BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Orders Reserved On 27.11.2023	Orders Pronounced On 30.11.2023

W.P.(MD)No.22130 of 2021
&
W.M.P.(MD)Nos.18718 & 18719 of 2021

P.Regin ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Agricultural Marketing and
Agricultural Business,
St. George Fort,
Chennai - 600 009.

2.The Director,
The Directorate of Agricultural Marketing
and Agriculture Business,
Thiru. Vi.Ka. Industrial Estate, CIPET – II,
Main Road, Guindy, Chennai – 600 032.

3.The Commissioner,
The Tamil Nadu Agricultural Marketing and
Agri Business,
Thiru.Vi.Ka.Industrial Estate, CIPET-II,
Main Road, Guindy, Chennai - 600 032.

4.The Secretary,
Kanyakumari Market Committee,
Nagercoil - 629 001,
Kanyakumari District.

5.The Superintendent,
Regulated Market,
Monday Market,
Neyyoor Post – 629 802,
Kanyakumari District. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 4 and 5 to forbear from levying 1% market fee on the cashew nuts imported by the petitioner from foreign countries, and further direct the said respondents to refund forthwith the amount unauthorisedly collected to a tune of Rs.16,00,178/- (Rupees Sixteen Lakhs One Hundred and Seventy Eight only).

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for M/s.Isaac Chambers
For Respondents	:	Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.B.Saravanan Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus, forbearing the fourth and fifth respondents from levying 1% market fee on the cashew nuts imported by the petitioner from the foreign countries and for a further direction to the respondents to refund the sum of Rs.16,00,178/- (Rupees Sixteen Lakhs One Hundred and Seventy Eight only), that was collected from the petitioner towards the market fee.

2. The case of the petitioner is that he is the Proprietor of an Agency, which is involved in the business of importing raw cashew nuts from other Countries, which is processed in the Factory and the processed cashew nuts are sold across India. The petitioner is also the Managing Director of another Company, which is involved in the same business.

3. The further case of the petitioner is that the cashew nut is an agricultural produce, which is notified under the Tamil Nadu Agricultural Marketing (Regulation) Act, 1987 (hereinafter referred to as "the Act").

4. The market fee can be levied under the Act only when the agricultural produce is bought or sold in the notified market area. The grievance of the petitioner is that the agricultural produce is imported by the petitioner and it is processed and thereafter, it is exported to the Foreign Countries and therefore, the petitioner is not liable to pay the market fees for the cashew nuts imported from the Foreign Countries. However, the fourth respondent was unauthorizedly collecting the market fee from the petitioner, by intercepting the vehicle every time and in the said process, the sum of Rs.16,00,178/- (Rupees Sixteen Lakhs One Hundred and Seventy Eight only) was collected from the petitioner during various times from the years 2015 to 2021. It is under these circumstances, the present Writ Petition has been filed before this Court to forbear the fourth and fifth respondents from levying market fees and for refund of the market fee that was unauthorizedly collected from the petitioner.

5. The fourth respondent has filed a counter affidavit. The fourth respondent has taken a stand that the petitioner was involved in sale of cashew nuts in the notified market area and therefore, the market fee was levied from the petitioner. Therefore, the fourth respondent has justified the

collection of the market fee from the petitioner and has sought for the dismissal of this Writ Petition.

6. Heard the learned counsel on either side.

7. On carefully going through the Scheme of the Act, the levy of fees by the Market Committee is dealt with under Section 24 of the Act. In other words, Section 24 is the charging Section, which entitles the Market Committee to levy the fees. In order to justify the levy of fees by the Market Committee, the following conditions must be satisfied:

> "(i) The agricultural produce must form part of the schedule as defined under Section 2 (1) of the Act.
>
> (ii) The agricultural produce must be marketed in a declared notified area, which is dealt with under Sections 3 and 4 of the Act.

> (iii) In the notified area, the Government should issue a Notification and identify the notified market area for the purposes of the Act.
>
> (iv) The agricultural produce must be bought or sold in the notified market area and in which event, the Market Committee established under Section 5 of the Act, is entitled to levy a fee of 1%."

8. In the instant case, the cashew nuts in all forms is an agricultural produce that comes within the schedule. Kanyakumari District is a notified area as per G.O.(Ms)No.777, Food and Agriculture, dated 09.03.1964. The notified market area was done through a Notification issued in G.O.(Ms)No.3588, Agriculture, dated 03.12.1968, and it states that the area of 89.67 square miles around the market will fall within the notified market area. This Notification virtually covers the entire Kanyakumari

District. Hence, if the cashew nuts are bought or sold in the notified area, it will attract the levy of fees by the Marketing Committee.

