

(2021) 12 SC CK 0055

In the Supreme Court Of India

Case No : Civil Appeal No. 7706 Of 2021

APMC Yashwanthapura Through Its Secretary

APPELLANT

Vs

M/S. Selva Foods Through Its Managing Partner

RESPONDENT

Date of Decision : 14-12-2021

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation And Development) Act, 1966 —
Section 2(14A), 65, 65(2), 65(2A), 65(2A)(ia)

Citation : AIR 2022 SC 109 : (2021) 15 Scale 351 : (2022) 3 SCC 313

Hon'ble Judges : R. Subhash Reddy, J; Sanjiv Khanna, J

Bench : Division Bench

**Advocate : Dr. Nanda Kishore, Haris Beeran, Mushtaq Salim, Usman Ghani
Khan, Azhar Assees, Radha Shyam Jena**

Final Decision : Allowed

Judgement

R. Subhash Reddy, J

1. Leave granted.

2. This appeal is filed aggrieved by the judgment and order dated 11.01.2013 passed in Writ Appeal No.18000 of 2011, dismissing the intra-court appeal filed by the appellant herein by confirming the order of the learned Single Judge allowing the Writ Petition in W.P. No.11816 of 2009 on 22.08.2011, filed by the respondent herein.

3. The respondent herein is a trader engaged in the business of selling cleaned and processed spices in the name and style of M/s. Selva Foods within the market area of the appellant. They buy spices like turmeric, chilli, coriander, methi and mustard seeds etc., from the market areas of various Agricultural Market Committees within the State of Karnataka and they also import such spices from outside the State. After importing such agricultural produce, they undertake cleaning and processing of the spices and sell the processed items within the market area of the appellant.

4. During the year 2008, authorities of the Market Committee have inspected the records of the respondent and found that respondent had purchased methi and mustard seeds from outside the State of Karnataka and after importing they sold the processed goods within the market area of the appellant and has not paid the market fee. When At first instance, order dated 12.08.2008 was passed by the appellant-APMC cancelling the licence of the respondent on the ground that the market fee of Rs.28,422/- and the penalty amount was not paid. When such order was questioned in Writ Petition No.11211 of 2008 the High Court has allowed the writ petition on the ground that the respondent was not given proper opportunity and remitted the matter back for fresh consideration, to the appellant. Further it was observed, the amount of Rs.28422/- which was paid pursuant to interim order would be subject to decision of the authority.

5. Subsequently after giving opportunity, order dated 24.03.2009 was passed confirming the earlier demand and directed the payment of Rs.85,266/- which was payable out of the total demand of Rs.1,13,688/-. Questioning such demand again writ petition was filed in the High Court in W.P. No.11816 of 2009 which is allowed by the learned Single Judge of the High court as against which the appellant Market Committee has preferred intra-court appeal in Writ Appeal No.18000 of 2011 which is dismissed by the impugned judgment and order dated 11.01.2013. As against the same this appeal is preferred.

6. We have heard Dr. Nanda Kishore, learned counsel for the appellant and Mr. Haris Beeran, learned counsel for the respondent.

7. Having heard the learned counsel for the parties, we have perused the impugned judgment and other material placed on record. Before we deal with the rival contentions of both sides, we deem it appropriate to refer to the relevant provisions of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act of 1966. Section 65 of the Act reads as under:

"65. Levy of market fees:-

(2) The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws which shall not be more than two rupees per one hundred rupees of the value of such produce bought except in case of livestock where the market fee shall not be more than five rupees per head of cattle other than sheep or goat, and in the case of sheep or goat such fee shall not be more than one rupee per head in such manner and at such times as may be specified in the bye-laws:

Provided that in the case of any co-operative society doing business in agricultural produce within a market yard, market fee shall be levied and collected at the rate of eighty per cent of the market fee payable under this Act:

Provided further that, if on any agricultural produce market fee has already been levied and collected under sub-section (2) in any market area within the State

and such agricultural produce is processed and sold in any other market area within the State or exported outside the State it shall be exempted from the levy of market fee:

Explanation. - Nothing in this proviso shall apply to -

(i) any processed agricultural produce imported from outside the State and sold in any market area within the State; or

(ii) any agricultural produce imported or caused to be imported by any person either on his own account or as an agent for another person, from outside the State into any market area within the State for the purpose of processing or manufacturing except for one's own domestic consumption.

