



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

373

**RSA-4127-2010
Reserved on : 07.11.2024
Pronounced on : 03.12.2024**

Market Committee Amritsar and another Appellants

versus

M/s. Deva Singh Sham Singh Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. P.K.S. Gill, Advocate
for the appellants.

Mr. Sapan Dhir, Advocate
for the respondent.

PANKAJ JAIN, J.

1. Defendants are in appeal. For convenience, parties are hereinafter are referred to by their original position in the suit i.e. appellants as defendants and plaintiff as respondent.
2. Plaintiff filed suit seeking decree of declaration to the effect that he is not liable to pay any market fee and RDF on the paddy purchased by plaintiff from outside Punjab during the year 1992-93 and 1993-94 and that the demand raised by the defendants from plaintiff to the tune of Rs.45,13,362.32 as market fee and Rs.31,13,748.82 as RDF on the paddy purchased by the plaintiff from outside Punjab during the year 1992-93 and 1993-94 is wrong, illegal and unjustified. He further prayed decree of permanent injunction restraining defendants from making recovery.



3. Plaintiff claimed to have purchased paddy from a notified market area in Haryana and claims to have paid market fee as well as RDF. He thus, claims that State of Punjab cannot claim the same again. Defendants contested the suit by filing written statement claiming that the Civil Court has no jurisdiction to entertain the suit. It was further claimed that the paddy brought from outside State of Punjab is covered under Rule 29(7) of the Punjab Agricultural Produce Markets (General) Rules, 1962 and the market fee is leviable under Section 23 of the Act. It was further claimed that Punjab Agricultural Produce Markets Act, 1961 is applicable to the State of Punjab. The fee levied within the territorial jurisdiction of State of Haryana, cannot be held good for levy of market fee in the State of Punjab.

4. The Courts below while relying upon Rule 29(7) of the 1962 Rules, decreed the suit filed by the plaintiff granting him decree of declaration holding that he is not leviable to pay any market fee and RDF on paddy purchased from outside Punjab during the year 1992-94. That the demand raised by the defendants-appellants was bad. The judgment passed by Trial Court stands affirmed by the Appellate Court.

5. Counsel for the appellant while assailing the impugned judgment and decree passed by the Courts below, claims that no evidence was led by the plaintiff to prove the transaction, yet the Courts below have decreed the suit filed by the plaintiff. It has been contended by Mr. Gill that it is a suit wherein no evidence has been led by the plaintiff, yet suit has been decreed.

6. *Per contra*, Mr. Dhir relies upon Division Bench judgment of this Court in **CWP No.3871 of 2000** titled as **M/s. Guru Nanak**



Industries vs. State of Punjab and others decided on 01.08.2018, to submit that Section 23 of the Act provides for levy of fee on the agricultural produce bought or sold within the market area. Once it has come on record that the entire transaction took place outside the State, market fee will not be leviable.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. Facts are not much in dispute. The issue is:-

(i) Whether plaintiff is required to pay market fee on the delivery of paddy and rice in the facts and circumstances of the present case?

(ii) Whether Civil Court has jurisdiction to entertain the suit to quash the demand raised by market committee?

9. Section 23 of the Punjab Agricultural Produce Markets Act, 1961 deals with levy of fee. The same reads as under:-

“Levy of fees - [A committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad-valorem basis -

(i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees];

Provided that -

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.”



10. In exercise of powers under the Act, State of Punjab notified Punjab Agricultural Produce Markets (General) Rules 1962. Rule 29 deals with levy and collection of fee on the sale and purchase of agricultural produce. Rule 30 deals with exemption from payment of fee. The provisions read as under:-

“30. Exemption from payment of fees – [Sections 23 & 43(2)(vii) - ⁶(1) No market fee shall be levied on the sale or purchase of any Agricultural Produce manufactured or extracted from the agricultural produce in respect of which such fee has already been paid in the same notified market area or in an other notified market area within the state].

⁷[(1-A) The dealer who claims exemption from payment of market fee levied on any agricultural produce manufactured or extracted from the agricultural produce in respect of which the market fee has already been paid in another notified market area shall make declaration and give certificate in Form K-1 to the Committee from where exemption is claimed and a copy of the same shall be delivered to the Committee to which the fee has already been paid. The counterfoil shall be retained by the dealer. The book containing K-1 forms shall be got attested by the dealer from the Secretary of the concerned Market committee or his authorized Officer before giving the requisite certificate. The dealer shall produce the certificate within a period of thirty days from the date of transaction to the Committee from where exemption is claimed. The certificate presented after the aforesaid period of thirty days shall not be entertained.

(2) The dealer concerned in the sale or purchase of any quantity of agricultural produce from which he manufacturers or extracts any other agricultural produce shall maintain in Form-L true and correct accounts of the sale or purchase as the case may be of the said agricultural produce and of any agricultural produce manufactured or extracted from it.

