

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.5523 of 1999

M/s. Overseas Traders

....

Petitioner(s)

Mr. R.P. Kar,
Advocate

-versus-

The State of Orissa & Ors.

....

Opposite Party(s)

Mr. S. Ghose
Addl. Govt. Adv. for O.Ps.1 to 3
Mr. S.K. Patnaik,
Advocate for O.P.4

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
13.10.2022**

Order No.

05. 1. Mr. R.P. Kar, learned counsel for the Petitioner files a memo stating therein to give up the prayer no.”c” made in the writ application and confines his prayer at prayer nos. “a”, “b”, “d” and “e”. Accordingly, they are being considered.
2. Heard Mr. R.P. Kar, learned counsel for the Petitioner, Mr. S. Ghose, learned Addl. Government Advocate for the Opposite Party Nos.1 to 3 and Mr. S.K. Patnaik, learned counsel for the Opposite Party No.4.
3. Challenging has been made in this writ application to the illegal action of Opp. Party nos.5 to 8 in levying market fee from the Petitioner which contravenes the provisions of law.
4. Mr. Kar submits that the Petitioner Company is an exporter of Kendu Leaves and it used to buy Kendu leaves from the O.F.D.C,

Bhubaneswar; but not from the market area of the R.M.Cs. According to him, no buying or selling takes place at the market area in R.M.C., Junagarh, R.M.C., Sargipalli, R.M.C., Tikabali, R.M.C., Padampur for levying of market fee on Kendu leaves. He fairly submits that the issue in this case is covered by the case decided by this Court in the case **Sriniwas Trading Company v. State and others, reported in 2017 (Supp.I) OLR 628**. So, he submits that the Opp. Parties may be restrained from levying the market fee and consequently to return the market fee already collected by Opp. Party Nos.5 to 8 from the Petitioner.

5. Learned counsel for the Opposite Party No.5 supporting the counter affidavit submits that since the Kendu leaves have been included in the schedule of the O.A.P.M. Act and under section 11 of the O.A.P.M. Act, the R.M.C. is the competent authority to levy the market fee from the Petitioner, the Opposite Party No.5 has rightly levied the market fee from the Petitioner. He further submits that although the Kendu leaves are not auctioned in the market area, but the same were lifted from the godowns installed under the R.M.C area and as such the R.M.C has got right to levy the market fee from the Petitioner. So, he submits to dismiss the writ application.

6. Considering the submission of learned counsel for the respective parties and since the buying and selling has not been made in terms of the provisions of the Act in the market areas of the R.M.Cs, the transaction was made outside the market area and the issue in question has been covered by the decision in the case of **Sriniwas Trading Company v. State and others (supra)**, this Court is of the view that the market fee collected by the Opposite Party Nos.5 to 8 is illegal and this Court directs Opposite Party Nos.5 to 8 not to collect

market fees from the Petitioner. The market fee so far collected, if any, from the Petitioner be returned to it within a period of four weeks, failing which the amount shall carry interest @ 9% per annum till the date of actual payment.

7. With the aforesaid direction the writ application is disposed of. The interim order passed in this case stands vacated.

8. Urgent certified copy of this order be granted on proper application.

(Biswanath Rath)
Judge

Ayaskanta Jena