Provided also that in case of a buyer in a spot exchange established by a licensee or a licensee for direct purchase of notified agricultural produce or a contract farming sponsor buying from a contract farming producer, market fee shall be levied and collected at the rate of seventy per cent of the market fee payable under this Act:

Provided also that in case of any private markets established under Section 72-A of the Act, market fee shall be levied and collected at the rate of thirty three percent of market fee payable under this Act, provided that no market fee is leviable on flowers, fruits and vegetables. Instead the Market committee may collect user charges in respect of the above articles, user charges for such services provided by the Market Committee from the buyer of the produce at such rates as may be specified in the bye-laws as approved by the Director of Agricultural Marketing.

(2-A) The market fee payable under this section shall be realised as follows namely.-

(i) if the produce is sold through a commission agent, the commission agent shall realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ii) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the committee;

(iii) if the produce is purchased by a trader from another trader, the trader selling the produce shall realise it from the purchaser and shall be liable to pay the market fee to the committee; and

(iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee.

(2-B) The market fee payable under clause (i), (ia), (ii) or (iii) of sub-section (2-

A) shall be paid to the market committee within such time as may be specified in the bye-laws."

8. Dr. Nanda Kishore, learned counsel for the appellant, has contended that as per sub-sections (2) and (2-A) of Section 65 of the Act, market fee is payable on the agricultural produce, which is purchased from outside the State as an importer and sell the processed goods within the area of the Market Committee. It is submitted that agricultural produce, which is subject matter of the petition is a scheduled item, as such, after processing market fee is leviable on such processed goods. It is submitted that as per Section 65 of the Act the Market Committee shall levy and collect market fee from every buyer in respect of the agricultural produce bought by such buyer in the market area at such rate as may be specified in the bye-laws. It is submitted that as per the second proviso to Section 65(2) of the Act, if on agricultural produce, the market fee has already been levied and collected under sub-section (2) in any market area within the State and such agricultural produce is processed and sold in any other market area within the State or exported outside the State, it is exempted from levy of the market fee. However, in view of the explanation, it is clear that any agricultural produce, imported or caused to be imported by any person either on his own account or as an agent for any other person from outside the State into any market area within the State for the purpose of processing or manufacturing, except for one's own domestic consumption, is liable for market fee.

9. It is submitted that exemption under second proviso to Section 65(2) of the Act, is not applicable for the importers, on processed goods and sales within the market area as per the explanation. It is further submitted that in view of clause (ia) of sub-section (2-A) of Section 65 of the Act, if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee. It is submitted that the interpretation of the relevant provisions by the learned Single Judge, as confirmed by the Division Bench of the High Court, is erroneous and runs contrary to the plain reading of the Section 65 of the Act. The learned counsel also placed reliance on the judgment of this Court in the case of G. Giridhar Prabhu and others v. Agricultural Produce Market Committee (2001) 3 SCC 405.

10. On the other hand, the learned counsel appearing for the respondent has strenuously contended that since the respondent has purchased the agricultural produce from outside the State of Karnataka as and when such produce is processed within the market area of the appellant and sell, they are not liable to pay market fee. By referring to amendments made to the Act (by Act 22 of 2004), it is submitted that Section 65(2) of the Act is the charging Section and a reading of the said provision makes it clear that market fee can not be collected on the produce which the respondent has purchased from outside the State as an importer and processed within the area of the appellant Market Committee. In support of his contentions, the learned counsel has placed reliance on the judgment in the case of Gujarat Ambuja Exports Limited and Another v. State of

Uttarakhand and Others (2016) 3 SCC 601 and also the judgment in the case of ITC Ltd., v. State of Karnataka and Others 2005 SCC OnLine Kar 86 : 2005 AIHC 2950.