9. The main ground that has been urged by the learned Senior Counsel appearing on behalf of the petitioner is that the case of the petitioner falls within the proviso to Section 24 of the Act. To properly appreciate the submission made by the learned Senior Counsel, Section 24 of the Act and the proviso, are 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 are 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 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 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."*

10. On carefully going through the proviso to Section 24 of the Act, it is seen that the agricultural produce that is brought into any notified market area only for the purpose of processing or for export, the same does not attract the levy of fees. However, if the agricultural produce is not processed or exported within thirty (30) days from the date of its arrival, it shall be presumed to have been brought into the notified market area for buying and selling and hence, it will attract levy of fee by the Market Committee on the value of the agricultural produce. The proviso creates a reverse burden in a case where the agricultural produce is kept and unprocessed or is not exported within thirty days from the date of its arrival. In such an eventuality, the burden of proof is upon the person dealing with the agricultural produce to establish that the agricultural produce was not meant for sale in the notified market area even beyond thirty days.

11. The learned Senior Counsel appearing on behalf of the petitioner relied upon two judgments of the Hon'ble Apex Court *viz.,* in the case of ***Gujarat Ambuja Exports Limited and Another Vs. State of Uttarakhand and others*** reported in ***(2016) 3 SCC 601*** and in the case of ***APMC Yashwanthpura, through its Secretary Vs. Selva Foods through its Managing Director*** reported in ***(2022) 3 SCC 313***.

12. On carefully going through the above judgments, it is seen that the Hon'ble Apex Court has reiterated the scope and effect of Section 24 of the Act. The Hon'ble Apex Court has held that where a person merely exports notified agricultural produce for the purposes of cleaning and processing, without selling the processed produce within the market area, it is not liable for levy of market fee.

13. The petitioner claims that he has imported the cashew nuts from other Countries and the same is being processed in the Factory and thereafter, the cashew nuts are exported. Therefore, the petitioner is seeking for exemption from levy of market fees in line with the proviso to Section

24 of the Act. The grievance expressed by the petitioner is that whenever the cashew nuts are transported through lorries or containers, the officials belonging to the fourth respondent intercepted the vehicle and straightaway demanded for the payment of the market fees. This is in spite of the fact that the petitioner showed all the relevant documents to substantiate that the cashew nuts are not meant for sale within the notified market area. In this process, a sum of Rs.16,00,178/- (Rupees Sixteen Lakhs One Hundred and Seventy Eight only) has been recovered from the petitioner for the period from 2015 to 2021.

14. There is no difficulty in directing the fourth and fifth respondents not to levy the market fees on agricultural produce, if it falls within the scope of proviso to Section 24 of the Act. The proviso is in the nature of an exception to the main charging Section, *viz.,* Section 24. It is in fact, a statutory mandate on the Market Committee not to levy the market fee, when the agricultural produce is brought into the notified market area only for the purpose of processing and / or for export. However, the same has to be decided only on a case to case basis. This is in view of the fact that the proviso to Section 24 of the Act also creates a reverse burden on the

expiry of thirty (30) days from the date of the arrival of the agricultural produce. On such expiry of thirty (30) days, the Market Committee can presume that the agricultural produce is meant for purchase / sale in the notified market area and can proceed to levy the market fees, unless the contrary is established by the concerned person to the effect that the agricultural produce continues at the stage of processing or at the stage of export. This involves determination of facts in each given case. The act of the officials belonging to the Market Committee, intercepting the vehicles carrying agricultural produce, cannot be faulted since only at that stage, the entire process begins for determining and levying the market fees. However, if any person produces materials to show that the agricultural produce is meant only for processing and / or export, the Market Committee has to necessarily conduct an enquiry and the market fees should not be levied on the spot.

15. The petitioner has taken a stand that the agricultural produce, for which the market fee has been levied, was not meant for sale in the notified market area and it was only meant for processing and exporting to Foreign Countries. This fact has to be established only by the petitioner

before the fourth respondent, by producing the relevant materials. If ultimately, the Market Committee is satisfied that the agricultural produce, for which the market fee was levied, was actually processed and exported, then, the fee that was collected from the petitioner has to be refunded. If this fact is not able to be established by the petitioner, then, the levy of the market fee will be justified under Section 24 of the Act.

16. In the light of the above discussion, there shall be a direction to the fourth and fifth respondents to conduct an enquiry in every case, where the concerned person claims that the agricultural produce is meant only for processing and / or export and deal with such a claim in line with Section 24 of the Act. In all those cases, proceedings shall be issued before the market fees is levied, so that, the application of mind on the part of the Market Committee is evidenced by the reasons given in the proceedings. There shall be a further direction to the petitioner to make a fresh representation to the fourth respondent, claiming for the refund of the market fees levied from the petitioner for the period from 2015 to 2021. The petitioner shall place all the relevant materials before the fourth respondent and establish that his case comes within the ambit of the proviso

to Section 24 of the Act. If the petitioner is able to establish the same, the market fee collected from him shall be refunded within a period of four (4) weeks thereafter. On the other hand, if the Market Committee is not satisfied and does not find that the claim falls under proviso to Section 24 of the Act, an order shall be passed, by assigning reasons. In such an event, it will be left open to the petitioner to work out his remedy in the manner known to law.

17. This Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

30.11.2023

Index : Yes/No
NCC : Yes/No
Speaking order / Non-Speaking order
TSG

To

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N.ANAND VENKATESH, J.

TSG

Pre-delivery order made in

W.P.(MD)No.22130 of 2021
&
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