
(2008) 09 GAU CK 0051
In the Gauhati High Court

Assam Roller Flour Mills Association and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 254
Evidence Act, 1872 — Section 114, 31C

Citation : (2009) 1 GLR 1 : (2008) 4 GLT 366

Hon'ble Judges : Jasti Chelameswar, C.J; Amitava Roy, J

Bench : Division Bench

Judgement

Amitava Roy, J.—This batch of writ petitions register an identical challenge to the constitutional validity of Section 3D, 3E, Clause (ii) and (iii) of Explanation-1 to Section 21 as well as Section 21(1), 21(2), 21(3), 21A, 23 and 25(xiii) of the Assam Agricultural Produce Market Act, 1972 as amended by Assam Agricultural Produce Market (Amendment) Act, 2000 and the Assam Agricultural Produce Market (Amendment) Act, 2006 with the consequential relief of refund of the cess collected thereunder by the respondents together with the interest @ 15% thereon for the period 13.08.2001 to 08.12.2005 and till such time the same is exacted from the petitioners.

2. The contextual facts though vary minimally, the spectrum of assailments being strikingly common in the cases, these petitions were analogously heard and this adjudication would answer the issues raised.

3. We have heard Mr. D.K. Mishra, Senior Advocate assisted by Ms. Section Jahan, Advocate for the petitioner in WP(C) Nos. 5491 /2001, 1794/2001 and 5776/2001, Mr. G.N. Sahewalla, Senior Advocate assisted by Mr. P. Bora, Mr. Aslam, Mr. D. Senapati, Advocates in WP(C) Nos. 7082/2001 and 8748/2001, Ms. M. Hazarika, Senior Advocate assisted by Ms A. Ajitsaria, Advocate for the petitioner in WP(C) No. 8462/2001 and Mr. G Choudhury, Advocate for the petitioner in WP(C) No. 2301/2001. Mr. AK Phookan, learned Advocate General, Assam appeared for the State respondents, whereas, Assam State Agricultural

Marketing Board (hereafter referred to for short as "Board") was represented by Mr. Gaurav Banerjee, Senior Advocate assisted by Mr. Saumitra Saikia, Mr. Arunav Choudhury and Ms. Panchali Choudhury, Advocates.

4. A measure of the facts in brief indicating the nature of the petitioners' transactions and the incidence of the levy of cess under the impugned legislations, before venturing into the thick of the impeachment need be made.

5. The petitioner in WP(C) No. 5491/ 2001, Assam Flour Roller Mills Association is a registered association of roller flour mills situated throughout the North Eastern Region of the country and represents to espouse the collective interest of such mills and thus claim to be competent to air their grievances to protect and enforce the constitutional and legal rights of their members who are engaged in producing flour (Maida), Semolina (Suji), Atta, Whole meal Atta and Wheat bran by manufacturing those in their respective units. The wheat for manufacturing the aforesaid products, is purchased by the members of the association from several states in North India namely, Punjab, Haryana and Uttar Pradesh. The products purchased are made by paying market cess to the Market Committees of the respective places and thereafter the goods are dispatched to Assam by road and/or rail at the risk of the members/consignees. Apart from the fact that wheat is insured in the name of the consignee and is transported to the State of Assam, these being ascertained goods in a deliverable state, the sale thereof, is completed in the States from where the purchases are made. The association has asserted that its members do not sell wheat bought from outside the State, but manufacture Flour, Semolina, Maida, Atta etc. in their mills.

6. The petitioner in WP(C) No. 8748/ 2001, M/s Kothari Products Ltd., Jorhat is a public limited company with its registered office at Kanpur and branch office, amongst others at Cinnamara, Jorhat. It claims to purchase bettlenut and tobacco at its registered office at Kanpur as well as branch office at Ahmedabad and after processing the same, transfers to its unit at Jorhat for manufacturing "Pan Masala" and "Gutka". According to it, it does not sell "Supari" (dried bettlenut) and as Panmasala and the Gutka manufactured by it is not an agricultural product within the meaning of the Assam Agricultural Produce Market Act, 1972 as amended (hereafter referred to as the "Act") and no cess under the Act is leviable thereon. Further, the said goods are transferred to its unit at Jorhat from those at Kanpur or Ahmedabad and since the same are purchased by it at those places, no cess under the Act can be levied at Jorhat or any other place in Assam.

7. The petitioner in WP(C) No. 1794/ 2001 and 5775/2006, M/s. Shalimar Chemical Works Limited is a company registered under the Companies Act, 1956 with its registered office at Kolkata in the state of West Bengal and branch offices amongst others at Guwahati in the District of Kamrup, Assam. It has maintained that it inter alia is engaged in the business of manufacturing, marketing and selling of coconut oil under its registered brand or trade marks "Shalimar Coconut Oil", "Rajat Coconut Oil" and "Shalimar Mustard Oil" and spices under

the brand name "Shalimar Chef Spices". It is a registered dealer under the Assam Value Added Tax Act, 2003 and holds a valid trade licence from the Guwahati Municipal Corporation, Guwahati. It manufactures coconut oil either in its own factory or through its technical collaborators or franchisee manufacturers and the product is factory packed in small containers and stored in its warehouses located amongst others at Kolkata and Hyderabad. As per the requirement of its Guwahati branch, the stocks held by the petitioner are transferred to "Self" at Guwahati or to its various godowns located at Rehabari or Beltola of the State capital. As per the business requirements, the goods like "Shalimar Coconut Oil "and "Shalimar Chef Spices" are dispatched to various distributors, retail sellers and wholesalers located in the North East. It has maintained that none of its above products is sold or marketed by it and purchased within the State of Assam or is delivered within it pursuant to any agreement with any other party. In spite thereof, the respondent Board has been imposing and collecting market cess at Boxirhat and/or Sri Rampur Check Gate as soon as the goods enter the state of Assam in course of transit by road while proceeding to the petitioner's office/godown at Rehabari and Beltola at Guwahati from its factory and Head office at Hyderabad/Kolkata. The petitioner has further alleged that the respondents collect cess from it for the second time at its office at Rehabari and its godown at Beltola while the goods are in the process of transportation to their various dealers and distributors within the State.

8. The petitioner in WP(C) No. 7082/ 2001, M/s Gopiram Chetram though has projected itself to be a proprietorial concern with its place of business at Chirang Bazar at Tinsukia it has not disclosed the particulars of its business and the transactions relating thereto for which the market cess under the Act it being realized from it.

9. The petitioner in WP(C) No.8462/ 2001, Sri Kundanlal Sharma, Proprietor of Sri Mahadev Flour and Oil Mill, Tinsukia has pleaded that he carries on the business of manufacture of mustard oil and mustard cake in his mill. While contending that as a dealer of mustard oil he is registered under the Assam General Sales Tax Act, 1993 he has averred that he purchases the same from outside Assam namely, Rajasthan by paying all legal duties, insurance charges etc. there. The goods are transported from North India and other places outside the State of Assam by oil tankers and are covered by open Marine Insurance policies. The transporters however, at the time of entering into the State of Assam are intercepted at Sri Rampur Check Gate and cess purportedly under the Act is demanded by the officials of the respondent Board present thereat. The petitioner has contended that as no sale or purchase of the agricultural produce takes place in the State of Assam and manufactured oil not being a notified item under the Act, the demand and realization of cess is illegal and unauthorized.

10. The petitioner in WP(C) No. 2301/ 2001, M/s. Potato and Onion Merchant Association, Guwahati is an association of members engaged in the import and whole sale business of Potato, Onion and Garlic. While contending that the

association represents the collective interest of its member traders, it has asserted that the aforementioned agricultural produces are purchased from various markets outside the State of Assam, namely, West Bengal, Bihar, Uttar Pradesh etc., whereafter those are dispatched by traders of other States on commission basis to the members of the petitioner association. While purchasing those produces at different markets beyond the State of Assam, the members pay market cess to the concerned market committees of those markets and thereafter the consignments are dispatched to Assam by road and rail at the risk and cost of each consignee. The consignments are insured in the name of the consigners till the actual delivery thereof is made to the consignee. The association has pleaded that as the agricultural produces involved are ascertained goods and in a deliverable state, the sale thereof are completed at the places of their purchase in the States of West Bengal, Bihar etc. and, therefore, the cess thereon under the Act is not leviable.

11. The State Legislature of Assam enacted the Assam Agricultural Produce Market Act, 1972 and the State Government in exercise of its power conferred u/s 49 thereof, framed a set of Rules namely, Assam Agricultural Produce Market (General) Rules, 1975 (hereinafter referred to as the "Rules") which came into effect from 15.6.1977. Explanation to Section 21 embodied a legal fiction that notified agricultural produces taken out or proposed to be taken out of a market area defined in Section 2(1)(xvii) shall unless the contrary is proved be deemed to have been bought or sold within such area. The State Government, according to the petitioners enlarged the scope of the transaction by designing Rule 21(7) so much so, that it was beyond the scope of the parent legislation.

As, this led to random collection of cess by the respondent Board, vires of Rule 21(7) of the Rules was challenged by M/s. Assam Roller Flour Mills Association [petitioner in WP(C) No. 5491/2001] in WP(C) No. 1453/ 1998 before this Court. By judgment and order dated 29.09.1999, the petition was partly allowed adjudging Rule 21(7) to be ultra vires. The learned Single Judge, however, left the other counts of impugnement undecided.

12. Being aggrieved, the petitioner, namely, Assam Roller Flour Mills Association, preferred Writ Appeal No. 378/1999 in respect of the reliefs unattended. The respondent Board as well as State Government also preferred separate appeals being Writ Appeal No. 392/1999 and 39/ 2000 respectively challenging the determination, vis-a-vis, the vires of Rule 21(7) of the Rules. During the pendency of these appeals, a learned Single Judge of this Court by order dated 17.8.1999 passed in Civil Rule No. 1142/1997, Tinsukia Trading Co. v. State of Assam and Ors. reported in 2001 (1) GLT 520, referred the following question to the Full Bench of this Court for decision:

Whether the consignment of notified agricultural produce, which are being transported into the declared market area in the State of Assam are liable to cess u/s 21 of the Act even before their sale and purchase in the market area in view of the decisions of the Supreme Court in Ram Chandra Kailash Kumar and

Company and Others Vs. State of U.P. and Another, and inn Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.,

13. A Full Bench of this Court in course of answering the above reference having decided to hear the aforementioned appeals as well as other writ petitions pending on the same or associated issues formulated the following questions -

(i) Whether the provisions of Rule 21(7) of the Rules is ultra-vires inasmuch as the State Government in exercising rule making power u/s 49 of the Act has widened the scope of "presumption" by providing number of other factors beyond its legislative competency?

(ii) Whether the Assam Agricultural Marketing Board (for short" the Board") has power to collect levy and cess of the agricultural produce in the market area as per Section 21 of the Act merely on the basis of Resolution adopted by the Board?

(iii) Whether the Board and its employee are justified and empowered to realize cess on the agricultural produce at different Check-Gates on the National Highway in Assam, particularly erected at Srirampur, New-Guwahati, Jagiroad, Jorhat, Titabor & Dergaon for such purposes?

(iv) Whether the Respondents State Government may be directed to refund the cess already realized by it?

By judgment and order dated 4.4.2001, the Full Bench decided the aforesaid question Nos. (i), (ii) and (iii) in favour of the petitioner holding Rule 21(7) to be ultra vires the Act and that the Board had no authority to levy and collect cess at Srirampur Check Gate or any other Check Gate as no sale or purchase takes place at those places.

14. In the meantime, however, the Assam Agricultural Produce Market (Amendment) Act, 2000 (hereafter referred to as the "Act 2000") had been enacted by the State Legislature occasioning profuse amendments in the principal Act. The Act 2000 received the assent of the President on 29.12.2000 and was published in the issue dated 30.1. 2001 of Assam Gazette, Extra Ordinary. The writ petitions instituted in the year 2001 and presently under consideration followed challenging the various amended provisions, details whereof would be enumerated hereinafter.

15. During the pendency of these writ petitions, the Assam Agricultural Produce Market (Amendment) Act, 2006 (hereafter referred to as the "Act 2006"), was introduced effecting further amendments in the Act. The Act received the assent of the Governor on 16.1.2007 and was published in the issue dated 20.1.2007 of the Assam Gazette Extra Ordinary.

16. On the prayer made by the petitioners in the pending petitions for updating the challenge in view of the Act, 2006, the same was allowed. WP(C) No. 2301/2007, then joined the fray. It would be expedient to note at this stage the relief"s prayed for in the writ petitions which as alluded hereinabove are identical:

a writ in the nature of mandamus or any other appropriate writ or directions or orders should not be issued to strike down the following provisions of the enactment inserted by the Assam Agricultural Produce Market (Amendment) Act, 2000 and Assam Agricultural Produce Market (Amendment) Act, 2006.

(i) Sub-Sections (3D) and (3E) of Section 8 of the Assam Agricultural Produce Market (Amendment) Act, 2000, whereby a provision has been made for all the Market Committees to contribute 50% of its annual gross income under the Act to meet the expenses of establishment of the Board;

(ii) Section 13 of the Assam Agricultural Produce Market (Amendment) Act, 2000, whereby the words "one rupee" in Section 21 of the Assam Agricultural Produce Market Act, 1972, was substituted by the words "two rupees".

(iii) Clause (ii) and Clause (iii) to Explanation I, of Section 13 of the Assam Agricultural Produce Market (Amendment) Act, 2000, containing legal fictions for presuming sale and purchase at the notified market area.

(iv) Section 14 of the Assam Agricultural Produce Market (Amendment) Act, 2000, inserting a new provision, namely, Section 21 A, by the Assam Agricultural Produce Market (Amendment) Act, 2000 whereby the Market Committees have been empowered to establish Check Gate at different points in the market area.

(v) Section 15 of the Amending Act of 2000 by which Section 23 of the Principal Act has been amended. Providing, inter alia, that the expenditure as provided u/s 25 shall be subject to provisions of Section 3E.

(vi) Section 18 of the (Amending) Act, 2000 inserting a new Clause (xiii) in Section 25 of the Principal Act, which contains in general terms the power of the Board to entrust any matter to the Market Committees.

(vii) Sub-Section (5A) of Section 7 of the Assam Agricultural Produce Market (Amendment) Act, 2006, which provides for sale of specified agricultural produce at private market yards.

(viii) Sub-Section (5B) of Section 7 of the Assam Agricultural Produce Market (Amendment) Act, 2006 which provides for establishment of private market yards and direct purchase of agricultural produce from agriculturist.

(ix) Sub-Section (5C) of Section 7 of the Assam Agricultural Produce Market (Amendment) Act, 2006 which provides for establishment of consumer/farmer market (direct sale by the producer).

(x) Sub-Section (5D) of Section 7 of the Assam Agricultural Produce Market (Amendment) Act, 2006, which provides for grant/renewal of registration.

(xi) Section 10 of the Assam Agricultural Produce Market (Amendment) Act, 2006 whereby Section 21 of the Principal Act has been amended by authorizing the Board to levy and collect cess for any or all Market Committees and the amended Section 21 has been given effect from 3rd September, 1974.

(xii) Section 11 of the Assam Agricultural Produce Market (Amendment) Act, 2006, whereby Section 21A of the Principal Act has been amended by empowering the Board to establish composite Check Gate(s) for all Market Committee and/or any Check Gate at any point within any market area of any Market Committee, (xiii) Section 12 of the Assam Agricultural Produce Market (Amendment) Act, 2006 whereby Section 23 of the Principal Act has been amended by providing that for the figure and letter "3E" appearing in the Section the figure and letter "3D" shall be substituted.

(xiv) Refund of the cess collected with 15% interest from 13-08-2001 to 08-12-2005 and till such time the respondent forcefully and illegally collect market cess from the members of the Petitioner Association:

And upon cause or causes being shown and upon perusal of records may be pleased to make the Rule absolute and further declare that in total absence of quid pro quo the realization of the Cess by the Board and the Market Committees are illegal and the realization of Cell to be stopped forthwith and/or may pass such further or other order/orders as Your Lordships may deem fit and proper in the facts and circumstances of the case.