11. In this case, it is not in dispute that the respondent is a trader as defined under provisions of the Act and has purchased spices, which are notified as agricultural produce, not only from market areas within the State of Karnataka but also from outside the State of Karnataka. After such imports, they process the goods and sell the processed goods within the market area. Even the processed goods are notified items as per the schedule under the Act.

12. A reading of Section 65 of the Act, which is the charging section, it is clear that, the Market Committee shall levy and collect the market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws. As per the second proviso to Section 65(2) of the Act, if on any agricultural produce market fee has already been levied and collected under sub-Section (2) in any market area within the State and such agricultural produce is processed and sold in any other market area within the State or exported outside the State, it shall be exempted from the levy of market fee. However, a reading of the explanation, makes it clear, the applicability of second proviso excluded to any agricultural produce imported from outside the State and processed and sold in any market area within the State; or any other agricultural produce imported or caused to be imported by any person either on his own account or as an agent for another person, from outside the State into any market area within the State for the purpose of processing or manufacturing except for one's own domestic consumption. Further, as per Section (2-A)(ia), if the produce is sold by an importer to the purchaser, the importer to realise the market fee from the purchaser and shall be liable to pay the same to the committee. A harmonious reading of the Section 65(2) of the Act, its second proviso, and explanation to the same and clause (2-A)(ia), makes it clear that if any dealer imports agricultural produce from outside the State into any market area within the State of Karnataka for the purpose of processing and sale, the applicability of second proviso to sub-section (2) of Section 65 of the Act stands excluded. The explanation to sub-section (2) of Section 65 of the Act, makes it clear that even the processed items from the agricultural produce imported from outside the State of Karnataka, attract market fee on sales within the market area of the appellant - Market Committee. It is also clear from the aforesaid Section, it is the obligation of the importer to realise the market fee from the purchaser and pay the same to the Market Committee.

13. In the case of G. Giridhar Prabhu & Ors. (2001) 3 SCC 405 while interpreting the provisions of Karnataka Agricultural Produce Marketing Regulation Act, 1966 this Court has held that a person purchasing the raw cashew nuts, then extracting cashew kernels by means of manufacturing process for the purpose of sale in domestic and international market, is held to be a trader within the

meaning of sub-section (2) of Section 48 or importer under Section 2(14-A) of the Act, therefore, would be liable to collect the market fee from his buyers and to pay such fees to the Marketing Committee.

14. In the case of Gujarat Ambuja Exports Limited & Anr. (2016) 3 SCC 601 while considering the provisions of Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, this Court has held that agricultural produce which is brought into market area not for the purpose of sale, but only for the purpose of manufacture or further processing activities, cannot be subjected to market fees. Similarly, in the case of ITC Ltd. 2005 SCC OnLine Kar 86 : 2005 AIHC 2950, learned Single Judge of the High Court of Karnataka has held that mere activity of stocking and processing of even the imported notified agricultural produces, which are imported into the market area do not attract payment of market fees.

15. We also endorse the view in the aforesaid judgments but in the case on hand respondent is a buyer as defined under sub-section (2) of Section 65 of the Act and we cannot ignore the second proviso and Explanation to Section 65(2) of the Act. It is not a case where the respondent is denying sale of the imported agricultural produce within the market area of the appellant after processing. In that view of the matter it is not entitled for exemption from payment of market fees. At the same time we make it clear that if one merely imports notified agricultural produce from outside the State for the purpose of cleaning and processing without selling the processed produce within the market area is not liable to pay market fee. As much as in this case without disputing the factum of sale within the market area post the import, the respondent has defended the proceedings only on the ground that once the agricultural produce is processed it will not attract market fee as such the same cannot be accepted. It is the sale within the market area that attracts levy of market fee, and not the first purchase that was outside the market area. Notably the goods sold are also notified agricultural produce specified in the Schedule. Validity of the item under the Schedule is not under challenge.

16. For the aforesaid reasons, the appeal is allowed. The impugned judgment and order passed in W.A. No.18000/2011 dated 11.01.2013 is set aside.

Consequently, the Writ Petition No.11816 of 2009 stands dismissed. No order as to costs.