
(1988) 09 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No's. 9601, 9602, 9787, 9788, 9938 to 9941, 10534, 10367 and 10368 of 1988

Consolidated Coffee Ltd. and Others

APPELLANT

Vs

The Coffee Board and Another

RESPONDENT

Date of Decision : 16-09-1988

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22, 25, 30

Citation : (1989) ILR (Kar) 1532 : (1988) 2 KarLJ 488 : (1989) 74 STC 272

Hon'ble Judges : M. Rama Jois, J;H.G. Balakrishna, J

Bench : Division Bench

Advocate : V.P. Kurian and K.P. Kumar, for King and Partridge, K. Srinivasan, for Vasan, Associates, Kalasa Shamanna, S.G. Sundaraswamy and S.S. Ramdas, for the Appellant; R.J. Babu, M.R. Achar, Government Advocate and D.V. Shylendrakumar, CGSC, for the Respondent

Judgement

M. Rama Jois, J.—In these petitions, presented by the coffee planters, the following question of law arises for consideration :

"Whether, the respondent - Coffee Board is authorised in law to pay the tax which it is liable to pay to the Karnataka Government under the provisions of the Karnataka Sales Tax Act, out of the pool fund which it is required to maintain, u/s 30 of the Coffee Act, 1942 ?"

2. The brief facts and circumstances of the case which have given rise to the above question are these : The Coffee Board ("the Board" for short) is constituted under the Coffee Act, 1942 ("the Act" for short) enacted for the development of the coffee industry under the control of the union. The Board is the statutory authority on which the exclusive right to purchase and sell the coffee produced in the country is conferred under the provisions of the Act. The Act brought into existence a pool marketing system for coffee produced in the country. Section 22 of the Act, however, provides for allotment of internal sale quota to each registered estate by the Board with the previous sanction of the

Central Government. It is common ground that except for a few years after the commencement of the Act, no internal sale quota of coffee is being allotted to any estate. The resultant position is the entire coffee grown by the petitioners and other planters has got to be delivered to the Coffee Board. The relevant section of the Act, which compel such surrender is section 25 of the Act. It reads :

"25. (1) All coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to the estate or when no internal sale quotas have been allotted to estates, all coffee produced by the estate shall be delivered to the Board for inclusion in the surplus pool by the owner of the estate or by the curing establishment receiving the coffee from the estate :

Provided that where no internal sale quotas have been allotted to estates, the Chairman may allow the owner of any estate to retain with himself for purposes of seed, such quantity of consumption by his family and for purposes of seed, such quantity of coffee as the Chairman may think reasonable."

As can be seen from the proviso to sub-section (1) of section 25 of the Act, except the quantity of coffee allowed by the Chairman for retention by each of the estates for purposes of consumption by his family and for purposes of seed, the entire coffee produced has got to be delivered to the Board. The obligation of the Board in respect of the coffee so delivered and the right of the coffee planters in respect of the coffee delivered are regulated by sub-sections (3) and (6) of section 25 of the Act respectively. They read :

"25. (3) Coffee delivered for inclusion in the surplus pool shall upon delivery to the Board remain under the control of the Board which shall be responsible for storage, curing where necessary, and marketing of the coffee.

* * * 25. (6) When coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered or is treated as having been so delivered or is treated as having been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in section 34."

Section 26 of the Act authorises the Board to take all necessary steps for the sale of coffee. That section reads :

"26. (1) The Board shall take all practical measures to market the coffee included in the surplus pool, and all sales thereof shall be conducted by or through the Board.

(2) The Board may purchase for inclusion in the surplus pool coffee not delivered for inclusion in it."

The purchase of coffee by the Board under sub-section (2) of section 26 would arise only when an internal sale quota has been allotted to any of the estates as provides in section 22 of the Act. But such a situation does not arise at all, for the reason there has been no allotment of internal sale quota, as stated earlier.