17. The petitioners in unison, have with reference to Section 3D, 3E, 21, 21(A), 23 and 25 of the Act, have contended that the same are subversive of the objectives thereof. According to them, the market fee levied by the Market Committee, is sought to be treated as the income of such committees, a concept violative of the very purpose of the Act. Though, under the legislation, the fee realized, is required to be spent for the purposes contemplated by the Act, the purport whereof, is to provide necessary infrastructure and facilities thereby necessitating the existence of quid pro quo between the impost and the services rendered to the payers, no market yard and/ or sub-market yard, has yet been constructed and no other facility relating thereto, has been provided. According to the petitioners, therefore, the market fee is being collected without their being any semblance of quid pro quo. They have alleged that the fee is being utilized for purposes not authorized by the Act and that to regularize such unauthorized expenditures Section 3B, 3D and 3E, have been incorporated by way of amendment of the principal Act.

18. They have pleaded that the establishment of the Marketing Board Fund, by inserting Clause (XL) in Section 2 of the principal Act and 3D, requiring every Market Committee to contribute 50% of its annual gross income derived from licence fee and cess to meet the expenses of the establishment of the Board, is beyond the legislative competence of the State Legislature. The petitioners have expressed an apprehension that under the cover of Section 3E, the fund collected and credited to the Marketing Board Fund, would not be expended for the development of the market but would be diverted for purposes alien to the objectives of the Act, as is already being done. The enhancement of the rate of market fee from Rs. 1 to Rs. 2 has been assailed as excessive and arbitrary in absence of any service being rendered to the traders and farmers involved in the

transactions.

Apropos Section 21 of the Act, the petitioners have contended that the legal fictions introduced thereby, are not only out of context but have no nexus whatsoever with the sale or purchase of the agricultural produce in the market area. Though, no sale or purchase takes place within the area of Assam, the respondent Board has been levying and collecting market fee at the check gates on the basis of these legal fictions, which are thus ultra vires the Act. The validity of Section 21A has been impugned contending that in absence of any guidelines, the employees of the Market Committees and the Board would subject the consignments of the agricultural produce transported from outside the State to unnecessary harassment and exactions. Insertion of clause XIII of Section 25 has also been challenged as having the potential of vesting the Board with arbitrary powers pertaining to expenditure of market fees for purposes not authorized by law.

The amendments caused by the Act 2006, inter alia authorising the Board to levy and collect cess for any or all Market Committees have been denounced being militative of the underlying objectives of the Act. According to the petitioners, such conferment of power is wholly repugnant to the scheme of the principal Act, empowering the Market Committees to exercise its statutory duty of/ levying and collecting cess from the area enumerated in Section 21(1) of the Act. These the petitioners have reiterated, are devised to regularize the illegalities committed by the Board in levying and collecting cess by establishing check gates at the entry points on the National Highway of the State without any authority of law and further to perpetuate such illegalities for all times to come. Section 21(2), authorizing the Board to set up composite check posts on behalf of the any or all marketing committee(s), has been questioned to be contrary to the other provisions of the Act and the general scheme thereof. According to the petitioners, Sub-section 5(A), 5(B), 5(C) and 5(D) of Section 7 are also antithetical to the framework of the principal Act, which does not envisage setting up of principal market yard by a private person or a group of persons. Relief?s prayed for, have consequentially been oriented on the above assailments.

19. The State of Assam, in its affidavit, has questioned the maintainability of the writ petitions on the ground that the same precipitate disputed questions of facts bearing on the actual place of sale or purchase, state of the goods involved, nature of consumption thereof etc., which this Court in the exercise of its extra ordinary jurisdiction ought not delve into. Further, the challenge to the levy and collection of cess by the market committees and a declaration that the same is illegal and unauthorized is impermissible in their absence as party respondents in the present proceedings. While contending that the Act has been enacted to provide better regulation of sale transactions involving of agricultural products and to establish organized markets therefore in the State of Assam, as well as matters connected therewith, it has been averred that the Board is conceived of as a supervisory body to exercise superintendence and control over the market

committees, whose duty it is to enforce the provisions thereof. The answering respondent has clarified that there are at present twenty four such Market Committees in the State established u/s 7 of the Act for the declared market areas. The State has maintained that the Act generates one of the major sources of revenue by way of cess on agricultural products bought and sold in the declared market areas and the traders including the petitioners, have been purposefully resorting to wasteful litigations on one pretext on the other to evade the said impost.

20. It has been averred that the Act, 2000, has occasioned amendments to facilitate a balanced development of the agricultural marketing system all over the country and to streamline the functioning of the Board, vis-a-vis, the market committees and to regulate their activities pertaining to agricultural marketing in order to make them more effective. This has also been made with a view to provide better benefits to the market functionaries in general. The answering respondent maintained that Section 21A had been inserted to specifically provide for establishment of check gates at different points to prevent evasion of cess. While affirming that Section 21 of the Act (as amended), has introduced a deeming provision to make certain transactions exigible to cess provided the eventualities enumerated therein exist, the answering respondent insisted that the traders involved in the proceedings in hand, have been indulging in local sales of goods brought from outside the State and that their contention of completion of sales outside Assam, is untenable. It has been contended that the Market Committees as well as the Boards, are institutions/bodies created by the Act to provide the desired administrative mechanism and that the apportionment of fees and cess money between these two bodies, has been so envisaged so as to enable them to function more effectively through enhancement of their human resources and infrastructural facilities for the purpose of achieving the objectives of the Act. The answering respondent, while underlining that the Act is a beneficial legislation aimed to protect the growers of agricultural produce from exploitation by the dealers and middlemen, has asserted that the Board and the Market Committees have been functioning satisfactorily to achieve the contemplated purposes thereof. It has been emphatically averred that the market fee is levied in the market area only once and there is no multiple levy thereof. It has been contended in this context that payment of market fee to a Market Committee of a different State, is wholly irrelevant for the levy of cess under the Act, which is permissible once a transaction involving an agricultural produce satisfies the prerequisites of being "bought or sold" in the notified market area.

21. The State has claimed that the Act, 2006, had been enacted in alignment with the draft model legislation titled the State Agricultural Produce Marketing (Development and Regulation Act) 2003 (hereafter for short referred to as the "Model Act 2003"), codified by a Committee set up by the Ministry of Agriculture, Government of India. The model legislation was drawn up to ensure nation wide integration of agricultural market facilities, establishment of competitive

agricultural markets in private and corporate sectors, creation of an environment conducive to emphasise investments in marketing related infrastructural facilities, modernization and strengthening of existing markets etc. Act 2006, according to the answering respondent, has been enacted to promote the development of agricultural markets under the relevant schemes of the Government of India and to streamline the functioning of the Board and the Market Committees to make them more effective and purpose oriented.

The State has contended that the cess under the Act, being regulatory in nature, service to the individual payers, is not a condition precedent therefor, and the utilization of the levy for the benefit of the system in general, would furnish the necessary quid pro quo for the fee realized. It has been pleaded that the development of the markets and the infrastructure thereof, as has been undertaken by the State, thus establish a direct nexus between the realization of fees and the service rendered to the establishment envisaged by the Act. The answering respondent has emphasised that the cess collected, is being utilized wholly for authorized purposes as prescribed by the Act.

22. The Board, while generally ratifying the pleaded stand of the State, has underlined that the object of a market, as conceptualized by the Act, is to facilitate marketing activities by providing fair opportunities both to the buyers and sellers to strike a bargain and complete the deal, the primary purpose thus being to stifle unfair business and facilitate fair transactions. The legislation, thus, authorized the State to efficaciously intervene by regulating market practices and ensuring that the buyers and purchasers perform their functions strictly in conformity with the prescribed rules of behaviour. As the sale of agricultural produce involves a number of activities, such as assembling, storing, grading, weighment, standardization, transport and financing, the individual producers bereft of specialized knowledge and adequate resources to the above effect, are usually grossly disadvantaged. The provisions of the Act, are not only to gear up better facilities for disposal of their produces in a well established regulated market, but also to provide adequate help and advice to them with regard to gradation, standardization and weighment, as well as storage facilities and to render financial assistance to them and augment their selling power. The answering respondent claimed that the Board had been established to achieve, inter alia the above aims and objectives.

It has been contended as well, that during the pendency of the earlier round of litigation before this Court, the Government of India, Ministry of Rural Areas and Employment (Department of Rural Development), Directorate of Marketing and Inspection, introduced amendments to the State Agricultural Produce Market (Regulation) Act, 1998 (for short hereafter referred to as the "Model Act 1998"), following the recommendations of the High Powered Committee on agricultural marketing and study of the marketing Regulations and Acts of different States, to remove disparities therein and to bring forth their useful implementation. The answering respondent insisted that the purpose of the Model Act, was to provide

guidelines for the different States to make appropriate provisions in the respective enactments, so as to facilitate a balanced development of the Agricultural Marketing System all over the country through coordinated implementation of the relevant legislations. Inconformity with the said guidelines, the Government of Assam occasioned amendments to the Principal Act for which Act 2000 was enacted. In the meantime, the Board being aggrieved by the judgment and order dated 04.04.2001 of the Full Bench of this Court, had preferred a SLP before the Apex Court, registered as Civil Appeal No. 3969/2001, wherein, by order dated 13.08.2001, the operation of the impugned decision was stayed.

The Board has asserted that the plea of illegal and unauthorized realization of cess by it and the Market Committees based on lack of quid pro quo, having been urged by the petitioners before this Court, but left unanswered by the Full Bench, signifies rejection thereof and thus the renewed plea to that effect, is barred by the doctrine of res judicata. Further, the petitioners are wanting in locus standi as well, to maintain the petitions.

23. While endorsing the validity of the impugned provisions of the Act, the Board has pleaded that the provision relating to contributions by the Market Committees to it for its maintenance, was contained in the principal Act, since its enactment in 1972, but the rate thereof as per Section 23, has been enhanced to 50%, following escalation of prices over the years. It denied the charge that no market yard/sub-market has yet been set up and that the principal market yard of the Guwahati Sub-Division, Uparhali, is wholly unfit for human habitation with no link road. According to the answering respondent, ample facilities for development of markets in almost all the declared market areas, have been provided. It has been contended that the fees collected by way of market cess under the Act and the Rules, are regulatory in nature, hence the doctrine of quid pro quo, is not applicable, so much so that service to the individual contributors is not an essential precondition for the validity thereof. As under the Act and the Rules, the Board is required to perform various functions, which include supervision and imposition of penalty on the defaulter traders, those are regulatory in nature and its actions pursuant to the objectives of the Act, demonstrate a direct nexus between the realization of the fees and the service rendered to the infrastructure generally. The Board has reiterated that the edificial works and market developing facilities, which require major investments, have been successfully undertaken by it. The Board dismissed the apprehension of the petitioners that the fees/cess collected, may be utilized for purposes other than those contemplated under the law as baseless. The answering respondent has claimed on the basis of contemporaneous records that effective steps have been taken to identify market and sub-market yards and chalk out schemes for activating the same, whereby, not only the individual licencees are being benefited, but also the general interest of all persons concerned with the transactions taking place therein, is being duly catered to. The Board has urged that the Agricultural Development Fund provides specifically for schemes or

items, as may be prepared for the development of agricultural produce and is conceived of to effectuate the purposes of Act. The development of agricultural produce market includes creation of appropriate infrastructure, connoting service to all concerned involved in the transactions therein. According to the Board, as the end objective of the legislation is to protect the growers of agricultural produce from exploitation in the hands of dealers and to prevent distress sale at a lower price, provisions for transport of agricultural produce, dissemination of information about improved, techniques in cultivation, supply of agricultural essentialities etc., comprehended within the scheme of the Agricultural Development Fund, cannot be stated to be beyond the purview of the Act. The answering respondent also defended the hike in the rate of the cess on agricultural produce bought or sold in the market from rupee 1 to rupees 2 on account of rise in the price index since the enactment of the principal Act.

While denying the allegations that the amendments have been effected to render ineffective the judgment of the Full Court, the Board has insisted that the same in fact, have been introduced in compliance of the said decision. The Board has maintained that the legal fictions introduced by the explanation to Section 21 of the Act, are not only legally sanctioned but are clearly co-relatable to the sale or purchase comprehended therein. The legal fictions, according to the Board, are intended to fructify the legislative intention and thus are unassailable. Referring to Section 23 of the Model Act 1998, in the framework of which the Act 2000, has been designed, the Board has asserted that it has full power to establish the check posts to verify and examine the consignments of the agricultural produce carried in vehicle, vessel or any other conveyance. The allegation of high handedness of the Board's employees, has thus been denied. It has been refuted as well, that arbitrary power has been vested in it.

24. It has been reiterated that the Act 2006, has been patterned on the State Agricultural Produce Marketing (Development and Regulation) Act 2003, (for short referred to as the "Model Act, 2003), by a Committee set up by Ministry of Agriculture, Government of India, the purpose of the legislation being similar to the Model Act, 1998 with updated provisions for meeting the growing situational demands pertaining to creation, sustenance and administration of agricultural markets in the national perspective. The Board has insisted that the Act 2006, has been codified to promote the development of agricultural markets and the relevant agricultural schemes of the Government of India and to streamline its functioning and the Marketing Committees in order to make them more effective. The allegation that the Act 2006, had been enacted to nullify the judgment and order of the Full Bench, has been denied. The plea that this legislation is contrary to the principal Act, has also been repudiated. The Board has claimed that it being the apex authority having deep and pervasive control over all the Market Committees, Section 21 of the Act, as amended by Act, 2006, empowering it to levy and collect cess for any or all such Committees with retrospective effect i.e. 03.09.1974, is not ultra vires the aims and objectives of the principal Act, as alleged.

25. The respondent Board in WP(C) No. 5776/2006 (Shalimar Chemical Works Limited v. Assam Agricultural Marketing Board etc.), in addition, has asserted that the petitioner therein has been conducting its business on specified agricultural produces without, applying for any licence which is otherwise mandatory u/s 13(2) of the Act as amended. While denying the petitioner's plea that it is not involved in the purchase and sale of specified agricultural produces within the specified market area, the Board has contended that agricultural produce as defined in Section 2(1) (i) of the Act not only includes the produce, but also contemplates processed and non processed varieties thereof. Coconut oil being included in the schedule of the agricultural produce under the heading "Oil seeds" it is susceptible to cess thereunder. Similarly, all items under the heading "Condiment" and "Spices" enumerated in the schedule include not only the produces specified, but also the processed and non processed versions thereof. The answering respondent therefore has maintained that the petitioner's plea against imposition of cess upon "Shalimar" and "Rajat" Coconut oil manufactured by it as well as on "Shalimar Chef Spices" is unfounded. According to the Board, the petitioner's business particulars as discernible from the writ petition establish that the goods involved are delivered at Guwahati from Hyderabad and Calcutta in terms of some agreement in existence between the consignor and the consignee and that therefore, its (petitioner) representation that such transactions are in the nature of stock transfer only is factually incorrect. It has been asserted that in its application the Act is not limited only to the market yards established thereunder, but also extendable to the entire market area declared as such. It has been clarified that the entire Guwahati Sub Division has been notified to be a declared "Market Area" and therefore, by virtue of Section 21 of the Act as well as the petitioner's admission that it in its usual course of business delivers the goods to different sellers throughout the State of Assam, the said transactions are exigible to cess under the Act.