(3) No market fee shall be leviable on purchase of raw hides and skins and sale of cured tanned and processed hides and skins from the persons who themselves are tanners and are residing in the State.



¹(4) No market fee shall be levied on paddy, cotton, timber, firewood and groundnut taken from one notified market area to another notified market area for the purpose of processing on sawing as the case may be.

(5) No market fee shall be levied during the financial year 1992-93, on the purchase of wheat by the national committee for solidarity with Cuba for the purpose of export to Cuba as a gift.

(6) No market fee shall be levied on the sale or purchase of Great Millet (Jowar), Gram and Kabli Gram (Channa Kala and Safaid, Cotton Seed (Banaula), Groundnut shelled (Mungphalli Giri), Cluster Bean (Guara), Turmeric (Haldi), Heena (Mehndi), Goat Hair, Camel Hair, Indian Clover (Senji), Cress/Gardenress (Hallon), Oats (Javi), Gur, Shakkar, Khandsari, Green Gram (Mung), Black Gram (Mash), Phaseolus aconitifolius (Moth), Lentil (Massur), Pigeonpea (Arhar), Rajmaha and Soya-Bean in a notified market area within the State of Punjab.

(7) No market fee shall be levied on Indian Colza (Sarson) Indian Rape (Toria), Rochet (Tara Mira), Linseed (Alsi), Indian Mustard (Raya), Sesamus (Til), Groundnut (unshelled) and Sunflower Seed imported from outside the State of Punjab for the purpose of processing and which is not bought or sold as such in the notified market area.

²[(8) No market fee shall be levied on the sale or purchase of Maize in a notified market area within the State of Punjab.]

³[(9) No market fee shall be levied on paddy (Basmati) imported from outside the State of Punjab;

Provided that the proof of making payment of market fee in the State from which paddy (Basmati) has been imported alongwith the purchase bill, documents relating to transportation and Form-K2, is furnished by the dealer to the concern committee.]

⁴**30-A and 30-B.** [Omitted]

11. Division Bench of this Court in *M/s. Guru Nanak Industries (supra)* dealt with Section 23 of the 1961 Act and Rule 29 of 1962 Rules, observed as under:-

“XX XX XX



Hon'ble the Supreme Court had also examined the factual aspect on which findings had been recorded by the High Court to hold that the transaction of sale or purchase of goods had taken place outside the State of Andhra Pradesh. For the purpose even provisions of the Sale of Goods Act, 1930 were also referred to in detail.

Competence of the State legislature to levy market fee which is brought in the market area not for the purpose of sale but for manufacture or further processing came up for consideration before Hon'ble the Supreme Court in Gujarat Ambuja Exports Limited vs State of Uttarakhand and others (2016) 3 SCC 601. It was opined that the same was beyond legislature competence of the State. Para 36 of the judgment is reproduced hereunder vide which Section 27(c)(iii) of the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011, was struck down:-

“36. A perusal of the abovementioned judgments makes it clear that Entry 52 of List I governs the process of manufacture and production. Therefore, in the instant case, the State Legislature did not have the competence to enact the impugned provisions which sought to levy market fee and development cess even on those agricultural produce which were not being brought into the market for the purpose of sale, but for the purpose of manufacture or further processing. Since the State Legislature was not competent to enact the impugned provision of Section 27(c)(iii) of the Act, the same is liable to be struck down as the same was enacted by the State Legislature without having the legislative competence to do so.”

The issue was subsequently considered by Hon'ble the Supreme Court in Agricultural Produce Market Committee vs Biotor Industries Limited and another (2014) 3 SCC 732. In the aforesaid judgment, the provisions of Gujarat Agricultural Produce Markets Act, 1963 (for short, 'the Gujarat Act') were under consideration. Market fee was sought to be levied on the castor seeds, which was bought from outside the State.



Section 28 of the Gujarat Act provided for levy of market fee on agricultural produce bought or sold in the market area. Explanation to Rule 48 of the Gujarat Agricultural Produce Markets Rules, 1965 (for short “the Gujarat Rules”) provided that sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale. While interpreting the aforesaid two provisions with reference to the material placed on record by the parties and also considering the provisions of the Sale of Goods Act, Hon'ble the Supreme Court opined that the conclusion arrived at by the learned Single Judge of the High Court concerned, was correct to the extent that the castor seeds were bought within the local market area as the term of the sale suggest that, hence, the market fee was leviable.

