amount to the 3rd respondent viz.,Superintendent of Market, Karamadai Regulated Market, Coimbatore. However, the insurance stands in the name of Cotton Corporation of India Ltd and all the documents clearly shows that the cotton bales were brought within the notified area as per Section 24(1) of the Tamil Nadu Agricultural Products Marketing (Regulation) Act and the 3rd respondent has rightly demanded the market fee from the petitioner. Accordingly, he prays for dismissal of the petition.

7.On perusal of records, it is seen that the petitioner's sister company viz., M/s.Sangeeth Textiles Limited, Coimbatore District, has entered into a contract with the Cotton Corporation of India Limited on 18.03.2004 at Warangal. As per the contract, the buyer has to effect payment and take delivery of bales within the free period given from the date of contract/date of confirmation. In case of failure on the part of the Buyer to do so, the contract is liable to be cancelled at the option of the Seller. In the event of such a cancellation, the Seller shall be entitled to resell the entire or balance quantity thereof, at any time and in any manner it deems fit and at the same time, reserving its right to recover any damage/losses sustained by such resale. Further in the said contract it is mentioned that without prejudice to the provisions stated above, the Seller may carry or hold cotton on behalf of the Buyer beyond free delivery period, subject to Buyer complying with the conditions mentioned therein. Accordingly, the Cotton Corporation of India Ltd received 10% of the value of cotton purchased and then sent the cotton bales to the petitioner's godown at Thekkupalayam, Coimbatore, where it was kept in storage and delivery is taken whenever required by paying the remaining price to CCI. That apart, a G.S.F. Agreement is also entered between the CCL and the petitioner at Coimbatore, wherein it has been clearly mentioned that “Not withstanding that the property in the goods may have passed to the Buyer, the Seller as the unpaid seller of goods will be entitled to rights and lien on the goods by implication of law.”

8.On perusal of the two agreements entered into between CCL and the petitioner, this Court does not have any hesitation to come a conclusion that the sale agreement and an advance amount of 10% of the cotton was made at Warrangal and the bales were transported from Warrangal to the petitioner's warehouse at Thekkupalayam, Coimbatore District, where the balance amount would be paid as and when the good are required. Accordingly, the agreement was entered into between the petitioner and CCL. However, for easy reference Section 24(1) and (4) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (XXVII of 1989) is extracted hereunder:

> "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.
>
> (4)(a)The fee payable under sub-section (1) shall be determined and collected in such manner as may be prescribed.
>
> (b)The burden of proving that any notified agricultural produce is not liable for the levy of fee or the fee payable has already been paid under this section shall lie on the person claiming such exemption or non-liability find till it is established with sufficient records to the satisfaction of the market committee that the notified agricultural produce has already suffered the liability, the fee due on such produce shall be paid."

On perusal of the above provision, makes it clear that the 2nd respondent viz., Coimbatore 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 bough or sold whether for cash or for deferred payment or other valuable consideration. However,on perusal of proviso clause, 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 has been bought and sold therein.

9. In the present case, the sale transaction has been completed in warrangal itself and only for the balance, the

cotton goods was kept in Coimbatore godown and periodically released in favor of the petitioner. Merely because the balance sale amount paid later, it does not mean the entire cotton bales were brought and sold in the notified area.

10. In view of the above provisions, the impugned demand made by the 3rd respondent is against the said provisio. Accordingly, this writ petition stand allowed and the impugned order dated 25.08.2006 passed by the 1st respondent is set aside. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner cum Secretary to Government,
Agricultural Production Department,
Fort St. George, Chennai-600 009.

2.The Secretary,
Coimbatore Market Committee,
Trichy Road, Ramanathapuram,
Coimbatore-641 045.

3.Superintendent of Market,
Regulated Market,
Sirumugai Road, Shastri Road,
Shastri Nagar,
Karamadai 641 101.
Coimbatore District.

+1cc to Mr.S.Saravanan, Advocate, SR.No.67060
+1cc to Mr.Anirudh Krishnan, Advocate, SR.No.67290
+1cc to the Govt.Pleader, Vide Sr.No.67557

W.P. No.39464 of 2006

Kak(11/11/2019)