26. The Board has maintained that the check gates have been erected under the Act and cess is being realized by the Pool Officers of the Market Committees who are appointed by the Board and therefore, the plea of unauthorized exaction of the impost is baseless as well. As the specified agricultural produces are being delivered to the petitioner in the notified market area like Guwahati Sub Division for market transactions pursuant to the sale/purchase or agreement therefor, it being the buyer is liable to pay cess and therefore cannot be permitted to by pass the provisions of the Act in the name of stock transfer. The Board dismissed as well, the plea of want of separate guidelines for the operation of the check gates contending that the Act and the Rules have provided elaborate measures to deal with the relevant sections bearing thereon. The Board in order to buttress its claim of providing the necessary infrastructural facilities in different market areas has also disclosed the facts and figures relating to the incentives doled out to the growers and agriculturists including free distribution of seeds, fertilizers, agro equipments and initiatives for familiarizing and updating the growers with the essential informations relating to market transactions, market prices, market

facilities, market information etc. The Board asserted that inspite of the enhancement of the rate of cess from Re. 1/- to Rs. 2/-, the same in fact is being realized at the earlier rate. While emphasizing that check gates in terms of Section 21A of the Act have been erected in different places in the market areas to check evasion of cess in the State of Assam, the Board has averred that realization is in cash and is duly accounted for. The allegation of forcible collection of cess or harassment meted out to the drivers of the trucks has been categorically denied.

Though copious pleadings have been exchanged by the parties in reiteration of their assertions as above, narration of the factual elaborations has been avoided for the sake of brevity.

27. Mr. Mishra, has strenuously urged in the above backdrop of contentious pleadings that the impugned provisions are repugnant to avowed objects of the Act and are therefore liable to be adjudged unconstitutional and null and void. The learned Senior counsel argued that the collection of cess at the check gates by the Inspectors of the Board are wholly unauthorized though the seals of different Market committees irrespective of the situs of realization are used as a stamp of validity of the imposition. As the Market committees in the scheme of the Act are to act within the respective areas specified for them, such collection by the officials of the Board are wholly impermissible. The learned Senior counsel referred to the Act 2006 amending inter alia Section 21 permitting the Board to collect cess in the eventualities referred to therein to submit that as the amendments enacted thereby have been given a retrospective effect on and from 03.09.1974 before the date on which the principal Act had been come into force, the same are ineffectual and inoperative. In that view of the matter as well, Mr. Mishra urged that the collection of cess by the officials of the Board in purported exercise of powers u/s 21(2) of the Act as amended is, per se, wanting in authority and tantamounts to illegal realization. Turning to the legal fictions introduced by the Explanation to Section 21 of the Act as amended, Mr. Mishra argued that the same are not sustainable in law as those seek to outreach the eventualities envisaged. As no perceptible correlation between the legal fictions and any of the intrinsic attributes concomitant of a transaction of sale or purchase as recognizable in law is discernible, the impugned amendments to the said effect are ultra vires the Act and are thus liable to be adjudged as such. The learned Senior counsel underlined that in face of the definition of "sale" as provided in the Sale of Goods Act, 1930, a central legislation, the legal fiction pertaining to sale as contained in Section 21 incompatible therewith is void. In absence of any definition of sale in the Act different from the one in the Sale of Goods Act, 1930, having been provided the title in the goods in the case in hand at their deliverable and ascertainable state having passed on the basis of transactions conducted beyond the State of Assam, imposition of cess thereon by applying the legal fiction u/s 21 of the Act is incomprehensible in law. Referring to the various provisions of the Sale of Goods Act, 1930, Mr. Mishra has pleaded that it being a central legislation, in view of Article 254(2) of the Constitution of

India read with the proviso to Sub-clause (3) thereof, no sale by a legal fiction under the Act contrary to the scheme of the Central Statute is legally conceivable. Mr. Mishra sought to rest his submissions on this issue by relying on the following decisions-

1. Zaverbhai Amaldas Vs. The State of Bombay,
2. The Bengal Immunity Company Limited Vs. The State of Bihar and Others,
3. Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others,
4. Deep Chand Vs. The State of Uttar Pradesh and Others,
5. AIR 1967 SC 973, Sri Krishna Coconut Co. and Ors. v. East Godavari Coconut and Tobacco Market Committee.
6. Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd.,
7. S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, .
8. Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.,
9. Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others,
10. Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College,
11. P. Prabhakaran Vs. P. Jayarajan,
12. State of Rajasthan and Another Vs. Rajasthan Chemists Association,

28. The learned Senior counsel next maintained that in the framework of the Act, the Market committees having been identified and vested with the authority to enforce the provisions thereof by executing all acts for the management and control of the market areas contemplated therein, the empowerment of the Board by Section 21(2) of the Act as amended for collection of cess is wholly inconsistent with the design of the legislation and is thus null and void. Neither the Act provides any mechanism for dealing with the amendments under which the Board is to administer the cess realized by it, nor Section 49 in particular authorizes framing of Rules for providing the machinery provision for collection and expenditure of the cess by it. The learned Senior counsel contended that the collection of cess by the Board is therefore conceptually alien to the lay out of the Act. The respective roles of the committees and the Board having been otherwise clearly de-alienated in the Act and the functions of the latter being manifestly supervisory, the impugned amendments which authorize it to collect cess in the absence of provisions akin to those existing for the Market committees, are irreconcilably discordant with the framework of the Act and are thus unconstitutional. Mr. Mishra argued that the retrospective empowerment of the Board on the conditions therefore at this distant point of time demonstrates

the absurdity and illogicalness of the impugned amendments rendering the same invalid. To buttress his arguments, the learned Senior counsel placed reliance on the decision of the Apex Court in *Ashok Lanka and Another Vs. Rishi Dixit and Others*,

The learned Senior counsel argued that the enhancement in the rate of cess is exorbitant as well as impermissible in absence of quid pro quo. Referring to the affidavit of the Board, he urged that its (Board)'s admission of collecting cess even before the enactment of Act 2006 demonstrates the highhanded and unauthorized realization of the impost, it having failed to render any service either to the cess payers or to the set up as a whole. The collection of cess is thus illegal amounting to undue enrichment, he contended. The following decisions were relied upon:

1. *The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory, Respondent*;
2. *Kewal Krishan Puri and Others Vs. State of Punjab and Another*,
3. 1980 (Supp). SCC 21, *Ram Chandra Kailash Kumar and Co. and Anr v. State of U.P and Anr.*
4. *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*,
5. *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*,
6. *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*,
7. *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*,
8. *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*,
9. *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others*,

Various excerpts from Constitutional law by Seervai-4th Edition were also referred to.

29. Mr. Mishra with reference to the pleadings of the Board argued that it is apparent therefrom that it (Board) dominantly discharges governmental functions and applies the cess collected for purposes not contemplated by the Act and on that count as well, the conferment of power on it to realize the levy is subversive of the principal enactment. Reiterating that no service at all is being rendered by the Board as required by the Act, Mr. Mishra has urged that the check gates established in the purported exercise of power u/s 21A are unauthorized as well in absence of any approval by the State government.

With specific reference to the pleadings in WP(C) No. 5776/2006, the learned Senior counsel argued that as coconut oil and powdered spices are not specified agricultural produces listed in the schedule to the Act, no cess thereon is

leviable. Moreover, as the transactions vis-a-vis the petitioner M/s Shalimar Chemical Works Ltd., are out and out its stock transfers and by no means involved in sale or purchase, the realization of cess by the Board is patently illegal and invalid. The decisions of the Apex Court in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., , State of Rajasthan and Ors. v. Rajasthan Agricultural Input Dealers' Association and Ors. were pressed into service on this count.

30. Mr. Sahewalla, while generally endorsing the above has urged that in absence of any pleading by the Board that all necessary and relevant materials had been furnished to the President vis-a-vis the impugned amendments sought to be occasioned by Act 2000, the assent of the said authority under Article 254(2) of the Constitution of India ipso facto would not save the same if repugnant to the Sale of Goods Act, 1930. The learned Senior counsel to sustain his arguments referred to the following decisions of the Apex Court: -

1. The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,
2. Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others,
3. M.P.A.I.T. Permit Owners Assn. and Another Vs. State of Madhya Pradesh,
4. Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.,

Mr. Sahewalla, on the aspect of legal fiction relied on the following decisions of the Apex Court:

1. Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd., and Anr. v. Enfield India Ltd. Cooperative Centeen Ltd.
2. AIR 1967 SC 973, Sri Krishna Coconut Co. and Anr. v. East Godavari Coconut and Tobacco Market Committee.
3. Mancheri Puthusseri Ahmed and Others Vs. Kuthiravattam Estate Receiver,
4. P. Prabhakaran Vs. P. Jayarajan,
5. Maruti Udyog Ltd. Vs. Ram Lal and Others,
6. Bijender Singh Vs. State of Haryana and Another,

While reiterating that the Board by the amended Section 21(2) of the Act has been endowed with an unfettered and unguided power to collect cess, the learned Senior counsel has contended that in absence of any guideline or the required machinery provision, the same is to be construed as non est in law. The decisions of the Apex Court in AIR 1974 SC 2510 and State of Maharashtra Vs. Mrs. Kamal Sukumar Durgule and Others, were referred to.

31. Ms. Hazarika, Senior Advocate and Mr. G.C. Choudhury, Advocate both adopted the above arguments.

32. In reply, Mr. Banerjee, has argued that considering the judicially countenanced scope of challenge to the validity of a statute, mere possibility of an abuse of powers conferred thereby is not a sustainable ground to construe the same as ultra vires the Constitution. Not only if two views are plausible, the one in favour of its constitutionality is to be upheld, some play in the joints for a fiscal law as in the instant case has to be conceded. A wrongful act, even if committed in exercise of powers conferred by a statute does not necessarily invalidate the legislation, he urged. The learned Sr. Counsel emphasized that considering the nature of the impeachment made in the case in hand, no specific assailment to the constitutional validity of any of the provisions of the Act as amended is discernible. As the Act 2000 had been enacted before the Full Bench had rendered its verdict, no legislative malice is attributable as well. Mr. Banerjee maintained that in any view of the matter, with the amendments heralded by the Act 2000, the rendering of the Full Bench has no decisive bearing on the issues now raised. The decisions of the Apex Court in *Amrit Banaspati Co. Ltd. Vs. Union of India and others*, *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, were relied upon to reinforce the above proposition.

Mr. Banerjee argued that Section 21 of the Act as amended is neither extra territorial nor prescriptive of an irrebuttable presumption of sale. He insisted that a plain reading thereof would demonstrate that the legal fiction contained therein raises a rebuttable presumption shifting the primary onus of proof on the traders to reverse the same and is by no way disregardful of the essential features of sale. The learned Sr. Counsel referred to Rule 21, 22, 23 and 25 of the Rules to contend that the same ordain a self-contained mechanism for the levy and refund of cess. Mr. Banerjee urged that the explanation to Section 21 of the Act is not a novelty, a provision akin thereto being available in many coexisting legislations. According to him, the purpose of the fiction is to ease the burden of the Market Committees of examining the transactional facts of each case to determine the nature thereof for the purpose of the levy and having regard to the objectives of the statute, no invalidity can be comprehended on this count. The learned Sr. Counsel maintained that the petitioner's endeavour to generalize the assailment on the basis of solitary or stray transactions is clearly fallacious. He further argued that as retrospectivity of a validating law is legally permissible to remove the basis of any legislation on which an earlier decision of a Court is founded, the retroactive operation of Section 21(2) of the Act as sanctioned by Act 2006 is unassailable. It was therefore urged that its retrospective effect on and from 3/9/1974 does not defile the validity thereof as the principal Act in fact existed on the statute book on that day. In the alternative, he insisted that as Section 21(2) would even otherwise be enforceable from the date of commencement of the principal Act, the plea against the vires thereof on this count is obviously flawed. The learned Sr. Counsel to sustain his arguments relied on the following decisions. *East End Dwellings Co., Ltd. v. Finsbury Borough Council* (1951) 2 AER 587, *British India Corporation Ltd. Vs. Market Committee, Dhariwal and Another*, *State of T.N. and Another Vs. P. Bala*

Krishnan and Others, Bijender Singh Vs. State of Haryana and Another, , State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, , Star Paper Mills Ltd. Vs. State of U.P. and Others, , Government of Andhra Pradesh and Another Vs. Corporation Bank, Mohd. Akram Ansari Vs. Chief Election Officer and Others, , Agricultural Market Committee Vs. Shalimar Chemical Works Ltd., , Virender Singh Hooda and Others Vs. State of Haryana and Another, , Bihar Sa Produce Marketing Board and Ors. v. Shankar Kakhana Bhandar and Ors.

It was further urged that the Act 2000 is conceived on the Model Act 1998, Section 3A to Section 3J whereof obliges the Board to discharge the functions referred to therein. As no challenge to Section 3A to 3C of Act 2000 has been raised, impugment of Sections 3D and 3E which form the integral segments of the wholesome scheme outlined by Section 3A to 3J is per se untenable. The learned Sr. Counsel repelled the assailment on the ground of want of quid pro quo contending that the petitioners are estopped from pursuing it in the instant proceedings, the Full Court having implicitly rejected the same leaving it unanswered in the earlier round of litigation. Mr. Banerjee argued that the plea questioning the hike in the rate of cess is also untenable as the related amendment only enacts an outer limit of the enhancement though in fact realization at the pre-amendment rate is in vogue till date. Without prejudice to the above, the learned Sr. Counsel argued that as the cess collected under the Act is in the nature of a composite fee, with regulatory and service constituents, no quid pro quo necessitating service to the individual payers is envisaged in law to render the levy valid and, therefore the grouse raised in this regard is misconceived. Referring to Section 21(2) of the Act as amended, Mr. Banerjee urged that conditions precedent for the Board to validly realize the cess are sufficient safeguards against any arbitrary exercise of such power. Drawing the attention of this Court to Section 3E(vi) and (vii), the learned Sr. Counsel argued that it is not a cardinal essentiality that the Board exclusively has to provide the service and as in the instant case the same is being extended through the Market Committees for the purpose of carrying out the end objectives of the Act, the plea of autocratic exercise of authority by the Board and lack of service is per se fallacious.

33. The learned Advocate General, Assam, in essence urged that the impugment of the amendments to the Act keeping in view the avowed objectives thereof have to be tested in the teeth of Article 31(C) of the Constitution of India whereupon the same is rendered non est. He maintained that as the petitioners though required u/s 13 of the Act to obtain a licence to carry out their business have omitted to do so they are estopped in law from challenging the provisions of the said statute as amended or claim refund of the cess collected from them. Mr. Phukan insisted that as no assailment on Explanation (1) to Section 21 of the Act has been laid, challenge to Explanation (2) and Explanation (3) is per se not tenable. While endorsing the retrospective amendments of the Act, the learned Advocate General repudiated the contrasting arguments pleading that as the present proceedings are not in the nature of

public interest litigation, no contention as raised therein by an insignificant group of traders administering their business without complying with the prescriptions of the legislation ought to be entertained. The following decisions were cited by the learned Kewal Krishan Puri and Others Vs. State of Punjab and Another, , Bhagwan Dass Sood Vs. State of Himachal Pradesh and others, Agricultural Market Committee Vs. Shalimar Chemical Works Ltd., , S.D. Soni Vs. State of Gujarat, , Dahiben Widow of Ranchhodji Jivanji and Ors. v. Vasanji Kevalbhai (Dead) and Ors. AIR 1995 SC 1215, Orient Paper & Industries Ltd. v. State of M.P. and Ors., (2006) 12 SCC 468.

34. We have bestowed our anxious consideration to the challenging pleadings and the assiduous arguments advanced. A few fringe facets of the lis need be unavoidably attended to clear the deck for the adjudication of the major issues. While the fundamental essential of clear and unambiguous pleadings projecting a challenge to the constitutionality of a statute is a well accepted imperative, the burden being on the person, who asserts such a vitiating infirmity, to substantiate the same as has been ruled by the Apex Court in Amrit Banaspati Co. Ltd (Supra), the facts furnished by the petitioners herein, are not wholly scarce failing to provide the edifice of the assailments. Considering the various fronts of impugnments encompassing amongst others the aspects of repugnancy under Article 254 of the Constitution of India, retrospectivity of an amending statute, legal fiction for exaction of market Cess etc., we do not feel persuaded to non-suit the petitioners on this count. True it is that a presumption of constitutionality of an enactment ought to be the starting premise and that if two views are possible, the one in favour of its sustenance ought to be preferred, it is at best a caveat to inform the process of assaying the grounds of impeachment thereof. While respectfully subscribing to the observations recorded in Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, , reiterating the view expressed in Amrit Banaspati Co. Ltd. Vs. Union of India and others, , wherein a greater latitude was acknowledged for legislations on fiscal or tax measures, we construe it expedient having regard to the multifaceted challenges projected in the present batch of petitions to deal with the same on merits. As the issues raised transcend beyond, mere possibility of abuse of powers under the impugned enactments, we are unable to sustain the plea against the maintainability of the petitions on this ground, though, on principle, we are in agreement that the challenge to the constitutionality of a statute on the touchstone of such a possibility in isolation is not entertainable as expressed by their Lordships in People's Union for Civil Liberties and Another Vs. Union of India (UOI), .