The proposition was again considered by Hon'ble the Supreme Court in M/s Arihant Udhyog vs State of Rajasthan and others AIR 2017 SC 3074, where provisions of the Rajasthan Agricultural Produce Markets Act, 1961 (for short, 'the Rajasthan Act') and the Rajasthan Agricultural Produce Markets Rules, 1963 (for short, 'the Rajasthan Rules') were under consideration. Section of the Rajasthan Rules provided for levy of fee on the agricultural produce bought or sold in the market area, whereas explanation (a) to Rule 58 of the Rajasthan Rules was similar to but was under consideration before Hon'ble the Supreme Court in Biator Industries Limited's case (supra). While relying upon the judgment of Biator Industries Limited's case (supra), Hon'ble the Supreme Court opined that Section 17 of the Rajasthan Act and Rule 58 of the Rajasthan Rules framed thereunder will depend upon the question as to whether agricultural produce is bought or sold by the licensee in the market area. An answer to the aforesaid question would depend as to when and on what stage the title of the goods passes. If the entire transaction takes place outside the State of Rajasthan, no market fee is payable and answer to the aforesaid question would depend upon the provisions of the Sale of Goods Act. Section 17 of the Rajasthan Act and Rule 58 of the Rajasthan Rules are extracted below:-

“Section 17 of the Act



Power to collect market fees. – The market committee shall collect market fees from the Licences in the prescribed manner on agricultural produce bought or sold by them in the market area at such rate as may be specified by the State Government, by notification in the official gazette, subject to a maximum of Rs 2/- per hundred rupees worth of agricultural produce.

Provided also that Mandi Fee leviable on the sale or purchase of Mustard Seed shall be Rs. 1/- on one hundred rupees.

Provided also that Mandi Fee leviable on the sale or purchase of Oil Seeds shall be Rs. 1/- on one hundred rupees.

Rule 58 of the Rules

Market area Cess –

(1) A market area committee shall collect cess on agricultural produce bought and sold in the market area at such rate as may be specified by the Government by way of notification:

Provided that no cess shall be levied on any such notified agricultural produce on which cess has been levied in any market area if the seller or the purchaser of such notified produce files a declaration in Form XI, in the prescribed manner, that no notified agricultural produce, cess has already been levied in any other market area of the State.

Explanation – (a) For the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a Market area if it has been weighed or measured or surveyed by a licensed weighman, measurer or surveyor in the Market area for the purpose of sale, notwithstanding the fact the property in the agricultural produce has by reason of such sale, passed to a person in place outside the market area.”



While referring to the provisions of Sale of Goods Act and terms of the contract between the parties regarding sale of goods and the provisions of the Sale of Goods Act, Hon'ble the Supreme Court opined that the sale of agricultural produce had taken place within the market area in Rajasthan as the sale rectified in that area, seller being responsible for delivery of goods at the place of the buyer. Relevant paras therefrom are extracted below:-

“14. From the aforesaid arguments it becomes clear that applicability of Section 17 of the Act read with Rule 58 of the Rules would depend upon the question as to whether agricultural produce is bought and sold by the licensee in the market area. It is also the common case of the parties that the answer to the aforesaid issue would depend upon the question as to when and at what stage the title in the goods passes. If the entire transaction takes place outside the State of Rajasthan and the ownership in the goods also passes outside Rajasthan, then the market fee is not payable. It is also the common case of the parties that answer to the aforesaid question would depend upon the applicability of Section 4 read with Section 19 of the Sale of Goods Act, 1930, which provisions are to be applied keeping in view the terms and conditions on which the goods are sold. That is the exercise which is done by the High Court by looking into the terms on which the goods were sold by Jawahar Exim Ltd. to Arihant Udyog. Insofar as Arihant Udhog is concerned, this was the only invoice produced before the High Court and is also made Annexure P-3 in the present proceedings. On going through the same, we do not find any fault in the approach of the High Court.

15. Section 4 of the Sale of Goods Act deals with the contract of sale and defines ‘sale’ as well as ‘agreement to sell’. It reads as under:

“4. Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a



price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

The very distinction between the sale and agreement to sell enumerated in the aforesaid provision points out that a sale takes place when the property in goods is transferred from the seller to the buyer. If transfer of property in the case is to take place at a future time or subject to conditions that are stipulated in the contract of sale of goods, then the contract is merely an agreement to sell. Section 19 is contained in Chapter-III of the Sale of Goods Act, title whereof is “Effects of the Contract (Transfer of Property as between Seller and Buyer)”. As per this provision, property passes from seller to buyer when it is intended to pass and such an intention is to be gathered from contract for the sale when it pertains to sale of specific or ascertained goods. To understand fully the implication of this provision, we reproduce hereunder the provisions of Section 19:

“19. Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the



contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.”

16. Sub-section (3) of Section 19 is another significant provision which mentions that rules contained in Sections 20 to 24 are the rules for ascertaining the intention of the parties, unless a different intention appears in the contract for the sale of specific or ascertained goods. It means, if such an intention as to when the parties to the contract intend the property in goods to be transferred cannot be gathered from the contract, rules contained in Sections 20 to 24 would be applied.