In view of the provisions of this Act, the Board has been taking delivery of the entire coffee produced by the coffee planters in the State of Karnataka, Kerala and Tamil Nadu, the largest production of coffee being in the State of Karnataka and has been selling coffee both in the internal market in the country and also in the export market.

3. Section 30 of the Act requires the Board to maintain two separate funds, general fund and pool fund. The composition of two funds and the purposes for which the amount from each of the funds could be expended are prescribed in sections 31 and 32 of the Act. The three sections read :

"30. The board shall maintain two separate funds, a general fund and a pool fund.

31. (1) To the general fund shall be credited -

(a) all amounts paid to the Board by the Central Government under sub-section (1) of section 13; and

(b) any sums transferred to the general fund under the proviso to sub-section(2) of section 32; and

(c) all fees levied and collected by the Board under this Act.

(2) The general fund shall be applied -

(a) to meet the expenses of the Board;

(b) to meet the cost of such measures as the Board may consider advisable to undertake for promoting agricultural and technological research in the interest of the coffee industry in India;

(c) for making such grants to coffee estates or for meeting the cost of such other assistance to coffee estates as the Board may think necessary for the development of such estates;

(d) to meet the cost of such measures as the Board considers advisable to undertake for promoting the sale and increasing the consumption in India and elsewhere of coffee produced in India; and

(e) to meet the expenses for securing better working conditions and the provision and improvement of amenities and incentives for workers.

32. (1) To the pool fund shall be credited all sums realised by sales by the Board of coffee from the surplus pool.

(2) Subject to the provisions of sub-section (4) of section 13, the pool fund shall be applied only to -

(a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the surplus pool;

(b) the costs of storing, curing and marketing coffee deposited in and of

administering the surplus pool;

(c) the purchase of coffee not delivered for inclusion in the surplus pool :

Provided that where, after the requirements of the clauses of this sub-section have been met, there remains any excess in the pool fund, the Board may, with the previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the general fund."

There are specific provisions both in the Act and the Rules regarding the payment to be made to each of the growers of coffee who are required to and who deliver coffee to the Coffee Board as required u/s 25 of the Act. In these cases, we are not concerned with the method of calculation and payment. It is sufficient to state that in respect of the coffee delivered during each coffee season, the only right made available to the grower is to receive the payments as prescribed in section 34 and that the value of the coffee delivered by each of the growers is fixed as prescribed and payments are required to be made and are being made as provided in section 32(2)(a) of the Act.

4. It is appropriate at this stage to refer to the relevant provisions of the Karnataka Sales Tax Act, 1957 ("Sales Tax Act" for short). Section 5(3) of the Sales Tax Act provides that in the case of the sale of any goods mentioned in column No. (2) of the Second Schedule to that Act by the first or the earliest of successive dealers in the State who is liable to tax under the said section, the tax at the rates specified in the corresponding entry of column No. (3) of the said Schedule, on the taxable turnover of sales of such dealer in each year relating to such goods, shall be levied. Coffee is included in entry 43 of the Second Schedule to the Sales Tax Act. The rate of tax prescribed is ten per cent. However, there is an exception incorporated to the word "dealer" which is defined in section 2(k) of the Sales Tax Act. The relevant portion of the definition and the exception read :

"2. (k) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes -

* * * Exception : An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause."

In view of the exception, the growers who are under the Act compelled to sell coffee to the Coffee Board, are not liable to pay the sales tax as prescribed u/s 5(3)(a) of the Sales Tax Act.

5. Though a producer-seller is exempt in view of the above provision from paying the sales tax, the purchaser is made liable to pay the tax u/s 6 of the Sales Tax Act. The relevant provisions of that section reads :

"6. Levy of purchase tax under certain circumstances. - Subject to the provisions

of sub-section (5) of section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax u/s 5 is leviable on the sale price of such goods and,

(i) either consumes such goods in the manufacture of other goods for sale or otherwise disposes of such goods in any manner other than by way of sale in the State, or

(ii) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 5."

6. During the various assessment years right from 1974, the Coffee Board was not paying any tax on the purchase turnover of coffee on the ground that compulsory delivery of coffee by the growers was not sale of coffee by the growers to the Board and further on the ground that the sale of coffee by the Board was only as agent of the growers and, therefore, in view of section 2(k) of the Sales Tax Act, the sale turnover of coffee by the Board did not attract the tax under the Sales Tax Act. The assessing authorities under the Sales Tax Act had accepted this stand of the Coffee Board. For the assessment period commencing from 1st April, 1974 to 31st March, 1975 also the stand of the Board had been accepted by the assessing authority. The Commissioner of Commercial Taxes, however, on 25th July, 1981, having considered that the order of the assessing authority was prejudicial to the Revenue, initiated proceedings in exercise of his suo motu powers of revision and called upon the Board to show cause as to why the tax should not be levied on it u/s 6 of the Sales Tax Act. In respect of assessment year commencing from 1st April, 1975 to 31st March, 1976 the assessing authority considered that the returns filed by the Board was incomplete and incorrect and issued a proposition notice on 10th March, 1982 proposing to bring the purchase turnover during the said period to tax u/s 6 of the Sales Tax Act. The objection of the Coffee Board to the proposition notice was overruled and the entire purchase turnover of coffee by the Board was subjected to purchase tax u/s 6 of the Sales Tax Act. For the assessment years 1976-77, 1977-78, 1978-79, 1979-80 and 1980-81 the Commercial Tax Officer completed the assessment subjecting the purchase turnover of the Coffee Board during the aforesaid years to purchase tax. Thereafter, the Coffee Board presented writ petitions before this Court questioning the legality of the show cause notice issued by the Commissioner as also the orders passed by the authorities, contending that section 6 of the Sales Tax Act was not at all attracted. The main contention of the Board was that the delivery of coffee by the growers to the Coffee Board was not sale at all and the Coffee Board was only acting as an agent of the producer and, therefore, in view of the exception to the definition of the word "dealer" in section 2(k) of the Sales Tax Act, neither growers nor the board were liable to pay tax under the Sales Tax Act. The contention of the board was repelled and the writ petitions were dismissed. The judgment of this Court is

The Coffee Board Vs. Commissioner of Commercial Taxes and Others,

7. The above judgment was taken up in appeal by the Coffee Board before the Supreme Court. The Supreme Court has affirmed the judgment of this Court. The decision is Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others, . The relevant portions of the judgment of the Supreme Court read (page 187 of STC) :

"46. The coffee growers being agriculturists are not dealers and therefore are not liable to pay any sales tax or purchase tax, it was submitted. The demand for purchase tax is in effect a demand on the growers who were exempt from such levy, as the monies required for paying the tax if the same is lawful has necessarily to come out of the monies otherwise payable to the growers. The object of the pool marketing system is not to deprive the growers of a fair compensation for their produce by making them suffer a tax which they would not otherwise be required to suffer. An analysis of the different provisions of the Coffee Act makes it clear that there was no sale to attract exigibility to duty, it was submitted. We are unable to accept these submissions. Section 6 of the Karnataka Sales Tax Act, 1957, meets the situation created by such circumstances. This was examined by this court in The State of Tamil Nadu Vs. M.K. Kandaswami and Others, which examined section 7A of Tamil Nadu General Sales Tax Act, 1959, which was in pari materia with section 6 of the Karnataka Sales Tax Act. In that view of the matter section 6 of the Karnataka Act would be attracted.

47. The alternative submission of the appellant was that the Coffee Board was a trustee or agent of the growers. We are unable to accept this submission either. There is no trust created in the scheme of the Act in the Coffee Board; it is a statutory obligation imposed on the Coffee Board and does not make it a trustee in any event.

* * * 49. In the aforesaid view of the matter, we are of the opinion that the imposition of tax in a manner done by the sales tax authorities which has been upheld by the High Court is correct and the High Court was right."

Thus, the liability of the Coffee Board to pay tax u/s 6 of the Sales Tax Act is no longer in controversy.

8. In view of the liability of the Board to pay tax u/s 6 of the Sales Tax Act, the Board has paid the tax to the State Government. Some payments were made during the pendency of the earlier writ petitions before this Court in view of the interim orders. The Board has also paid sales tax to the Kerala and Tamil Nadu Governments under the corresponding provisions of the Sales Tax Act, in force in those States. The learned counsel for the Board has produced a consolidated statement of the amount of tax paid by the Board for the assessment year 1974-75 onwards. It reads :

CONSOLIDATED TABLE OF PURCHASE TAX PAID FROM 1974 ONWARDS

State Assessment Amt. levied on finalis-	Amount	Date/period of year	-ation of
asst./provision paid	payment only	asst./monthly (in cr-	payment. (in crores)
ores)	-----	Karnataka	
74-75 to 60.55	10.38	In 1985 82-83	25.09 5-7-88 4.15 16-8-88 83-84 8.22
8.22 17-8-88 84-85	10.50	10.50 21-8-88	April, 88 ... 0.34 May, 88 May, 88 ...
2.52 June, 88 June, 88	...	0.55 July, 88 July, 88	... 0.69 August, 88 Kerala
84-85 2.50 2.50	85-86 3.00 3.00	April, 84 86-87 4.70 4.70	to 87-88
3.20 3.20	March, 88 April, 88	0.50 0.50	During May, 88 0.16 0.16
April, 88 June, 88	0.58 0.58	to July, 88 0.15 0.15	July, 88 Tamil May, 88 0.08
0.08 August, 88	Nadu	-----	Total 77.31 -----

The above payments have been made out of the pool fund. In these petitions presented by the petitioners, the contention raised is that even though the Coffee Board is liable to pay tax u/s 6 of the Sales Tax Act, the petitioners being growers they are exempted from payment of tax in view of the exception to the word "dealer" in section 2(k) of the Sales Tax Act and that being the position the Board cannot make payment of the tax out of the pool fund as it would amount to levying tax on the growers though they are exempted. In fact, this point was raised by some of the petitioners, who had presented the writ petitions before the Supreme Court, which were heard along with the appeals of the Coffee Board against the judgment of this Court (Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others, The Supreme Court dismissed those petitions reserving liberty to them to agitate the question of liability of the grower vis-a-vis Coffee Board in an appropriate proceeding, vide paragraph 51 of the judgment (page 188 of STC). It reads :

"51. Civil Writ Petition No. 358 of 1986 under article 32 of the Constitution of India is dismissed. Re. Writ Petition No. 36 of 1986. We are of the opinion that we cannot go into the contentions in this petition. The rights and obligations of the parties, inter se, between the petitioners and the Coffee Board may be agitated in appropriate proceedings. Re. Writ Petition No. 37 of 1986. This writ petition is dismissed without prejudice to the rights of the petitioners to agitate the question of liability of the petitioner, vis-a-vis, Coffee Board in respect of the sales tax due and payable on the transactions between the parties in appropriate proceedings. Re. Civil Writ Petition No. 39 of 1986. There will be no order in this petition. But it is made clear that this is without prejudice to the right of the parties taking appropriate proceedings if necessary for determination of the liabilities inter se between the petitioners and the Coffee Board for the amount of sales tax payable."

Thereafter, the petitioners have presented these petitions contending that they are not liable to pay the tax under the Sales Tax Act and that being the position, the Board cannot collect the tax from the growers by way of utilising the pool fund for payment of tax. In particular, they rely on section 18 and section 18A of

the Sales Tax Act. They read :

"18. Collection of tax by dealers. - (1)(a) A person who is not a registered dealer liable to pay tax shall not collect any amount by way of tax or purporting to be by way of tax under this Act; nor shall a registered dealer collect any amount by way of tax or purporting to be by way of tax at a rate or rates exceeding the rate or rates specified u/s 5.

(b) No person shall collect any amount by way of tax or purporting to be by way of tax in respect of sales of any goods on which no tax is payable by him under the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), a dealer who has been permitted to pay any amount by way of composition u/s 17 or a dealer who is exempted from sales tax by virtue of recognition granted under the provisions of this Act, shall not collect any amount by way of tax or purporting to be by way of tax on the sales or purchases of goods made during the period to which such composition or recognition applies.

(3) Notwithstanding anything contained in sub-sections (1) and (2), no dealer who is liable to pay turnover tax u/s 6B shall collect any amount by way of such turnover tax or purporting to be by way of such turnover tax payable by him.

18-A. Penalty for collection in contravention of section 18. - If any person contravenes any of the provisions of section 18, the assessing authority may, after giving such person reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times such amount :

Provided further that no prosecution for an offence u/s 29 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

The petitioners contend that payment of tax which is payable by the Board from out of the pool fund amounts to collecting the tax from the producers, who are exempted from paying tax and, therefore, it amounts to contravention of section 18 and consequently attracts imposition of penalty u/s 18A of the Sales Tax Act.

9. In view of the clear provision contained in exception to section 2(k) of the Sales Tax Act, which defines the word "dealer" and the judgment of the Supreme Court, there cannot be and there is no controversy on the following two aspects :

(1) The growers/producers are not liable to pay the tax u/s 5(3)(a) of the Sales Tax Act in respect of the sale of coffee by them to the Board.

(2) The Coffee Board is liable to pay the tax u/s 6 of the Sales Tax Act.

Therefore, the only question which arises for consideration is the one which is set out in the first paragraph of this order. The answer to this question, in our opinion, depends upon the provisions of section 32(2)(b) of the Act. As can be

seen from sub-section (1) of section 32 of the Act extracted earlier, all sums realised by the Board by the sale of coffee from the surplus pool has to be credited to the pool fund. The pool fund can be utilised for payment of excise duty as provided in sub-section (4) of section 13 of the Act and for the purposes specified under clauses (a), (b) and (c) of sub-section (2) of section 32 of the Act. The relevant clause for the purpose of these cases is clause (b) of sub-section (2) of section 32 of the Act. The said clause, inter alia, permits the application of the pool fund towards the cost of storing, curing and marketing of coffee. The expression "marketing" both having regard to the dictionary meaning and the meaning at common parlance means all activities intimately connected with the sale of goods produced as also purchase and sale of all marketable commodities. It certainly includes buying and selling. Therefore, every expenditure which the Coffee Board has to incur in the course of buying coffee from the producers as well as in the course of selling coffee in the internal or export market, which is its statutory obligation, is an expenditure which is expressly authorised to be incurred from out of pool fund by section 32(2)(b) of the Act. The tax which the Board is liable to pay u/s 6 of the Sales Tax Act, is an inevitable expenditure which the Board has to incur in discharging its obligation of selling coffee. Therefore, there can be no doubt that the Board is empowered to meet this liability out of the pool fund.

10. The learned counsel for the petitioners, however, contended that meeting the liability of the Board to pay the tax u/s 6 of the Sales Tax Act out of the pool fund amounts to a clear circumvention of the provisions of section 2(k) of the Act, which grants exemption to the growers and also amounts to an unauthorised collection of tax which is prohibited u/s 18 of the Sales Tax Act and consequently such an act of the Board even attracts the penal provisions incorporated in section 18A of the Sales Tax Act. We find no merit in this contention. It is difficult to appreciate as to how any of the clauses of section 18 is attracted to this case. The Coffee Board is not collecting any tax from the growers. It is only utilising the pool fund for meeting the expenses of marketing, which includes the tax payable by it to the State Government u/s 6 of the Sales Tax Act. As u/s 25(3) of the Coffee Act the Board is responsible for the curing and marketing coffee and the discharge of that responsibility is possible only subject to payment of tax u/s 6 of the Sales Tax Act, the said amount constitutes a valid expenditure incurred by the Board for marketing coffee and, therefore, the pool fund can be utilised for payment of tax in view of section 32(2)(b) of the Act.

11. The learned counsel for the petitioners submitted that the liability should be met out of the general fund. Clauses (a) to (e) of section 31(2) specify the purposes for which alone the general fund has to be applied. The expenses incurred for marketing of coffee is not one of them. Hence the Board cannot pay the tax out of the general fund. Therefore, the tax liability incurred in connection with the marketing of coffee has to be met out of the pool fund as expressly prescribed in section 32(2)(b) of the Act.

12. Faced with this clear position in law, the petitioners have raised an alternative contention. The contention was that even on the basis that the Board can pay the tax which it is liable to pay u/s 6 of the Sales Tax Act out of the pool fund, as the pool fund for each season was separate, it was impermissible for the Board to make payment out of the pool fund available in any given year in respect of the tax liability of the Board in respect of any earlier year, the account of which has been settled finally as required under rule 34 of the Coffee Rules, 1955 ("the Rules" for short). They relied on rule 34(2) of the Rules. It reads :

"34. (2) Pool Fund. - (i) The accounts of the pool fund shall be maintained separately for each season and in such form as the Board may direct and shall show, inter alia, -

- (a) the amount realised on account of the sale of coffee from the surplus pool,
 - (b) the total sum distributed to registered owners,
 - (c) the expenditure on account of curing coffee received in the surplus pool,
 - (d) the amount spent in purchasing coffee from registered owners,
 - (e) amount of the duty of excise paid on coffee that may be realised by the Board from the surplus pool for sale in the Indian market,
 - (f) expenditure on account of the administration of the surplus pool for which budget estimates are prepared and got approved by the Board, and
 - (g) expenditure on account of the marketing of coffee deposited in the surplus pool.
- (ii) The audit report on the accounts of the pool fund together with the explanatory notes shall be put up to the Board for approval."

The above rule requires that the accounts of the pool fund shall be maintained separately for each coffee season. The Board has maintained the account of the pool fund for each coffee season separately and once all the legitimate expenditure which the Board can incur in terms of section 32(2) of the Act read with rule 34(2) of the Rules have been met out of the pool fund and final payments have been made, there is no provision which authorises the Board to reopen the account or to charge the expenditure incurred by way of payment of tax relatable to the years in respect of which accounts have already been closed during the subsequent or current years. The learned counsel for the petitioners also pointed out that in some of the cases, the coffee estates have been sold by the erstwhile owners and, therefore, the present owners cannot be made liable for the tax relatable to the period during which they were not owners.

13. The learned counsel for the Coffee Board, in reply to the above contention, submitted as follows :

The reserve fund and the pool fund required to be created u/s 30 of the Act are two permanent funds. Section 3(n) defines "year" for the purposes of the Act as

twelve months commencing from 1st day of July and ending with 30th day of June next following. Rule 34 only requires the maintaining of account for each season but the pool fund as such is not annual, it is perennial. The pool fund once constituted is a permanent fund and it continues until the Board is dissolved with the repealing of the Act itself as provided in section 10 of the Act. Therefore, if in a given year on account of the wrong understanding of the provisions of the Sales Tax Act, the Board had not paid the tax and consequently there is no payment out of the pool fund in that regard and subsequently the board is required to pay the tax under the Sales Tax Act, it is open for the Board to readjust the account of each of the growers in respect of each of the years.

14. The submission of the learned counsel for the Board as above, in our opinion, is well-founded and has to be accepted. We, however, place on record the submission made by the learned counsel for the Board in respect of the persons who have sold their coffee estates, that the amount apportionable to them during those years cannot be and will not be debited to the account of the persons who became the owners of coffee estates during subsequent years and that if there were any such instances, steps will be taken by the Board to recover such amount from the erstwhile owners of the coffee estates and in any event the liability will not be imposed on the subsequent owners.

15. It is true that by the payment of huge amount of about seventy crores of rupees from the pool fund towards accumulated amount of sales tax due for the past years during the year 1988 has created considerable amount of hardship to the coffee planters. If during the relevant assessment years, the Coffee Board had realised that it was liable to pay the tax u/s 6 of the Sales Tax Act and had paid it, neither the Board nor the growers would have been in the present predicament. Whatever that may be, once it is held that the Coffee board was liable to pay tax u/s 6 of the Sales Tax Act, right from the year 1974-75 onwards, such payment constitutes a valid expenditure incurred by the Board in respect of marketing the coffee and, therefore, there is no alternative than to hold that the payment of the arrears of tax also out of the pool fund is valid and authorised. As far as the plea of the petitioners that in respect of the coffee planters who have purchased them cannot be made liable for the expenditure incurred by the Board during the period when their vendors were the owners, the Coffee Board has made it clear that no such liability will be foisted on them.

16. The only question which remains for consideration is about the resolution passed by the Coffee Board on which reliance was placed by the petitioners. In the 123rd meeting held on 24th June, 1988 the following Resolution was passed by the Coffee Board. The resolution reads :

"The Coffee Board, in its meeting held on 24th June, 1988, considered the impact of the recent decision of the Supreme Court in the appeal filed by the Board against the judgment of the High Court of Karnataka in the purchase tax demand made on the Coffee Board.

Considering the fact that the Board cannot under the Coffee Act, utilise the current proceeds of sale of coffee to discharge past arrears in the pool fund, the Board resolved that the payment of arrears of tax cannot be made out of the pool fund. It was resolved to request the Government of Karnataka to consider waiving the payment of arrears of tax in view of the above circumstances.

The Board further resolved to request the Central Government to intervene in the matter and come to the relief of the coffee growers by considering special grants or subsidies to cover these arrears of tax from out of the duties of export, customs and excise which are being collected from the Coffee Board by Union Government.

The Chairman stated that as it is a resolution of the non-official members and he is not a party to the resolution, this may remain as decided by the non-official members.

Chairman asked Shri Lakshman Gowda whether the resolution's intention is that the payment of arrears should not be made out of current year's realisations. Shri Lakshman Gowda stated that the resolution as drafted may remain.

This was placed by all the non-official members, i.e., all the members present excluding the Chairman."

17. The learned counsel for the Coffee Board has submitted that the first part of the resolution of the coffee Board not to make payment of arrears of tax from out of the pool fund was contrary to section 32(2)(b) of the Act and, therefore, the Central Government in exercise of its powers u/s 42 of the Act had cancelled the said resolution. Section 42(1) of the Act reads :

"42. (1) All acts of the Board shall be subject to the control of the Central Government which may cancel, suspend or modify as it thinks fit any action taken by the Board."

The above section confers power on the Central Government to cancel or modify the resolutions of the Board. There is no dispute that the Central Government has exercised its power and has cancelled the aforesaid resolution. As held earlier, the Board is bound to meet the expenditure incurred for the marketing of coffee out of the pool fund in view of section 32(2)(b) of the Act. As the resolution of the Board was contrary to the above provision, the Central Government has cancelled the said resolution.

18. We do, however, understand the great hardship to the growers resulting from the heavy payments from out of the pool fund during this year towards the arrears of tax payable under the Sales Tax Act by the Board consequent on the judgment of this Court and the Supreme Court. But all that we can do is to observe that this is a genuine case in which the Central Government should come to the rescue of the coffee growers by making special grants or subsidies to cover whole or part of the said liability as requested in the second part of the resolution of the Board.

19. In the result, we answer the question set out first as follows :

The respondent-Coffee Board is authorised in law to pay the tax which it is liable to pay to the Karnataka Government under the provisions of the Karnataka Sales Tax Act, out of the pool fund which it is required to maintain, u/s 30 of the Coffee Act, 1942, and make the following order :

The writ petitions are dismissed without order as to costs.

20. Writ petitions dismissed.