35. The reservation against the locus of the petitioners for their omission to obtain licence u/s 13 of the Act, also does not appeal to us. In absence of demonstrable evidence to this effect, this sweeping argument in general terms does not commend for acceptance. Even assuming that the petitioners are transacting without obtaining a licence, the Act and the Rules contain adequate penal provisions against such omissions or contraventions, but the same ipso

facto, in our opinion, cannot disqualify them from invoking the writ jurisdiction of this Court on otherwise valid grounds cognizable in law. The decision of the Apex Court in Bhagawan Das Sood (Supra), in the context of the legislation involved, though, ruled that a trader or dealer comprehended therein, is under an obligation to obtain licence thereunder, did not lay down any proposition that failure to do so, would disentitle him to lay a challenge to a levy thereunder, otherwise available to him in law.

36. We propose hereafter to deal with the various contentions bearing on the amendments of the Act. The Act as its preamble discloses is a legislation to provide for better regulation of buying and selling of agricultural produce and the establishment of market for agricultural produce in the State of Assam and for matters connected therewith. The objects and reasons of this enactment as published in the issue dated 21.07.1992 of the Assam Gazette are extracted as hereunder:

The object of a market is to facilitate the marketing activities by providing fair opportunities both to the buyers and the sellers to strike bargain and to complete transaction. The promotion of this object should therefore be the duty of the traders as well as of the agriculturists. Where one is unable for one reason or the other to discharge his responsibilities and the other anxious to exploit his rival's ignorance and helplessness it is avowed duty of the State to intervene and control unfair business and facilitate the fair one. The State can effectively intervene by regulation of market practices under, which those using the markets are required to behave and perform their function and under which only duty elected local body (authority) is created to ensure that those prescribed rules of behaviours are strictly observed.

In fact, the sale of agricultural produce involves a number of functions such as assembling, storing, grading, standardizing transporting and financing the producer and negotiating the sale. The individual producer does not have the specialized knowledge and adequate resource to perform all these functions. Hence, he needs to be given not only better facilities and disposal of his produce in a well established regulated market, but also proper help and advice with regard to the grading and standardization as well as adequate storage facilities and financial assistance to improve his staying power. The implementation of the provisions of the various schemes of agricultural improvement and recommendation of the Government of India from time to time for effecting the above improvements demand the establishment of Regulated markets. The plan for regulation of market may, therefore, be said to be an integrated plan which intends to effectively link the various stages of marketing thereby brings benefit to the agriculturists.

A brief reference of the salient aspects of the challenge raised in the earlier round of litigation would not be totally out of place before we venture into to the emulous debate on the constitutional validity of the impugned amendments.

37. Section 21 of the Act as it stood prior to the Act, 2000 empowered every market committee to levy and collect cess on the agricultural produce bought or sold in the market area at the rate not exceeding one rupee for every one hundred rupees of the aggregate amount for which the notified agricultural produce was bought or sold, whether for cash or for deferred payment and other available considerations. In exercise of its rule making power conferred by Section 49 of the Act, the Assam Agriculture Produce Market (General) Rules, 1975 (for short also referred to as the "Rules"), were framed. Rule 21 of the Rules while laying down the modalities for payment in the realization of cess in terms of Section 21 incorporated Sub-Rule 7 as hereinbelow:

7....For the purpose of this rule, agricultural produce shall be deemed to have been bought or sold in a notified area:

(i) if the agreement of sale or purchase thereof is entered into in the said area; or
(ii) if in pursuance of the agreement of sale or purchase, the agricultural produce is weighed in the said area; or

(i) if in pursuance of the agreement of sale or purchase, the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

Though, Explanation-I of unamended Section 21 clarified that for the purpose thereof, all notified agricultural produce taken out or proposed to be taken out of a market area would, unless the contrary is proved, be presumed to be bought or sold within the said area, Rule 21(7) was construed to have unauthorizedly widened the scope of the aforementioned explanation and thus ultra vires the Act. Exception was also taken to the levy and collection of cess by the Assam Agricultural Marketing Board (for short the "Board") under the Act. As per Section 21 thereof, in absence of any statutory empowerment in that regard, a vociferous demur was raised as well on realization of cess on agricultural produce at the different check gates on the National Highways in Assam, particularly set up at Sri Rampur, New Guwahati, Jagiroad, Jorhat, Titabor and Dergaon.

38. M/s Assam Roller Flour Mills Association [petitioner in WP(C) No. 5491/2001 herein] led the charge instituting WP(C) No. 1453/1998 before this Court which was allowed declaring Rule 21(7) to be ultra vires. As the other impugnement remained unattended, appeal was preferred. Being aggrieved by the annulment of the above impugnments of the Rules, the Board as well as State Government also filed appeals. Eventually, in a reference made before the Full Bench of this Court, it by its verdict dated 04.04.2001, adjudged Rule 21(7) to be ultra vires, the legal fiction created thereby being held to be beyond the legislative policy ingrained in Section 21 of the Act. It further decided against the authority of the Board or its employees to levy and collect cess on the agricultural produce by erecting check gates on the basis of its resolution dated 30.11.1983.

39. The Full Bench ruled that the Board or its employees had no power to levy

and collect cess on the agricultural produce in terms of Section 21 of the Act. It was of the view that the Board or the Market committee had no authority to levy and collect cess at various check gates located in the State of Assam though the area was declared as Market area. This was in the face of its conclusion that no sale or purchase used to take place in any market area where check gates were erected for the purpose of levy and collection of cess on the agricultural produce. It however, declined the prayer for refund of cess already collected, but enjoined further realization of cess at different check gates on the National Highway.

In Civil Appeal 3969/2001 preferred by the Board before the Apex Court, it by its order dated 13.08.2001 stayed the operation of the judgment of the Full Bench on the condition that the amount collected would be refundable in the event of dismissal of the appeal would have to be paid back with interest @ 15%. This appeal was eventually disposed of on 08.12.2005 holding that the issue with regard to the validity of Rule 21 (7) had become academic in view of amendment of Section 21 by the Act, 2000 and the deletion of the said Sub Rule by the Assam Agricultural Product Market (General) (Amendment) Rules, 2003 (hereinafter referred to as "Rules, 2003") which had come into force with effect from 1.8.2003. The decision on the aspect of refund was left uninterfered in absence of any appeal by the petitioners. The Apex Court declined to reevaluate the facts pertaining to collection of cess for the pre amendment period at the check gates. It also sustained the petitioners' plea that as no appeal had been preferred by the Board against the finding of absence of its power to levy and/or collect cess u/s 21 of the Act, no interference therewith was warranted. The Apex Court noticing the pendency of the fresh impugnants following the amendments closed the appeal with the observation that any amount which might have been collected by the Board during the pendency thereof would be subject to the out come of the writ petitions, questioning the validity of the amendments by Act, 2000 and 2006. The whole gamut of the issues presently raised therefor, need a scrutiny anew in the consequential changed perspective.

40. The Act, 2000 which received the assent of the President of India on 29.12.2000 and published in the issue dated 30.1.2001 of the Assam Gazette Extra Ordinary, inter alia, amended Section 21 of the Act following which it wore the following complexion:

21. Every market Committee shall levy and collect a cess on the agricultural produce bought or sold in the market area at a rate not exceeding [two rupees] for every one hundred rupees of the aggregate amount for which a [specified agricultural produce] is bought or sold ,whether for cash or for deferred payment or other valuable considerations.

Provided that no cess will be levied on goods manufactured from the agricultural produce on which cess is proposed to be levied and which are ultimately exported out of the country.

Explanation-1. [For the purpose of this section all notified agricultural produce

taken out or proposed to be taken out of a market area shall unless the contrary is proved be deemed to be bought or sold in the notified market area if (i) such produce is taken out or proposed to be taken out of the said area; or (ii) the agreement of sale or purchase thereof in respect of such produce is entered into the area; or (iii) in pursuance of the sale or purchase or agreement of sale or purchase such produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser]

Explanation-2. The cess referred to in Section 21 shall be paid by the purchaser of the [specified agricultural produce] concerned. By the amendments in the aforementioned section, the rate of cess was enhanced from one rupee to two rupees. The expression "notified agricultural produce" was replaced by "specified agricultural produce" and most importantly sub Clause (i) and (iii) of Sub-rule 7 of Rule 21 (now amended by Rule, 2003), were integrated as Clause (ii) and Clause (iii) in Explanation-1. Thereby the legal fiction of sale or purchase as contemplated in the aforementioned clause of Rule 21(7), were engrafted in the above Explanation of Section 21 of the Act resultantly generating the polemics on legal fiction.

Before embarking on the analysis the essential features of the various clauses to the Explanaton-1, expedient it would be to traverse the authorities cited at the Bar in this regard.

41. In *Bengal Immunity Co. Ltd.* (supra), a Constitutional Bench of the Apex Court while dealing on the validity of a demand of sales tax made under the Bihar Sales Tax Act on a non resident dealer in respect of inter state sale or purchase of goods ruled that the legal fictions are created only for some definite purpose(s) and are to be limited to those, but should not be extended beyond that field. His Lordship Bhagawati, J as he then was in his concurring view enunciated that a legal fiction pre supposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. However, due regard to the purpose for which it has been created has to be maintained.

42. The Apex Court in *Sri Krishna Coconut* (Supra), negated the plea raised on behalf of the appellant that the expression "bought or sold" appearing in Section 11(1) of the Madras Commercial Crops Markets Act, 1933 denoted purchase and sale by the same person of the goods involved in the notified area for fee to be levied. Observing that such a plea if entertained would defeat the purpose of the Act, it was held that the transactions aimed must be viewed in the sense in which the legislature intended those to be considered i.e. one transaction resulting in buying on one hand and selling on the other to another. The legislative intendment therefore was accorded a primacy to elicit the true import of a statutory provision.

43. In *Deputy Commercial Tax Officer* (supra), the Apex Court, in essence, propounded that a legislature, in absence of an element of transfer of property

from one person to another in any transaction, cannot treat it as a sale by a deeming clause and bring it within the ambit of the taxing statute.

44. Elaborating in this regard in *K. Prabhakaran* (supra), the Apex Court elucidated that a legal fiction presupposes the existence of the state of facts which may not exist and then work out the consequences which flow therefrom. The consequences, however, have to be worked out only to their logical extent having due regard to the purpose for which the legal fiction had been created. Stretching the consequences beyond what logically flows would amount to an illegitimate extension of the purpose of the legal fiction, it held.

45. While reiterating the above view, the Apex Court in *Maruti Udyog Ltd.* (supra) opined that to construe the legal fiction, the rule of purposive construction should be applied.

46. It was held in *Bijender Singh* (supra), that in interpreting a provision creating a legal fiction, the court has to ascertain for what purpose the fiction is created and then assume all those facts and consequences which are incidental or inevitable corollaries for giving effect thereto. It, however, sounded the word of caution that in doing so, the fiction ought not to be extended beyond the purpose for which it is created or beyond the language of the provision by which it is created.

47. The decision in *Mancheri Puthusseri Ahmed and Ors.* (supra), underlined the same proposition.

47A. The of quoted felicitous passage of Lord Asquith in *East End Dwellings Co.* (supra), succinctly sums up the quintessence of the above formulation.

If one is bidden to treat an imaginary state of affairs as real", one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

48. The decision in *Sundaram Pillai* (supra), was offered to accentuate that the role of an explanation added to a statutory provision is not a substantive provision in any sense of the term but is merely to explain the meaning and the intendment of the Act and to provide necessary clarification in case of obscurity or vagueness of the enactment so as to make it consistent with the dominant object which it seems to subserve. Their Lordships viewed that where some gap is left in a legislation, in order to suppress the mischief and advance the object thereof, explanation can help or assist the Court in interpreting the true purport and intendment of the enactment.

On the same issue, the Apex Court in *Government of Andhra Pradesh and Anr. v.*

Corporation Bank (supra), recalled its view in *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, that ordinarily an explanation is meant to clear up any ambiguity in the main section but cannot be construed to widen the ambit thereof. However, if on a true reading of the explanation it appears to the Court in a given case that its effect is to widen the scope of the main section, the legislative intent ought to be actualized. In all such cases, the Court has to find out the true intention of the legislature and, therefore, there is no single yardstick to decide whether an explanation is enacted to clarify an ambiguity or to widen the main Section.

The legal fiction thus comprehends a licit supposition of eventualities, which may or may not exist to achieve a legislative purpose. A court on the discernment of the objective, can permissibly infer the existence of hypothetical state of affairs and all conceivable consequences and corollaries logically ensuing therefrom. A purposive construction of the legal fiction needs to be adopted to achieve the legislative goal, the only constraint being that thereby the purpose of the fiction ought not to be stretched beyond the intended. The statutory purpose of the legal fiction, axiomatically is the controlling determinant, all other assumptions of relevant facts subsisting or not, to attain the same, being allowable. The significance and essentiality of a legal fiction being to fructify some legislative end, it ought to be permitted a full play subject to the restraint of unintended extension thereof annihilating the very objective of its creation.

Section 21 of the Act authorizes the levy and collection of cess specified on the agriculture produce bought or sold in the market area at the rate specified. Explanation-I envisages a rebuttable presumption that unless the contrary is proved, a specified agricultural produce would be deemed to have been bought or sold in the notified market area in the three eventualities enumerated in Clause (i), (ii) and (iii) thereof. The obvious legislative aim is to obviate the possibility of any transaction of sale or purchase of a specified agricultural produce in the notified market area going unnoticed and to prevent consequential evasion of cess. The presupposition is not in absolute terms and is liable to be displaced, if proved otherwise. Though three incidents have been comprehended which signify to hypothesize a sale or purchase of such produce in the notified area, these per se are neither antithetical nor incompatible with the essential attributes of such transactions as contemplated in law. Instead, the contingencies referred to in the three Clauses infer the existence thereof and seek to complement the same. The events, namely agreement of sale or purchase, delivery of the produce involved and the movement thereof as a consequence, can by no means be dismissed as features totally alien to a transaction of sale or purchase as known in law. Having regard to the marked proliferation of such transactions in the recent times, the fiction understandably at the first instance seeks to relieve the Market Committee or the Board as the case may be of the seemingly impracticable task of stalking each and every transaction effected in the notified area and instead furnishes an option to the person concerned to dislodge the presumption of deemed sale or purchase. The

legal fiction obligates the traders/dealers to be scrupulously vigilant and law compliant. Indubitably, they are obliged to pay the cess, if realizable in law. There is no scope to presume that the levy would be exacted even if not payable. The eventualities comprehended in the three clauses of Explanation I are plausible consequences and/or corollaries relatable to a transaction of sale or purchase of a specified agricultural produce in a notified area and are not in our view transgressive of the contours of the purpose for which the legal fiction had been envisioned. The fiction is neither extra territorial nor ipso facto repugnant to the legally acknowledged features of sale and/or purchase. It is also not sui generis in its form or characteristics, identical provisions being available in many contemporaneous laws. More significantly it is vividly arranged on a corresponding provision in the Model Act, 1998 enacted in alignment with the recommendations of the High Power Committee on agricultural marketing suggesting measures to remove disparities in different State Marketing Acts and for their effective implementations. The Model Act 1998 present a paradigm of provisions so as to facilitate a balanced development of the agricultural marketing system of the country through uniform implementation of the agricultural produce marketing Acts. The legal fiction understandably seeks to cater to a mandate of national consensus in agricultural marketing system. The challenge to the amendment in Explanation I of Section 21 by the Act 2000 on this count therefore does not commend to us for acceptance.