17. Section 20 deals with a situation where specific goods are in a deliverable state. In that case property in goods passes to the buyer when the contract is made, even when time of payment of the price or the time of delivery of the goods or both is postponed. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable {See – Shalimar Chemical Works Ltd. (AIR 1997 SC 2502)}.

18. However, Section 21 is exception to Section 20 which states that where there is a contract for sale of specific goods and the



seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such a thing is done and the buyer has notice thereof. Likewise, Section 22 carves out another exception and mentions that even when the specific goods are in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such Act or thing is done and the buyer has notice thereof.

19. Section 23 deals with sale of uncertain goods and appropriation, with which we are not concerned here. Likewise, Section 24 deals with a situation where goods are sent on approval or 'on sale or return' basis, which is also not relevant for our purposes.

20. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.

21. In the case of Arihant Udhyog, intention is to be gathered from the terms and conditions, which have already been noted above. It mentions that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods. Therefore, intention was to retain the title in the goods till its delivery inasmuch as till that time it is the seller who was responsible for the goods. This condition



would clearly spell out that if the goods are destroyed or lost in transit, i.e. before their delivery, responsibility will be that of the seller. Such a responsibility can be only if the ownership remains of the seller. No other document was produced by Arihant Udhyog which could demonstrate the intention that property in goods passed in their favour before these goods were delivered.

22. Thus, insofar as judgment of the High Court in Arihant Udhyog is concerned, no fault can be found therein. The appeal filed by Arihant Udhyog is, accordingly, dismissed.”

Section 23 of the Act provides for levy of fee on agricultural produce bought or sold within the market area. However, in Rule 29 (7) of the Rules, a deeming section has been added providing for certain eventualities which, in turn, would lead to the conclusion that the agricultural produce was bought or sold within the market area, hence, market fee will be leviable. Any one of those eventualities in isolation may not itself lead to conclusion regarding the agricultural produce being bought or sold in the market area, if seen these parameters considered in the light of the principles as laid down in the Sale of Goods Act, 1930. Hon'ble the Supreme Court in Shalimar Chemical Works Limited's case (supra) opined a similar presumption raised to be rebuttable. The legal fiction so created was held to be beyond legislative policy. In the case of M/s Arihant Udhyog's case (supra), Hon'ble the Supreme Court opined that factum of purchase of sale of goods in a market area will depend on their title for the agricultural produce passes. If entire transaction takes place outside the State, market fee will not be payable.”

12. Applying the aforesaid test to the present case, the question is:-

(i) whether plaintiff successfully proved transaction outside State of Punjab. It is not case of exemption



from statutory fee. Rather the issue is whether statutory fee was leviable at the first instance of Section 23 of the Act?

13. Sukhbir Singh PW-1 deposed regarding purchase of paddy and claimed delivery of paddy to the commission agent of the plaintiff in Haryana. In order to prove the record, Prem Singh, Auction Recorder of the market committee itself was examined as PW-2. In his testimony, he admitted that the plaintiff produced the entire record pertaining to the purchase, agreement, weightment and delivery of paddy and rice in the notified market area in Haryana. He also admitted that the plaintiff produced sample bills of purchase of paddy and rice showing the payment of market fee and RDF of that area. PW-2 was subjected to cross-examination by the counsel for the appellants. No suggestion was put to him that the plaintiff-firm has not submitted the documents to the market committee. Secretary, Market Committee H.S. Randhawa appeared as DW-1 and admitted that it is correct that the plaintiff purchased the paddy from Haryana in question and brought the same in Punjab.

14. The paddy was weighed at the shop of kacha Arthias in the State of Haryana. The same was delivered to the commission agent of plaintiff at Haryana on payment of market fee and PDF leviable in the said state. The entire transaction was effected at a place outside the State of Punjab. In view of above, this Court finds that it being admitted case of the defendants also that the plaintiff purchased paddy outside State of Punjab, market fee as leviable under Section 23 would not be attracted on the transaction. Resultantly, the imposition of market fee by the appellant-market committee on the plaintiff, was not as per law.

15. Keeping in view the dictum of law laid down by Supreme Court in the case of *Dhulabhai And Others vs The State Of Madhya Pradesh and Another* reported as *1968(3) SCR 662*, once the levy of the market fee which is subject matter of the present appeal has been found to be against the statute, this Court finds that Civil Court cannot be precluded from exercising jurisdiction, once the authority acts in violation of the provisions of statute. Resultantly, the objection raised with respect to jurisdiction is also found to be unsustainable in the eyes of law and is hereby rejected.

16. Finding no merit in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

03.12.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes