IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.06.2019

CORAM
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 28490 of 2004
and
W.P.M.P. 34600 of 2004

M/s.Sri Abirami Spinners,
rep. by the Managing Partner,
852, Muthur Road,
Vellakovil - 638 111,
Erode District. ... Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by the Secretary to Government,
   Department of Agriculture,
   Fort St. George,
   Chennai-600 009.

2. The Superintendent of Market,
   Regulated Market,
   Erode Market Committee,
   Vellakovil-638 111. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records of the 2nd respondent in Ref.No.194/2004, dated 28.08.2004 and quash the same as illegal.

For Petitioner : Mr.S.Sivanandam

For Respondents : Mrs.K.Bhuvaneswari,
Addl. Govt. Pleader for R1

Mr.S.Saravanan for R2

O R D E R

This Writ Petition has been filed challenging the impugned order of 2nd respondent dated 28.08.2004 and quash the same as illegal.

2. The case of the petitioner is as follows :-
The petitioners are having spinning mills at Vellakovil, Erode District. Thus, they purchased cotton both within the notified area of Market Committee and also outside. In the month

of August and September 2003, the petitioners purchased cotton from original cotton importer M/s.Malai Yaarns entering into "High Sea Sale Agreement" and also raising sale invoice. Thus, the sale was taken place as per Sec.20 of the Sales Tax Act and the title of the specified goods in the invoice is transferred to the petitioner before the goods reached Tuticorin Port, India. The petitioner has further averred that the petitioner through agent, having blank endorsement of bill of lading along with necessary documents such as bill of entry, High Sea sales invoice, High Sea sales agreement has paid the customs duty and cleared the goods and brought the same to Vellakoil as their own products. After importing the said cotton yarn from United States of America, the 2nd respondent issued a notice dated 04.07.2004 demanding market fee on the above purchase on the ground that the assessee could not produce endorsed bill of lading and thereby, treating the purchase as first purchase within the notified area of market committee. Challenging the above demand notice, the petitioner has filed the present Writ Petition.

3. Mr.S.Sivanandam, learned counsel appearing for the petitioner would submit that though the cotton yarn was originally purchased from M/s.Malai Yaarns having office at R.S.Puram, Coimbatore and from the foreign buyer, the original invoice and everything was made in the name of M/s.Malai Yaarns, however, the petitioner has entered into an High Sea Sale agreement during the transit period. Hence, the bill of lading was entered in favour of M/s.Malai Yaarns and not in favour of the petitioner. Since the petitioner has not produced the bill of lading entered in the name of petitioner, the authorities have presumed that it is a first sale in between M/s.Malai Yaarns and the petitioner and demanded the amount. The learned counsel has fairly considered that the bill of lading is not in favour of the petitioner and it is only in favour of M/s.Malai Yaarns and also not endorsed. However, the fact remains that through the High Sea sale agreement, the petitioner has purchased yarns directly from the exporter.

4. Per contra, Mr.S.Saravanan, learned Standing Counsel appearing for the Market Committee would submit that it is the duty of the petitioner to claim waiving the market fee and it is for the petitioner to prove that the yarn was purchased by him directly from the foreign exporter. In the present case, the importer is M/s.Malai Yaarns and the exporter is foreign country. Thereafter, the petitioner has entered into High Sea sale agreement and it is only a self-declaration document unless the petitioner clearly establish the bill of lading in favour of the petitioner, then only he is entitled to claim waiver of the market fee. In the declaration form, it is clearly mentioned that the petitioner has purchased yarns from M/s.Malai Yaarns, having office at Coimbatore. Hence, the first purchase is within

the notified area and he has to necessarily pay the marketing fee to the Market Committee. Accordingly, he prayed for dismissal of the Writ Petition.

5. In the present case, in order to substantiate his case, the petitioner has referred the High Sea sale agreement entered on 24.06.2003 between M/s.Malai Yaarns and the petitioner and other contractors. However, the undisputed fact of the present case is that both the petitioner and the said M/s.Malai Yarns are the Indian companies and both companies were situated within the notified area. Hence, the petitioner's claim for waiver of market fee only on the ground that the petitioner has purchased the cotton yarn from a foreign company and he has paid the customs duty for the above said product. However, on perusal of Sec.24(1) and (4) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (XXVII of 1989), which 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 he paid."

6. On perusal of the above provision makes it clear that the fee payable under sub-section (1) shall be determined and collected in such a manner as may be prescribed and clause (b) impose a condition that the burden of proving that any notified agricultural produce is not liable for the levy of the fee or the fee payable has already been paid. If any 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 area has already suffered liability, the fee due on such produce shall he paid.

7. In view of the above, the petitioner is claiming waiver of market fee only on the ground that the petitioner has already paid the customs duty while entering High Sea Sale agreement with the said M/s.Malayan Yaarns. However, it is an admitted case, the petitioner did not produce any bill of lading in respect of the products purchased by him, and in the absence of bill of lading, the petitioner's claim in respect of waiver of market fee is unsustainable one. Hence, the authorities have arrived a correct conclusion and I do not find any error in the order passed by the original authority. Accordingly, the Writ Petition stands dismissed. Further, the petitioner is directed to pay the amount demanded in the impugned order without any penal interest within a period of four weeks from the date of receipt of the copy of this order. No costs. Consequently, the connected Writ Petition Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The State of Tamil Nadu,
   rep. by the Secretary to Government,
   Department of Agriculture,
   Fort St. George, Chennai-600 009.

2. The Superintendent of Market,
   Regulated Market,
   Erode Market Committee,
   Vellakovil-638 111.

+1cc to Mr.S.Saravanan, Advocate, S.R.No.53061
+1cc to the Government Pleader, S.R.No.53474
+1cc to Mr.S.Sivanandam, Advocate, S.R.No.52575

W.P. 28490 of 2004
and
W.P.M.P. 34600 of 2004

GP(CO)

RRS(13/08/2019)