49. We next turn to the contentious issue on quid pro quo and unauthorized creation of funds from the collections and expenses therefrom. According to the petitioners, levy of market fee inheres in it the essence of quid pro quo between the impost and the services rendered to the payers thereof. They have allege that though the Act had been enforced from the year 1974, no market yard and/or sub-yard has yet been constructed and consequential necessary facilities associated therewith have not been provided. They have maintained that the respondents have only resorted to purchase and construction of expensive guesthouses and rest houses. The instance of Uparhali Market in Guwahati Sub-Division declared as a principal market yard has been cited. Apart from contending that the site is located from 40 k.m. from Guwahati, they have stated that the principal market yard consists of a double storied abandoned structure wholly unfit for human habitation with no link road. The setting up of the Assam State Agricultural Market Board Fund has been repudiated to be beyond the competence of the Legislature and the requirement of contribution of 50% of the annual gross income of every market committee thereto to be impermissible in law. Apprehension has been expressed that the fund would not be utilized for the development of the markets but to attend to objects and purpose alien to the Act. The creation of the Agricultural Development Fund u/s 3D has been denounced to be beyond the purposes and objectives of the Act contending that neither any expenditure for agricultural development is contemplated by the legislation nor is it within the realm of services to be rendered thereunder and such expenditures being relatable to other sovereign functions are wholly

unauthorized. The enhancement of the rate of the market fee from Re. 1/- to Rs. 21/- has been questioned to be excessive and arbitrary in the face of the failure to render any services to the traders and farmers as mandated by the Act. According to the petitioners, this quantum leap has been necessitated by the requirement of contribution towards Agricultural Development Fund for augmenting the agriculture sector wholly unrelated to the services to be extended under the enactment. While generally denying the above assertions, the respondent Board in its affidavit has contended that the plea founded on quid pro quo having been raised before the Full Court but left unanswered,, the same ought not to be entertained a fresh being barred by the doctrine of res judicata. It maintained that the arrangement for contribution by the market committees to the Board for its maintenance subsisted in the principal Act since its enactment and the rate was enhanced from 30% to 50% only due to escalation of prices over the years. The Board has categorically denied the charge that no market area, market yard and/or sub-market yard has yet been constructed. It has denied that the building at the principal market yard at Uparhali Market in Guwahati Sub-Division is an abandoned structure wholly unfit for human habitation with no link road. It has averred that a Godown Auction Platform, Drying yard platform, weigh bridge, Cold storage, Farmer's Guest house, community toilets etc. have been constructed and the same are being adequately utilized by the traders and the buyers. It has claimed that it has provided ample facilities for the development of the markets in almost all the declared market areas. It has maintained that the fee collected by way of cess is regulatory in nature and hence the doctrine of quid pro quo is not applicable. It has asserted that having regard to the above nature of the impost, extension of service is not a condition precedent. In any view of the matter, services required to be rendered by the Collecting Authority need not be qua the contributors alone and it would suffice if a system in general is benefited thereby. The Board dismissed the apprehension of the petitioners of any inappropriate expenditure of the cess collected. Having denied that Section D of the Act is vitiated by a lack of legislative competence, the Board has insisted that the facts and figures furnished with its affidavits regarding establishment of markets yards and sub-market yards would demonstrate that effective steps not in contemplation but in reality have been taken and that schemes related thereto have been activated.

Supporting the levy, the Board has pleaded that while conferring some special benefits on the licencees, it is permissible to render services in the market in the general interest of those involved in the transactions therein and as it has been utilizing the cess realized for all relevant purposes contemplated under the Act, the levy is unassailable. It has certified the Agricultural Development Fund to be in harmony with the letter and spirit of the Act, expenditure therefrom being made for implementing schemes prepared for the development of agricultural produce and associated process of cleaning, grading, storing and processing thereof. The allegation that the Agricultural Development Fund is being utilized for purposes relatable to sovereign functions and is thus beyond the purview of

the Act has been denied. Emphasizing that the key purpose of the Act is to ensure that a agricultural grower should be able to market his or her produce not being subjected to distress sales for which all necessary effective steps are to be taken, the Board has averred that the enhancement of rate of levy from Re. 1/- to Rs. 2/- is justified on the basis of the rising price index over the years for which it is in pressing need of funds for the works required to be administered by it under the Act. According to the Board, the escalation in price of the commodities is of financial benefit to the licencees and the marginal raise in the rate is not at all oppressive.

50. In its additional affidavit, the Board has insisted that in addition to the creation, development and maintenance of market and market infrastructures, it has been extending suitable benefits to the growers and farmers from time to time amongst others by providing free distribution of pesticides, fertilizers, agro-equipments requiring huge investments. It has also promoted its information network for wide publicity for welfare of traders and other market functionaries in general inter alia by publishing monthly market news bulletin titled "Krishi Bipanan Tathya Setu" which aims to reflect all activities of the Board and the Regulated Market Committees by publishing daily market prices of specified agriculture produce at all major markets. The Board has also organized the growers by constituting the Growers Societies in different places of the market area of the State with a mission to make them conscious of the market and market practices etc. It has also undertaken periodical scheduled programmes to educate the growers' community in respect of market, market transaction, market price, market facilities, market information etc. The Board, therefore, has emphatically claimed that the realizations have been reinvested substantially so as to promote the market infrastructure as well for all round developmental activities.

A host of decisions having been cited on the facet of quid pro quo, we find it expedient to refer to the same before adverting to " the rival pleadings for ultimate deductions.

51. In *State of Maharastra and Ors. v. the Salvation Army, Western India Territory (supra)*, the provision for levy of contribution contained in Section 58 of the Bombay Public Trusts Act, 1950 and the Rules 32 and 33 of the Rules framed thereunder was impeached being beyond the powers of the State Legislature. In responding to the emerging debate as to the actual nature of the impost, the Apex Court enunciated the distinctive features between a tax and a fee. While a tax was comprehended to be a compulsory exaction of money by a public authority for a public purpose enforceable by law and not a payment for any specific service rendered, a fee was identified to be a charge for a special service rendered to individual by the Government or some other agency like a local authority or statutory Corporation. The levy of tax was held to be meant for the purpose of general revenue which when collected forms part of the public revenue of the State but the amount of fee levied was supposed to be based on

the expenses incurred for rendering the services. It was held that in case of a fee, no account is taken of the varying abilities of the recipients of the service to pay and it is a sort of return or consideration for services rendered for which it is necessary that the levy of fees should be correlated to the expenses incurred by the agency rendering the services. Their Lordships ruled that the two essential elements of fee are that firstly it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and secondly the amount collected must be earmarked to meet the expenses of rendering the services and must not find its way to the general revenue of the State to be spent for general public purposes. Their Lordships, however, were categorical in underlining that though the fee as far as practicable be commensurate with the services rendered no mathematical accuracy ought to be insisted upon.

52. A constitution Bench of the Apex Court in *Kewal Krishan Puri* (supra), was in seisin of the challenge to the validity of certain provisions of the Punjab Agricultural Produce Markets Act, 1961, and the Rules framed by the State of Punjab and Haryana thereunder as well as the validity of the fixation of market fees from time to time. While dwelling on the characteristic attributes of fee their Lordships initiated the narration by defining it to be a charge for a special service rendered to individuals by some governmental agency. It was propounded therein that the special services rendered must be to the payer of the fee and the element of *quid pro quo* must be established between the payer of the fee and the authority charging it. Though the services may not be the exact equivalent of the fee on mathematical precision yet by and large predominantly the authority collecting the fee must illustrate that the services which it has rendered in lieu thereof is for some special benefit for the payers of the fee. Their Lordships observed that the two aspects may be so intimately connected or interwoven with the services rendered to others that it may not be possible to do a complete dichotomy as to what amount of special services was rendered to the payers and what proportion had gone to others. It was, however, held that generally and broadly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial amount of fee realized was spent for the special benefits of its payers. On a survey of its decisions marking the evolution of the law acknowledging the distinctive traits of a fee, their Lordships culled out the following principles as the features of a valid levy of market fee on agricultural produce bought or sold by the licencees in a notified area:

- (1) That the amount of fee realized must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purposes.
- (2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
- (3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the

objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions,

(4) That while conferring some special benefits on the licensees it is permissible to render such services in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

53. While analyzing the various provisions of the legislations involved, the Court emphasized that the fee levied is not on the agricultural produce in the sense of imposing any kind of tax or duty on it. It was not a tax on the transaction of purchase or sale. The levy was construed to be an impost on the buyer of the agricultural produce in the market in relation to transactions of his purchase. Their Lordships referred to Section 28 which enumerated the purposes for which the market committee fund may be expended. Referring to Clause (viii), (x), (xi) and (xvii) thereof, their Lordships opined that those were not relatable to the services to be rendered in the market in relation to the purchase and sale of the agricultural produce. To indicate the aforementioned clauses, which have a bearing on the present facet of the adjudication in the cases in hand, the same are extracted herein below.

(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads; culverts, bridges and other such purposes.

..... (x) propaganda in favour of agricultural improvements and thrift;

_____ (xi) production and betterment of

agricultural produce;

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest.

Their Lordships in particular dismissed the purposes namely construction and repairing of approach roads, culverts, bridges and other such purposes; propaganda in favour of agricultural improvements and thrift, production and betterment of agricultural produce and purposes calculated to promote national or public interest to be undeserving of any expenditure of market fee realized from the traders and were of the view that if such purposes are espoused on the consideration that these would ultimately benefit the traders then the whole concept of correlation of fee with the services contemplated and its character of having an element of quid pro quo will dwindle down and become an empty formality. It was observed that though upliftment of villages and helping of agriculturists is the solemn duty and obligation of the State those must be achieved by incurring expenses out of the public exchequer consisting of the income from various kinds of taxes etc. By the same analogy of reasoning, the Apex Court ruled that any expenditure from the market development fund formed of the receipts of the Marketing Board by way of contributions from the market committees out of their income by way of licence fee, market fee etc. could not be expended in respect of the purposes enlisted in Clause (x), (xi), (xiii) and (xvii) of Section 26. For ready reference, the above clauses are extracted herein below.

...(x) Propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) Production and betterment of agricultural produce;

(xiii) Imparting education in marketing or agriculture;

(xviii) With the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the committee; or the national or public interest.

Their Lordships, however, did not strike down the above provisions as constitutionally invalid but restricted the operation of the two sections in the light of the determination made.

54. On the aspect of the statutory compulsion on the market committees to part with 30% of their income in favour of the Marketing Board, their Lordships observed that the latter being the only controlling and superintending authority over the former, the primary function of which is to render services in the market, the percentage of income to be deposited with the Board is not so excessive or unreasonable so as to warrant any interference on the ground of violation of the principle of quid pro quo in the utilization of the market fee

realized from the traders in the market area. Their Lordships, however, underlined that the market development fund could only be expended for the purposes of the market committees in a general way or as far as practicable for the purposes of the particular market committee, which makes the contribution. Discountenancing the mistaken notion that the market committees and the Board could spend the income from the market fee for all good purposes and the objects of the Act in the general interest of the agricultural and agriculturists in the village, their Lordships elucidated that though the enactment was primarily meant for that purpose such an expenditure could not be approved if the same went against the very concept of quid pro quo, the quintessence of a fee. Their Lordships reiterated that the impost must be correlated with the services to the payers of the fee and all other objects may be achieved by otherwise augmenting the public revenue but not by utilizing a good and substantial portion of the market fee when such application is destructive of the notion of quid pro quo. In the facts of the case, the Apex Court noticed that the market committees and the Marketing Board involved, out of the collections had been required to make donations to educational institutions, spend on water supply scheme for a village, contribute to the construction of a Panchayat Bhaban subscribe to the Guru Gobind Singh Medical College etc. Their Lordships deduced therefrom that a substantial amount of the enormous income generated from the market fees was being spent unauthorizably.

55. In *Ram Chandra Kailash Kumar and Co. and others (Supra)*, the levy of fee under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, was called in question. Their Lordships recounted with approval the decision in *Kewal Krishan Puri 7 another (Supra)*, more particularly the principle laid down therein to determine the correlation between the fees charged and the services rendered.

55A. A three Judge Bench of the Apex Court while examining the assailment on the legislative competence of the State of Kerela in enacting the Abkari (Amendment) Act, 1967 and the Rules framed thereunder had to dilate on the question as to whether the supervisory charges contemplated thereunder could be sustained as a fee in absence quid pro quo. It was observed that the element of quid pro quo was increasingly felt not to be a sine qua non of a fee. The observations in *Kewal Krishan Puri (Supra)* to the contrary, according to their Lordships, were not intended to mean or lay down a rule of universal application.

56. Another Bench of the same strength in *Sreenivasa General Traders (Supra)*, while responding to the challenge to the constitutional validity in the increase in the rate of market fee under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, also in substance entertained the latter view, opining that the observations on the issue of quid pro quo in *Kewal Krishan Puri (Supra)*, were not to be construed as Euclid's theorem or as provisions of a statute and must be appreciated in the context in which they appear. Holding that the said decision did not lay down any legal principle of general applicability, their Lordships of the Apex Court held that with regard to fees there is and must

always be a correlation between the fee collected and the services intended to be rendered and the co-relationship expected is one of general character and not of mathematical exactitude. Their Lordships propounded that a reasonable relationship between the levy of the fee and the services rendered was necessary. While emphasizing that a levy as a fee does not cease to be so merely because there is an element of compulsion or coerciveness present in it, it is also not a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It was also underlined that for a levy to be a fee the realization need not be credited to a separate fund and not to the consolidated fund of the State or to be separately appropriated towards the expenditure for rendering the service. The plea taken on behalf of the traders against their liability to pay market fee in respect of transactions carried on in the notified market area but outside the market in that area was expressly negated and a direction was issued to the market committee of the State to take immediate steps to shift them to the market proper of the respective notified market area for the stringent compliance of the Act, Rules and Bye Laws involved.

57. A Division Bench of the Apex Court in *Municipal Corporation of Delhi* (Supra), while embarking on the adjudication spurred by a challenge to the enhancement of fee imposed by the Delhi Municipal Corporation for slaughtering animals in slaughter houses had to traverse through the law relating to tax and fee. While reiterating that there is no generic difference between two and that compulsion is not the hallmark of distinction between them, their Lordships observed that though a fee imposed must have a relation to the services rendered or conferred, the same need not be direct and that a mere casual relation may be enough. The Court ruled that merely because others besides the payer were also benefited by the service, the levy would not shed its character of fee and in fact a special benefit or advantage to the payer of the fee may even be secondary as compared with the primary motive of regulation in the public interest. According to their Lordships, *quid pro quo* in the strict sense is not the one and only true index of a fee.

58. On a scrutiny of the scheme of the Haryana Rural Development Fund Act, 1983, the constitutional validity whereof was challenged, the Division Bench of the Apex Court in *Om Prakash Agarwal and others* (Supra), returned a finding that the purposes enumerated in the legislation for which the funds comprising the levy were to be expended, rendered the cess partake the character of tax. Their Lordships held that there was no co-relation between the amount paid by way of cess by the dealer and the services rendered to him adjudicating the levy to be a tax in the guise of a fee. Noticing that the State Government had failed to demonstrate the validity thereof tracing it to its legislative competence, the levy was quashed.

59. The question posed before a constitution Bench of the Apex Court in *Belsund Sugar Co. Ltd.*, (Supra), was whether Bihar Agricultural Produce Market Act,

1960, could apply to the transaction of purchase of sugarcane by the sugar mills and also of sugar and molasses despite the fact that such exploits were already being regulated by the Bihar Sugar Cane (Regulation of Supply and Purchase) Act, 1981 as well as Sugarcane (Control) Order, 1966 and the Sugar (Control) Order, 1966. Having answered in the negative, the Apex Court also dwelt upon the plea of justifiability of the levy under the Market Act. It was inter alia projected on behalf of the State that various infrastructural facilities as provided to the concerned sugar factories were an unfailing testimony of the validity of the impost. The following services and facilities were enumerated.

1. Link road facilities by which Market Committees were to spend monies for connecting villages in the market area with the main roads for facilitating the movement of agricultural produce including the sugarcane from the farms to the purchase centers of the factories.
2. Spread of information regarding prices of agricultural produce for information of growers of the sugarcane.
3. Providing mediation facility to enable the growers of sugarcane to get higher price for sugarcane as compared to the minimum prices fixed under the Control Orders.
4. Supervision of weighment of sugarcane.
5. Licensing of Weighing Inspectors.
6. Providing for drinking facility and park.
7. Parking facilities at the purchase centers.

Their Lordships with reference to Section 27 of the Act concluded that in order to attract the charge thereunder, the agricultural produce on which the market fee is to be levied must be required to be bought and sold in the market area within the jurisdiction of the market committee concerned. As the Market Act, itself, had been held to be inapplicable for the purchase and sale of agricultural produce involved, the Court opined that the market committee would cease to be under any statutory obligation to provide any service or the infrastructural facilities for covering such transactions so as to be entitled to charge market fee thereon. The contention, therefore was negated not on the ground that the services rendered by the market committee were not having any adequate quid pro quo but on the logic that these were not required to be extended to regulate the sale and purchase of sugarcane, sugar and molasses and that therefore Section 27 of the Act was not attracted in the facts and circumstances of the case. Their Lordships, however, referred with approval to the principles laid down in *Kewal Krishan Puri* (Supra), correlating the market fee and the services to be rendered.

60. In *Jindal Stainless Ltd.* (Supra), a constitution Bench of the Apex Court while differentiating between a tax, fee and compensatory tax expounded that a fee is based on the "principle of equivalence" which is converse of the "principle of

ability", the gravamen of tax. Their Lordships defined compensatory tax to be a sub-class of fee based on the principle of "pay for value". It was held that compensatory tax like fee is proportional to benefits. Their Lordships declared that the theory of compensatory tax rests upon the principle that if the Government by some positive action confers upon individual(s) a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. It was pointed out that the basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas the latter on the concept of recompense/reimbursement. Their Lordships held that when tax imposed is, as a part of regulation or regulatory measure its basis shifts from the concept of "burden" to the concept of measurable/quantifiable benefit and it becomes a "compensatory tax" and its payment is then not for revenue but as reimbursement/recompense to the services/facility provider. It is then a tax on recompense. Their Lordships ruled that compensatory tax is by nature hybrid but it is closer to fee than to tax as both fees and compensatory taxes are based on the principle of equivalence as well as reimbursement/ recompense.

61. A survey of the authorities referred to hereinabove, in our estimate, testifies that the view expressed by the Constitution Bench of the Apex Court in *Kewal Krishan Puri* (Supra), on the concept of quid pro quo and the inter relation between the fee levied and the services rendered has stood the test of time, the same being in substance reiterated and re-affirmed in *Ram Chandra Kailash Kumar* (Supra), and *Belsund Sugar Co. Ltd.* (Supra). In *Jindal Stainless Ltd.* (Supra), as well the Constitution Bench of the Apex Court propounded as well that compensatory tax is a sub-class of fee founded on the principle of recompense and that the principle of quid pro quo as applicable to a fee by necessary implication is also attracted for it. The transient drift in the notion of quid pro quo as an imperative attribute of fee as noticeable in *Southern Pharmaceuticals and Chemicals* (Supra), *Kewal Krishan Puri* (Supra) and *Sreenivasa General Traders and others* (Supra), is, therefore, in the teeth of the consistent renderings by the constitution Benches of the Apex Court.

The Constitution Bench while highlighting that the services rendered to the licencees must be in relation to the transaction of sale or purchase to the agricultural produce acknowledged that the element of quid pro quo may not be possible or even necessary to be proved with arithmetical precision but the authorities charging the fee must be able to establish that a substantial portion of the levy collected is being spent for rendering services to those who bear the brunt of the impost. Conclusively, therefore, if the levy is a fee, the element of quid pro quo is inseverable therefrom and services commensurate with the realization would have to be rendered so much so that the benefits thereof are extended to the payers though in the process the general interest of all concerned with the transaction conducted in the market is also catered to. As a return to the cess collected under the Act with which we are concerned, the Board and the Market Committees are thus obliged in law to render the services

for the benefit of the transactors in the markets in particular though while doing so, the interest of all concerned in general may as well stand served.

62. We have dealt with the issue of quid pro quo notwithstanding the reservation expressed on behalf of the respondents that the same is barred by the doctrine of res judicata. Firstly, as the same was not one of the points for determination formulated by the Full Bench and, therefore, implied rejection thereof is not inferable in law and secondly, the same has been considered to be an issue of moment calling for an adjudication on merits. This issue is as well of great significance touching the validity or otherwise of the realizations and would have a decisive bearing on the petitioners' claim for refund.

63. Unlike, in *Kewal Krishan Puri* (Supra), there is no overwhelming material in the instant case as unimpeachable evidence of uninhibited expenditure for the purposes extraneous to the heads of services identified to be rendered by the Board and the Market Committees. The relevant provisions of the legislation involved in *Kewal Krishan Puri* (Supra), are strikingly in pari materia with the Act in hand. The order appointing several Regulated Market Committees to be the procurement agents under the Assam Paddy and Rice Procurement (Levy and License) (Amendment) Order 2000 for procurement of paddy during the Khariff year 1999-2000 has been only for a year as is apparent therefrom. Though the deponent in the affidavit in reply in WP(C) No. 5491/2001 has affirmed the statement of payment of Rs. 20/- Lacs towards the Chief Minister's relief fund by the Board to be true to his knowledge persuasive materials are lacking in this regard. Contribution of 50% of the annual gross income of every Market Committee to the Board per se is not mutilative of the concept of quid pro quo in the utilization of market fee realized from the traders of the market area as held in *Kewal Krishna Puri*. The challenge to the stipulation of deposit of 30% of the income of the market committees in favour of the Marketing Board therein on this plea was negated indicating, however, that the Market Development Fund can be expended by the market committees in a general way or as far as practicable for the purpose of the particular market committee making the contribution. We respectfully subscribe to the view recorded by the Constitution Bench as above.

64. The documents furnished by the Board as testaments of services rendered by it, disclose huge investments in various kinds of construction works in several principal as well as sub-market yards in the nature of godown, administrative buildings, auction platforms, boundary walls, sheds, paddy shop houses, shopping complex, staff quarters, link roads, approach roads etc. Substantial investments have also been made in implementing the scheme "Agricultural Marketing Information Network" during 2000-2001 in course of which computer sets have been installed to monitor and disseminate market data for keeping the growers of the agriculture produce of the traders of the State updated with the latest information on agricultural marketing in the State as well as elsewhere in the country. The documents furnished disclose steps taken for implementing motivational programmes by the Board to keep the farmers abreast with its various schemes and activities undertaken by it on its own or

with the assistance from the Central Government towards development of agricultural marketing of the State as well as to keep them conversant with the agricultural market information network, utilization of rural godowns for future benefits of the farmers, advancement of auction method of sale etc. Names and particulars of the grower societies registered with the Board have also been furnished to evince the steps taken by it to promote growers knowledge in the market and market practice etc.

65. Judged by the touchstone evolved in *Kewal Krishan Puri* (Supra), to decipher the purpose for which expenditures can be validly made so as to constitute services to satisfy the mandate of *quid pro quo*, we are of the view that the two clauses of Section 25 being Clause (i) and (xi) are beyond the purview thereof for which the market committee fund cannot be permissibly applied. Clause (vi) and (vii) of Section 3E and (xii) and (xiii) of Section 25 are in general terms and must obligatorily align to the test laid down in *Kewal Krishan Puri* (Supra). In terms of the above decisions as well we do not propose to strike down Section 3E and Section 25(xiii) as constitutionally invalid but would restrict the operation thereof so as to be consistent with the purposes as would cater to the services to the traders and dealers transacting in the notified market area as well as to facilitate such a transaction with a view to achieve the objects of the legislation.

The Board's contention that the enhancement in the rate of cess in reality is an enlargement of the outer limit thereof and that in practice realizations are being effected at the old rate has not been controverted by the petitioners. Having regard to the growing price index in all conceivable spheres of contemporary existence, we do not consider that the enhancements as prescribed by Act 2000 after over two decades of the enforcement of the principal Act is so illogical, irrational or excessive so as to warrant interference therewith. As it is, there is no clinching evidence on record to infer that the market committees and/or the Board are, with their collections awash with liquid assets and overflowing surplus so much so that the enhancements in the rate of cess in the form introduced ought to be held illegal and unconstitutional. No unimpeachable evidence is available as well, to demonstrate that the Board indulges in essential sovereign functions and fritters away the funds composed of the cess for such purposes. The challenge to Section 3D, 3E and 25(xiii) is, therefore, answered accordingly.

66. Though not pleaded by either of the parties, in course of the arguments, the aspect of possible repugnancy between the fictional sale conceived of in Section 21 of the Act and sale as defined in the Sale of Goods Act, 1930 (hereafter referred to as the Act 1930) and the ancillary provisions thereof surfaced generating a debate thereon. The saving effect of the assent of the President enjoined by Article 254(2) of the Constitution of India in such an eventuality was also deliberated upon. The exigency of an adjudication on this question logically pre-supposes that any provision in the State law in respect of any matter enumerated in the concurrent list is repugnant to the provisions of an earlier law made by the Parliament or an existing law on the same subject matter. In other

words, the laws made by the State Legislature or the Parliament or the existing law must cover the same field in the Concurrent List and that any provision of the State made law is in conflict with the one made by the Parliament or the existing law so much so that the two cannot be possibly reconciled. It is in this contingency that the State law, if reserved for consideration of the President and has received his assent that it would prevail over the earlier law made by the Parliament or any existing law in the State concerned. For the repugnancy comprehended in Article 254(2) therefore the above factors must co-exist.

67. The Apex Court in *Zaver Bhai (Supra)*, while dwelling on the essential features of the above Constitutional provision propounded that the important thing to consider is whether the legislation is in respect of the same matter which forms the subject matter of the earlier legislation and if those are different and distinct though of a cognate and allied character, Article 254(2) would have no application.

68. Reiterating the above view, the Apex Court in *Tika Ramji, (Supra)*, quoted with approval the following extract of the dictum of Dixon J, rendered in *Ex. Parte Mc L. Eal (1930) 43 CLR 472 (p)*:

When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and Section 109 applies. That this is so is settled, at least when the sanctions they impose are diverse.

But the reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties.

The inconsistency does not lie in the mere co-existence of the two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter.

The above view found emphatic reiteration in *Dharappa, (Supra)*.

69. The constitutional validity of some provisions of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991, was assailed in *M.P. AIT Permit Owners Association* and another, *supra*, being in conflict with the Motor Vehicles Act, 1988. On a survey of the schemes of both the legislations, the Apex Court sustained the challenge to the vires of the State law observing that the offending provisions could not have been enacted without the assent of the President as

the same directly impinged upon Article 254 of the Constitution of India as both the laws were construed to be operating in the same legislative field.

The decision in *State of Rajasthan v. Rajasthan Chemist Association* (supra), involved an assailment of Section 4A of the Rajasthan Sales Tax Act, 1994 contemplating levy of sales tax on any transaction of sale of notified goods not on the actual price paid or payable by the buyer to the seller of such sale as have taken place but on the market retail price of the goods declared on the package as per the provision of the Standards of Weights and Measures Act, 1976 or the Rules framed thereunder or any other law for the time being in force which is chargeable only at the last point of sale by the retailer. The plea against the validity of the aforementioned legal provision was that it took into account an artificial amount as turnover for the purpose of tax on sale of goods which must be leviable with reference to something relatable to the taxing event and not de hors the same.

Upholding the challenge, the Apex Court observed that by substituting the assumed quantity of goods or price which is not the subject matter of the contract of completed sale for the purpose of measuring tax, the legislature assumed existence of contract of sale of drugs by legal fiction which had not taken plea and thus the same could not be considered to be a sale in the manner stated in the Act which alone could be the subject of tax under Entry 54 in List II. This authority apparently has been pressed into service to emphasise that the incidence for tax i.e. the sale could not presumably have been assumed through a legal fiction if such an event in fact had not occurred.

Considering the provisions of the Act in the present lis which occupies the center stage of the discourse i.e. Section 21 and more particularly Explanation I thereof, there is no reason to detain ourselves on this issue. The Act, neither is nor is claimed to be an enactment on the same legislative domain as the Act 1930. The Act is not a legislative instrument on Entry 7 of the Concurrent List as is the Act 1930 nor does it define sale as such. The thematic layout of the Act also does not reveal any intention of the lawmakers to supercede the concept of sale under the Act 1930 and the provisions ancillary thereto. Explanation I to Section 21 of the Act precisely nurtures the presumption of sale and purchase of specified agricultural produce in the notified market area on the existence of the contingencies engrafted therein. The presumption of fictional sale is conspicuously rebuttable and is subject to proof otherwise. The provision envisages a reversion of the onus of proof of actual sale simpliciter casting an obligation on the concerned trader/dealer to dispel the contra presumption. The legal fiction is not mutilative of the legally recognized attributes of sale and though prima facie contingently trenches upon the comprehension of sale in Act 1930, no subversion thereof in absolute terms is perceptible to precipitate repugnancy therewith as envisaged in Article 254(2) of the Constitution of India. The legal fiction does not present itself to be an immutable concept incapable of reconciliation with the provisions of the Act 1930 in a given fact situation to

occasion a repugnancy rendering it to be void in absence of the assent of the President in the manner mandated by Article 254(2). We are, therefore, of the unhesitant opinion that Section 21 of the Act is not repugnant to the Act 1930 as conceptualized in the above constitutional provision.

70. The fact remains that Act 2000 effecting the amendments amongst others to Section 21 of the Act had received the assent of the President on 29.12.2000 and, therefore, an endeavour was made on behalf of the petitioners to undo the same by contending that in absence of any material on record to demonstrate that the attention of the President had been drawn to the aspect of repugnancy between the proposed State law and the earlier law made by the Parliament as well as the necessity of such a law, the assent accorded was of no consequence and, therefore, did not save the enactment under challenge.

71. The decision of the Apex Court in Gram Panchayat of Village Jamalpur (Supra) and Kaiser-I-hind (P) Ltd. (Supra), were relied upon to buttress these arguments. Indeed their Lordships in the above decisions had underlined the essentiality of presentation of all relevant materials bearing on the repugnancy between the proposed State enactment and the earlier law made by the Parliament and the exigency of such State law facilitating the consideration thereof by the President before embarking upon the affirmative action regarding his assent to the demand made by the State for such law. The Apex Court enounced that the phrase "reserved for consideration" cannot be reduced to an idle formality and the assent of the President would require a serious consideration of the materials placed before him.

72. An identical plea raised in Engineering Kamgar Union Vs. Electro Steels Castings Ltd. and Another, , was not entertained by the Apex Court as the same had not been pleaded in the writ petition or the SLP by the petitioners therein. Their Lordships referred to Section 114(e) of the Indian Evidence Act, 1872 recognizing a presumption that all official acts must have been performed regularly and that the State act involved therein had been amended having regard to the provisions of the Central Act and after obtaining the Presidential assent as required.

73. The learned Counsels for the parties present without any reservation admitted to a query made by this Court that such a plea bearing on the assent vis-a-vis Act 2000 had not been pleaded in the writ petitions and, therefore, the respondents had no occasion to respond to the same. We feel inclined in the above admitted factual premise to subscribe to the view taken in Engineering Kamgar Union (Supra), and negate the assertion made qua the assent. A passing reference at this stage may also be made of the decision Subodh Chit Fund (P) Limited (Supra), wherein the Apex Court had approved the conclusion of the Madras High Court that the sanction of the President for the amending enactment is not necessary if the same had been obtained for the principal legislation.

74. By Act 2006, which received the assent of the Governor on 16.01.2007, Sub-section (2) was added to Section 21 of the Act as already amended by Act 2000. Section 10 of the Act 2006 proclaims that Section 21 of the Act thus amended would be deemed to have been inserted w.e.f. 03.09.1974 i.e. the date on which the principal Act had received the assent of the President. Sub-section (2) as above to which this segment of this adjudication would relate deserves to be extracted.

21(2) The Assam State Agricultural Marketing Board shall also have the power to levy and collect cess for any or all of the Market Committee(s) in the market areas in addition to the powers of the Market Committee (but not both), whenever felt necessary with the approval of the State Government, on the agricultural produce bought or sold in such market area(s) at a rate not exceeding two Rupees for every one hundred rupees of aggregate amount for which a specified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations.

As would be obvious from the above excerpt, thereby the Board has also been endowed with the power to levy and collect cess for any or all the market Committee(s) in the market areas in addition to the powers of the Market Committee (but not both) on the Agricultural produce bought or sold in such market, whenever felt necessary with the approval of the State Government. The cavil is on two counts. Firstly such retrospective conferment of powers on the Board w.e.f. 03.09.1974 is impermissible as the Act had come into force from 01.05.1975 being the appointed date and secondly such authorization of the Board is wholly discordant with the scheme of the Act and the Rules.

75. Indeed the principal Act, vide notification No. AGA 393/78168 dated 27.08.1975 had made it enforceable w.e.f. 01.05.1975. The above notwithstanding, we do not feel convinced that the aforementioned amendment would be rendered invalid per se for being sought to be made effective from 03.09.1974. The Act incidentally had received the assent of the President on the very same date but in terms of the ordainment in Section 1(3) thereof was brought into force by the notification dated 27.08.1975 referred to hereinabove published in the issue of the even date of the Assam Gazette, Part DA on and from first day of May, 1975. In the above view of the matter, we feel inclined that mere reference of 03.09.1994 in Section 10 of the Act 2006 ipso facto would not invalidate Sub-section (2) of Section 21 sought to be assimilated in the principal Act. However as the Act had been brought in force w.e.f. first day of May 1975, we would read down the date 03.09.01974 as 01.05.1975 for the purpose of enforcement of the aforementioned subsection.

76. The permissibility of the retrospective empowerment of the Board to collect cess for any or all of the Market Committee(s) next needs attention. Admittedly, such an express provision as in Section 21(2) introduced by Act, 2006 did not exist at the time of the verdict of the Full Bench which adjudged the collection of cess by the Board at the check gates on the basis of its resolution to the said

effect to be ultra vires the Act. The validity or otherwise of Section 21(2) thus has to be adjudged in the above backdrop vis-a-vis the legislative authority to enact a validating law with retrospective effect.

77. As it is, Section 21(2) invests the Board with the prerogative to levy and collect cess whenever felt necessary with the approval of the State Government for any or all of the Market committees on the agricultural produce bought or sold in the market areas at the rate specified therein. The remonstrance on behalf of the petitioners is firstly, such authorization of the Board is not contemplated in the scheme of the Act and the Rules and secondly, such investiture is with the object of purposefully legalizing the exactions made by it during the pre amendment period and ruled to be illegal and unauthorized by the Full Bench.

The law with regard to the retrospective enactment of a validating Act with the concomitant restraint is by now settled. It was held by the Apex Court in *Virender Singh Hooda and Ors. v. State of Haryana and Anr.* (supra), that if the legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a law and make it retrospective to bind even past transactions. The validity of a validating law, therefore, would depend upon whether the legislature possesses the competence over the subject matter and if in making the same, it seeks removal of the defects which the Court had found in the existing law, it observed. Their Lordships enunciated that though the legislature cannot by a bare declaration without anything more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary power conferred by the Constitution render a judicial decision ineffective by enacting a valid law on the topic within its legislative field, fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based.

78. While reiterating the above view, in *State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others*, , their Lordships observed that the legislature, as a body, cannot be accused of having passed a law for extraneous purpose and even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, it cannot render the passing of the law mala fide. It was held that whenever an amendment is brought in force retrospectively or any provision of an enactment is deleted retrospectively, the rights of some are bound to be affected in one way or the other. Their Lordships recounted the observations of the Apex Court in *Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. Vs. State of Karnataka*, that the legislature can alter the basis on which a decision is given by the Court and thus change the law in general, which may affect a class of persons and events at large. It cannot, thereby, however, set aside an individual decision inter parties and affect their rights and liabilities alone. The following quotation from *Harvard Law Review*, Vol. 73, Page 692 was referred

to:

It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called "small repairs. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus the interest in the retroactive curing of such a defect in the administration of the Government outweighs the individual's interest in benefiting from the defect.

79. In *Bihar S.A. Product Marketing Board. v. Shankar Makhana Bhandar* (Supra), by the Bihar Agricultural Produce Markets (Validation) Act, 1982, market fee levied, collect or to be levied or collected was sought to be saved from being illegal and invalid on the ground of non publication of the required notifications. The jurisdictional High Court upheld the challenge to the said enactment on the ground that it was not permissible as the same had an effect of upsetting the earlier judicial adjudication. The Apex Court while interfering with such determination of the High Court clarified that the Validation Act had only knocked off the basis of the earlier judgment by validating the omission of non-publication of the notification.

80. The decision in *Ashok Lanka and Anr.* (Supra) turned on its own facts. It involved a challenge to the selection for grant of licence for settlement of liquor shops under the Chhattisgarh Excise Act, 1915 and the Rules framed thereunder. Though under the Rules, an applicant was amongst others, required to submit an affidavit making the prescribed disclosures, the Commissioner of Excise before initiation of the process issued a circular deferring the submission of the affidavit till after the selection of the candidates. After completion of the selection process, the Rules were amended omitting the requirement of filing the affidavit by a candidate at the time of submission of his application offering his candidature. Sustaining the challenge, the Apex Court ruled against the validity of the circular issued by the Commissioner of Excise relaxing the requirement of submission of affidavit along with the application to be lacking in competence and jurisdiction and held that as before the amendment of the Rules, the process had been completed by following a procedure which was illegal, the same could not be rendered valid on the basis thereof. Their Lordships inter alia directed re-scrutiny of the applications of the successful candidates.

Incidentally, the lack legislative competence of enacting a validating law with retrospective effect did not surface for the consideration of the Apex Court and this decision cannot be construed to be a determination detracting from the judicially evolved precept in the other authorities referred to hereinabove.

81. In the face of precedential recognition of the legislative authority to enact a validating legislation retrospectively modifying or altering any law forming the basis of any judgment or order of a Court thereby rendering it ineffective, the assailment of the Act on this count cannot be upheld. The State legislature in doing so did not stray beyond the legislative field earmarked for the purpose and

the impugned enactment perse is a validating law seeking to authorize the Board to levy and collect cess alike the Market Committees on or from the date of enforcement of the Act. Thereby the basis of the rendering of the Full Bench has been rendered non est, an eventuality which is judicially countenanced as alluded hereinabove. The plea that Act, 2006 has been enacted to nullify the judgment and order of the Full Bench of this Court, in the above premise cannot be sustained.

As the bestowal of the power ordained by Section 21(2) is inveighed to be abhorrent to the scheme and theme of the Act and the Rules so as to be annihilative of the basic objectives of the enactment, a birds' eye view of the relevant provisions of the Act and the Rules is indispensable.

82. The constitution of the State Agricultural Marketing Board (also referred to as the "Board"), is provided by Section 3 of the Act. It is constituted of a Chairman and 17 other members to be nominated by State Government. It is a body corporate having perpetual succession and a common seal with the power, subject to the provisions of the Act to acquire and hold property and to sue and be sued in its name and to do all other things necessary for the purpose for which it is established. Section 3(1) authorizes it to exercise superintendence and control over the Market Committees in the manner prescribed. The State Government u/s 3(9) is empowered to exercise and superintendence and control over the Board and may supersede it on the satisfaction that it is not functioning properly and/or is abusing its power or is guilty of corruption or mismanagement.

83. The State Government or the Board in terms of Section 3(11) may call for any information from a Market Committee or from any other functionary under it pertaining to specified agricultural produce and may also inspect the records of the Market Committee or such functionary if need be. Section 3(13) mandates the Board to submit every year the estimate of its annual income and expenditure for the sanction of the State Government. The powers and the functions of the Board are delineated in Section 3A. In addition to its act of superintendence and control over the Market Committee, it is required thereunder to ensure the coordination of the working of the Market committees and other affairs thereof, undertake the State level planning of the development of Agricultural produce and markets; administer the Marketing Board Fund; issue directions to the Market Committees in general to ensure improvement thereof. The Board is also obliged to discharge other functions specifically entrusted to it under the Act as well as by the State Government.

84. Section 3B comprehends a fund nomenclatured "The Assam State Agricultural Marketing Board Fund". Section 3C prescribes that all payments incurred by the Board shall be defrayed out of this fund. Section 3D enjoins that ever Market Committee would pay to the Board 50% of its annual gross income derived from licence fee and cess as contribution to meet the expenses of establishment of the Board and execution of works as may be directed by the Government from time to time for carrying out the purposes of this Act and for

execution of other functions assigned to the Board under this Act including the maintenance of pool of officers common to the Board and the Market Committees. Out of the amount to be deposited by the Market Committee as above, 50% thereof collected every year is to be transferred from the Marketing Board's fund to a separate account namely, "Agricultural Development Fund" from which expenditure on schemes or items prepared for development of Agricultural Produce and Market subject to the approval of the Committees referred to therein are to be met as sanctioned by the Board. Amongst the purposes for which the Marketing Board's fund can be utilized as enumerated in Section 3E it can, inter alia be by way of grant to financially weak Market Committees thereunder all officers and staff of Market committees in the form of loan or grant for development purposes, as well as for any purpose as may be deemed necessary by the Board or the State Government for carrying out the objectives of the Act. Section 3F stipulates for annual audit of the accounts of the Board to be submitted by the State Government every year.

85. A market area u/s 5 of the Act is to be declared by the State Government by notification in the official gazette. Section 5A obligates that all specified agricultural produce shall ordinarily be sold in the principal market yards/sub-market yards. Section 5 (I) contemplates that in every market area there may be (a) a principal market yard and one or more sub-market yards managed by the Market Committee; (b) one or more than one private market yards managed by a person or a group of persons or a body corporate other than the Market Committee; and (c) one or more than one Farmer/consumer markets managed by a person or a group of persons or a body corporate other than the Market Committee. Provision for declaration of one principal market yard and one or more sub market yards as may be necessary for each market area is provided for in Section 6. Sub-section (2) thereof empowers the Board with the approval of the State Government to declare any enclosure, building or locality in any market area to be the principal market yard and sub market yard or yards.

A Market committee for every area declared to be a market area is to be established by the State Government u/s 7 to enforce the provisions of the Act and the rules and bye-laws framed thereunder in such area. The State Government is left with the discretion to establish more than one Market Committee for the same area in the process as referred to in Section 7(2). The composition of every Market Committee is provided for in Section 8. Each Market committee in terms of Section 13 as well, is a body corporate having perpetual succession and a common seal and may sue or be sued in its corporate name and is competent amongst others to do all things necessary for the purpose for which it is established. Section 13(2) prohibits any person from using any place for buying or selling specified agricultural produce or to function as a trader etc., within the market area where a Market committee is established without a licence being issued to him by such committee on payment of such fee and subject to such conditions as may be prescribed. The functions of a Market committee as envisaged in Section 14 indicate amongst others, maintenance and

management of the market yard, control and regulation and administration of the market in the interest of the agriculturists and traders holding licence from it. It is also required to regulate and control transactions in the market. Sections 15 and 16 equip a Market committee with the power to regulate entry of persons into the principal or sub market yards to supervise the behaviour of persons so entered as well as to take disciplinary action against the erring licensees and to enforce the conditions of the licence granted to it.

86. The power to levy cess u/s 21 following the Act, 2006 has been vested with every Market committee and also on the Board. Section 21A authorizes the Market committee as well the Board to establish check gates at different points within the Market Area. Whereas, the Market Committee can do so with the approval of the Board, the latter would require the approval of the State Government for such purpose. The collections by the Market committee are to be deposited in "Market Committee Fund" and all expenditures incurred by it under or for the purpose of this Act would be met therefrom. The surplus if any, as Section 23 requires would be applied in the manner as provided in Section 25 which inter alia may be for any matter as may be entrusted by the Board. The State Government u/s 37 is endowed with the power to supersede a Market committee in the eventualities as mentioned therein. A residuary power on the State Government has been conferred by Section 33 to inspect or cause to be inspected the accounts of the Board or to institute an enquiry into the affairs of the Board if considered necessary.

87. The Assam Agricultural Produce Markets (General) Rules, 1975, as amended by the Assam Agricultural Produce Market (General) (Amendment) Rules, 2003 framed in exercise of power u/s 49 of the Act amongst others provide a detailed procedure for levy and collection of cess. Rule 21 thereof, inter alia provides for the point of time at which the cess would be leviable, the body to which it would be payable, the form of receipt acknowledging the payment etc. Rule 23 prescribes the manner in which cess payable is to be assessed and levied. Thereunder every licensed dealer is required to submit to the Market committee a return in the prescribed form revealing his purchase and sales of each transaction of agricultural produce within four days thereof. The Committee is required to maintain a register also in the prescribed form showing the total purchases and sales made by traders, cess recoverable and recovered. This rule also enumerates the process to be observed in case the trader fails to submit a return and comprehends inspection of his account and consequential assessment of his dues payable as cess. In such a case, the assessment order would be communicated to him by means of a demand notice. The rule contemplates suspension and cancellation of trader's licence in case of a habitual defaulter. Rule 23(13) contemplates an appeal against the assessment order by the Committee to the Chairman of the Board. Rule 25 provides for refund of market fee recovered in excess of the amount actually due or on a transaction which is exempted under the Rules. The amount recoverable is to be defrayed out of the Market Development Fund or Market Committee Fund depending on the account

in which it had been credited.

The various provisions of the Act demonstrate in unequivocal terms that the State Government, the Board and the Market Committee(s) for the respective Market area have been assigned roles complementary to each other so much so that all these entities are designed to act in tandem for an effective and purposeful implementation of the provisions thereof. Incidentally, the provisions proclaim that the Board has been entrusted with the power of supervision and control over the Market Committee(s) to be overseen by the State Government. This functional hierarchy notwithstanding, as the coordination in the trinity is the driving force to achieve the avowed purpose of the legislation, any inflexible and rigid compartmentalization of the activities of these three bodies mutually exclusive of each other is not perceptible. On the other hand, overlapping thereof and a common bond in furtherance of the preambular commitment is conspicuously decipherable. The model of the Act comprehended as a whole does not determinatively prohibit the empowerment of the Board in the matters entrusted to the Market Committee(s). The Act discloses that the cess payable on the specified agricultural produce is the only source of revenue to form the corpus for achieving the objectives of the Act and though the legislature has provided for apportionment of the realization and deposit thereof in the Market Board's Fund, the Agricultural Development Fund and the Market Committee Fund, the purposes for which the same is expendable are, except as contained in Section 25(1) & (xi) and obviously relatable to those conceived of by the Act. As held above, the purposes enumerated in Clause (vi) and (vii) of Section 3E and Clauses (xii) and (xiii) of Section 25 thereof must essentially be in conformance with the requirements prescribed in Kewal Krishan Puri (*supra*).

88. Section 3A(1) (v) (vi), 3A(2) (viii), 3E (iv) (v) (vi) (vii), 14, 15, 16 and 25, on a conjoint reading evince an inextricable homogeneity in statutory assignments for the State Government, Board and the Market Committee(s) to effectuate the enjoinders thereof. The Board in this legislative paradigm can by no means be branded a stranger so as to disqualify it from being entrusted with the power to levy and collect cess even in well defined and demanding exigencies. The empowerment of the Board to levy and collect cess having regard to the framework of the Act hedged by the conditions as enumerated in Section 21(2) of the Act, in the opinion of this Court cannot be denounced to be extinctive of the fundamental features of the legislation rendering it wholly impermissible. The legislative malice, as suggested, is also not inferrable.

As it is, every trader as defined under the Act engaged in the business of buying and selling of agricultural produce in the notified market area is liable to pay cess. Conferment of power on the Board to levy and collect the cess per se would not have the effect of divesting him of any accrued right. This is, however, not to signify our approval to any levy and collection of cess dehors the Act or the Rules. Section 21(2) embodies a conscious decision of authorizing the Board to levy and collect cess on occasions envisaged therein for and on behalf of any one

or more of the Market Committee(s). The possibility of double exaction has, thus, been cautiously ruled out.

Noticeably, the corresponding changes following the amendments effected by Act, 2006 arming the Board with the power also to levy and collect cess have not yet been incorporated in the Rules. The State Government ought to have been vigilant, alert and prompt so as to avoid any misgivings in this regard. This omission notwithstanding, having regard to the legislative edict that the Board u/s 21(2) would levy and collect cess only in certain eventualities as envisaged for any or more of the Market Committee(s) and the exhaustive procedure laid down in the Rules visualizing the process therefore, vis-a-vis, the Market Committee(s), we do not feel persuaded to annul this provision on the count of want of adequate mechanism detailing an exclusive procedure to enable the Board to exercise such power. The legislative policy engrafted in Section 21(2) having been sustained by us, we are inclined to hold that as for all intents and purposes, the Board is levying and collecting cess for any or more of the Market Committee(s), it would do so as its agent and therefore, the provision of Rules 21, 22 and 23 till the Rules are amended appropriately, would serve as inbuilt guidelines for it (Board) in this regard. A purposeful construction needs to be adopted eschewing a myopic and pedantic approach to actualise the statutory commitments.

The following extract from the decision of the Constitution Bench of the Apex Court in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, appears befitting:

Now while considering the constitutional validity of the statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognized and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of

legislation dealing with economics matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.

As it is, in *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*, the Apex Court has authoritatively enounced that a Machinery provision in a taxing statute must be so construed as would effectuate the object and purpose of the legislation and not defeat the same.

The provision for refund as contained in the Rules is an unambiguous certitude against unwarranted and illegal exaction and retention of cess not leviable under the Act. The empowerment on the Board is not in any view of the matter subversive of the authority of the Marketing Committees to levy and collect cess. It is only supplementary in nature to be invoked on behalf of such a Managing Committee of committees in the eventualities envisioned. The impeachment of Section 21(2) of the Act on the ground of misconceived and illogical authorization of the Board to levy and collect cess thus fails.

89. The above determinations on the legal issues notwithstanding, the validity of the realizations of cess from the petitioners judged in the complete factual perspective have to be independently scrutinized amongst others for deciding on the claim of refund registered by them. In view of the decision of the Full Bench and the Apex Court noted here in above, the petitioners are not entitled to any refund prior to 13/8/2001. The present adjudication logically would appertain to the period on and from that date in the touchstone of the amended law in force and the attendant facts and circumstances. The petitioners have alleged that the Board in purported exercise of its powers u/s 21(2) of the Act has been realizing cess from the truck drivers of the consignments bound for different destinations at Srirampur/other check gates as well as Railway Stations through its Marketing Inspectors who have been equipped with the seals of various market committees. These officers depending on the destination of the goods use the seal of the concerned market committee though the sale and purchase thereof had been completed in places outside the State of Assam. The petitioners have asserted that the collections are being made on the basis of the documents accompanying the goods, though the same demonstrate sale and purchase thereof outside the State of Assam. They have emphatically averred against any sale or purchase of their goods within the State of Assam and have thus vehemently denounced the exactions as illegal, arbitrary and unauthorized.

90. The respondent Board per contra in its affidavit to the amended writ petition in WP(C) 5491/2001 (affirmed on 19.06.2006) has avowed that the petitioners have been conducting local sales of the specified agriculture produce bought from outside the State of Assam and has furnished the names and particulars of the firms and companies indulging in such activities with documents in support

thereof. The petitioners in the aforementioned writ petition in their reply affidavit while admitting such local sales by some of the members of the association have contended that the documents relied upon by the Board disclose that the transactions relate to the year 2005 and barring one or two instances, the article sold was wheat products and not wheat. In view of the above admission it is inessential to dilate further in this regard. It is, therefore, easily deductible that the petitioners' assertion of denying any local sale of their goods in Assam is factually incorrect.

90A. Noticeably "wheat and wheat products" have been enlisted as agriculture produce as defined u/s 2(1)(i) of the Act in Schedule thereto. The endeavour on their part to squirm out of the Board's asseveration of their involvement in sales and purchases of specified agricultural produce in the State of Assam is, therefore, of no avail. "Agricultural Produce" has been defined in Section 2(1) (i) to mean and include any produce whether processed or non-process of Agriculture, Horticulture, Animal Husbandry, Pisciculture, Sericulture and Forest as specified in the schedule to the Act.

91. The Apex Court in *State of Rajasthan v. Rajasthan Agriculture Input Dealers Association* (supra), while dilating on the definition of "agricultural produce" in Section 2(1)(i) of the Rajasthan Agricultural Produce Market Act, 1961, held that the schedule thereto serializing the items does not admit of supplementation by inferences and that the contents thereof have to be explicit and categorical. Any dispute on this count has, thus, to be addressed on the measure of the definition of Agricultural Produce provided in the Act, the schedule thereto and the above proposition expounded by the Apex Court.

91A. On the plea of absence of quid pro quo, the petitioners have been trenchant in charging the Board for having failed to establish any market yard or sub-market yard as required under the Act and to extend all necessary facilities associated therewith. According to them, the respondents have only resorted to purchase/construction of expensive guesthouses and offices. They have cited the instance of Guwahati Market at Uparhali to have been declared as principle yard which is at a place about 40 k.m. from Guwahati. They have alleged that the said principle market yard consists of a double storeyed abandoned structure wholly unfit for human habitation with no link road. They have also furnished a list of market committees to demonstrate the correctness of this plea.

The Board while refuting the above assertions in its affidavit has claimed that godowns, auction platforms, open sheds, guest houses, community toilets etc. have been constructed which are being utilized by the traders and the buyers. It has pleaded that ample facilities for development of markets in almost all the declared market areas have been provided insisting that the developmental works to promote the market facilities have been undertaken at the cost of heavy investments. While dismissing the petitioners' apprehension that the fee/cess collected might be utilized for purposes other than those contemplated under the Act, it has contended that there is an apparent correlation between the

realizations and the services rendered by it in general in alignment with the legislative scheme involved. All these, however, have been specifically denied by the petitioners in their reply affidavit.

92. The Board has furnished a list of schemes implemented by it through various market committees together with the year and the expenditure incurred therefor. An amount of Rs. 11,06,18,477/-, appears to have been expended by it during the period 1980 to 2001. From the rival pleadings recorded hereinabove, it is, therefore, difficult to decisively hold that no market area or principal market yard or sub-market yard has at all been set up till date as required under the Act.

The permissibility or validity of collection of cess at the check gates referred to hereinabove, however, does not ipso facto follow from the above deduction. It is claimed by the Board that the check gates are located within the declared market areas under the Act. Such check gates are contemplated in Section 21A of the Act introduced for the first time by Act 2000 requiring the territorial market committee to establish the same at different points within the market area whenever felt necessary with the prior approval of the Board. This, the said provision discloses is for the purpose of prevention of evasion of cess of specified agricultural produce. By Act 2006, Sub-section (2) was added to Section 21A whereby the Board also has been conferred with the discretion of establishing composite check gate(s) for all market committees and/or any check gate at any point within a market area of any market committee whenever felt necessary with the approval of the State Government. This authorization as well is to meet specific exigencies for prevention of evasion of cess under the Act.

The petitioners in this regard, have pleaded that no guidelines having been framed to interdict evasion of cess by setting up check gates, the trucks transiting the consignments from outside the State are likely to be subjected to unnecessary harassments and extortions. They have also offered an instance where a complaint has been lodged with the Board in that regard. The petitioners, however, have denounced the concept of establishing composite check gates by the Board on behalf of any or all market committees to be ultra vires the Act. The Board has countered this plea with a denial. Referring to the Model Act, 1998, more particularly Sections 21, 22 and 23 thereof it has averred in favour of its unqualified power to establish, verify and examine the agricultural produce ferried in any vessel or other contents to ensure prevention of evasion of cess under the Act.

93. The authority and competence of the Board and/or the market committees to set up check gates understandably was not in issue in the earlier round of litigation, the power to this effect having been conferred on only by the two amending Acts. The issue pertaining to the collection of cess at the check gates for the pre-amendment period in absence of any sale or purchase therein was not answered by the Apex Court in its wisdom, the traders/ dealers not having assailed the decision of the Full Bench declining the prayer for refund. The Apex Court parted with the issue, as assessment subsequent to the amendment in

2001 would involve different set of facts and examination thereof.

The statements of objects and reasons for the Act, 2000 and Act, 2006, which appear germane, are reproduced hereunder in seriatim:

Statement of Objects and Reasons

Amending Act-The Assam Act No. 1 of 2001 "Whereas the Assam Agricultural Produce Market Act, 1972 was enacted to provide for better regulation of buying and selling of agricultural produce and the establishment of market for agricultural produce in the State of Assam and for matters connected therewith.

This Act is in force in the State of Assam for last 25 years. In 1993 some amendments were made in this Act.

During the course of last 17 years after the first amendment it is felt expedient to amend this act further to keep a pace with the time and particularly in the areas not covered by the first amendment.

Meanwhile, the Government of India with a desire to bring uniformity in the various State Legislation on the subject constituted High Power Committees resulting in the formulation of a draft model Agricultural Produce Market Act. The present amendment is mainly done keeping in view the different provisions of the guidelines given by the Government of India in the form of a model draft Agricultural Produce Market Act. [Published in the Assam Gazette

Extraordinary, dated 27th June, 2000] pp-475-512.

..... Statement of Objects and Reasons:

The Assam Act No - III of 2007

In order to remove difficulties in implementing of a few sections such as Sections 2, 3, 4, 5, 13, 14, 21, 21A and 23 of the Assam Agricultural Produce Market Act, 1972 (as amended up to 2000) and to incorporate a few provisions to make the said Act more meaningful and effective, the present Amendment bill has been proposed by the department.

Having regard to the underlying purpose as illustrated in Section 21A, we do not find any justifiable reason to jettison the power conferred thereby to be antithetical to the scheme and design of the Act. The petitioners have not condemned the check gates for want of approval of the Board or the State Government as the case may be or to be in contravention of any other law. No reservation either has been expressed by the State Government in this regard. The aforementioned provisions of the Model Act, 1998 on which Act 2000 had been modelled empower any officer or servant of any market committee or the Board to require any person carrying on business of the specified agricultural produce to furnish accounts, documents and informations pertaining thereto for the inspection thereof. These authorities, subject to their satisfaction of any attempt to evade payment of market fee have been empowered for reasons to

be recorded in writing to seize such accounts, registers or documents. They have also been vested with the power to intercept any vehicle, vessel or other conveyance which is taken or proposed to be taken out of any market area so as to examine the contents thereof and inspect all records relating to the specified agricultural produce being carried as well as the names and particulars of the owner of the vehicle etc. Establishment of check gates to pursue the above activities per se in our opinion cannot be dubbed as illegal, arbitrary, unreasonable or in any way militative against the letter and spirit of the Act.

94. The realization of the cess, however, by all means would have to be in scrupulous observance of the necessary preconditions embodied in Section 21 of the Act and Rule 21, 22 and 23 of the Rules as discussed hereinabove.

The legal fiction engrafted in Section 21 would apply only in absence of any direct evidence of sale to the contrary. The levy and collection of cess on the specified agricultural produce would ensue only on the sale or purchase thereof in the market area as comprehended therein as well as at the rate specified. The fictional factors would hold the sway only in absence of any direct evidence of sale or purchase repelling the same. In other words, the legal fiction would operate if the trader/dealer concerned fails to establish against sale or purchase of the specified agricultural produce in the concerned notified market area. This is so, be the collector of the cess is the concerned Market Committee or the Board on its behalf. In the latter eventuality, the additional pre-requisites as prescribed by Section 21(2) namely necessity of such realization and approval of the State Government would have to be essentially complied with.

95. The petitioners allegation of forceful collection of cess at the check gates by the Board through its Marketing Inspectors using the seal of different committees irrespective of the ultimate destinations of the goods and in contravention of the preconditions mandated by Section 21(2), if true, the realization would per se be illegal, unauthorized, null and void. The sample documents produced by the petitioners to corroborate their stand that the goods intercepted at the check gates were on transit on completion of their sale outside the State of Assam though prima facie probative of the said plea in respect of the transactions referred to therein those are inadequate to be acted upon to return a finding that such an inference is possible in all cases of such detentions and collections at the check gates. Whereas the statutorily stipulated imperatives for the application of the legal fiction are not in doubt, the documents produced by the petitioners, in absence of a probe into the individual facts cannot be accepted as an irrefutable guarantee of completion of sale or purchase of all consignments of specified agricultural produce halted, scrutinized and subjected to the impost under the Act. In exercise of powers under Article 226 of the Constitution of India, this Court is not equipped to embark on this exercise.

96. The view expressed by the Apex Court in *Agricultural Market Committee v. Shalimar Chemical Works limited* (Supra), in the contextual facts of that case on an interpretation of Section 19 and 20 of the Sale of Goods Act, 1930, was

founded on a host of unimpeachable evidence of completion of the transaction of sale before the agricultural produce involved was weighed at Hyderabad. The facts unassailably demonstrated that the goods involved were ascertainable and in a deliverable state at the time of their interception at Hyderabad. Testimony of such a type, if produced by a trader or dealer at the check gate or in any notified market area under the Act which rules out any further sale of the specified agricultural produce at that point of time would definitely disarm the market committee or the Board to levy or collect cess thereon as otherwise it would be violative of the essence of Section 21 of the Act. In absence of such overwhelming evidence regarding all cases of unauthorized levy and collection of cess at the check gates, it is not possible for this Court to adjudge the same as illegal and non est. However, if on an application of this precept on investigation of the individual facts, it transpires to be so then unreservedly the trader and the dealer concerned would be entitled to the consequential reliefs.

97. On the question of refund, therefor, we are of the considered view that having regard to multi faceted factual enquiries to be made, it would be appropriate to remit this issue to a body composed of representatives of the Government, the Board, the concerned Market Committees and the traders. The Commissioner & Secretary, Department of Agriculture, Government of Assam, would within six (6) weeks herefrom constitute a Committee in terms of the above in consultation with the Board, Market Committees and the petitioner association. The petitioners/petitioner association would cooperate with the aforementioned authority in this regard as and when notified. In the interest of workability of the Committee, the composition thereof, ought to be compact yet representative. The petitioners and other similarly situated traders/dealers, may, if so advised approach the Committee and stake their claims for refund by disclosing all material facts and documents in support thereof. If the same is done, the Committee would:

- 1) notify the concerned authority of the Board, and the Market Committee(s) involved of the claim(s);
- 2) scrutinize the claims chronologically in order of the dates registration thereof on the basis of the records/documents produced by the parties and determine the validity of the levy at the check gate(s) and otherwise strictly in accordance with the relevant provisions of the Act as interpreted by this adjudication on individual basis, transaction wise;
- 3) examine as to whether the burden of the levy has been passed on to the ultimate consumer;
- 4) decide by recording reason(s) as to whether the traders/dealers concerned are entitled to any refund; and
- 5) if so, recommend the payment quantified to be refunded;

98. As is obvious from hereinabove, the Committee would administer the

exercise as ordered in terms of the determinations made in this decision after affording all reasonable opportunities of hearing to the parties. The decision taken, would be communicated to them in writing as well.

99. In case of an order of refund, the Board or the Market Committee concerned would forthwith arrange for the disbursements in accordance with the Rules.

100. The Commissioner & Secretary, Department of Agriculture, Government Assam, would oversee the entire pursuit to ensure that the same is conducted in meticulous adherence to the directions contained herein.

101. I The petitions, are, thus partly allowed. No costs.