(2005) 02 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No''s. 29958 to 29986, 31351 to 31354, 31883, 32088, 32106 to 32121, 32728, 32729, 34165, 37247, 39753, 43871 and 47640 of 2004 and 563 to 571 of 2005

ITC Limited — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 100
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 2 (12A), 2 (14A), 2 (18), 2 (19A), 2 (21)

Citation : AIR 2005 Kar 330 : (2005) 4 KarLJ 359

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Shanthi Bhushan, for A. Rama and D. Venkatesh, in W.P. No. 39753 of 2004, Subash B. Adl., in W.P. Nos. 31351 to 31354, 29958 to 29986, 32728, 32729, 43871, 47640 of 2004 and 563 to 571 of 2005, B.R. Satenahalli, in W.P. No. 32106 to 32121 of 2004, Gayathri Bhai, for Khaitan and Company in W.P. No. 31883 of 2004, E.R. Indrakumar and E.I. Shanthi, in W.P. No. 34165 of 2004, H. Kantharaja and Kalyankumar, in W.P. No. 37247 of 2004 and S.V. Subramanyam, in W.P. No. 32088 of 2004, for the Appellant; B.T. Parthasarathy, General and Kempanna, High Court Government Pleader for Respondents-1 and 2 in W.P. Nos. 39753 and 31351 to 31354 of 2004, Kempanna, High Court Government Pleader for Respondents-1 and 2 in W.P. Nos. 29958 to 29986, 32106 to 32121, 32728, 32729, 31883, 34165, 37247, 43871, 47640 of 2004 and 563 to 571 of 2005 and for Respondent-1 in W.P. No. 32088 of 2004, B.G. Sridharan, for Respondent-3 in W.P. Nos. 39753, 31351 to 31354, 32728, 32729, 31883, 34165 and 43871 of 2004, for Caveator-Respondent-3 in W.P. No. 37247 of 2004; for Respondents-3 to 7 in W.P. Nos. 29958 to 29986 of 2004 and for Respondents-3 to 11 in W.P. Nos. 32106 to 32121 of 2004, B.G. Sridharan and B. Papegowda, Respondent-2 in W.P. No. 32088 of 2004, Respondent-3 served in W.P. Nos. 663 to 571 of 2005, H.K. Thimmegowda, for Respondent-3 in W.P. No. 47640 of 2004 and Respondent Nos. 5 to 8 in W.P. No. 32106 to 32121 of 2004, C.S. Patil, in W.P. Nos. 32106 to 32121 of 2004, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—All these petitions are by persons who have dealings in the notified agricultural produce, as the expression occurs within the meaning of Sub-section (28) of Section 2 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short, ''the Act'').

2. While most of the petitioners are in fact what is known as ''market functionaries'', within the meaning of this phrase as it occurs in Sub-section (21) of Section 2 of the Act and are also licensed market functionaries, having sought for and obtained licences to function so within the notified area in respect of the Agricultural Produce Market Committees (APMC), only the petitioner in W.P. No. 39753 of 2004, namely M/s. ITC Limited, is not a licensed market functionary within the market area of the APMC, Doddaballapur, within which area this petitioner has some activities in relation to the notified agricultural produces namely wheat and other produces.

3. Petitioners have approached this Court even at the threshold praying for certain relief and the common cause made by all these petitioners is with regard to the liability for payment of any market fee under the provisions of the Act, particularly u/s 65 of the Act in respect of the activities of stocking of the notified agricultural produce and processing of such produces within the market area. Insofar as this aspect is concerned, while the stand of the respondents is that such activities are also sought to be roped in for levy of market fee under the Act, in the light of the amendment effected to the Act u/s 3 of the Amending Act 22 of 2004 and it is also asserted on behalf of the respondents that such amendment has enabled the respective market committees to levy and collect market fee on such activities of stocking and processing of imported notified agricultural produces, the stand of the petitioners is that the amending Act does not achieve this object; that even after the amendment effected to Section 65 of the Act, by addition of second proviso to Sub-section (2) of Section 65 of the Act, and the two explanations following this proviso, has not achieved the object of creating liability for payment of market fee in respect of the activities of stocking and processing of even the imported notified agricultural produces which are imported into the market area.

4. While this controversy is common to all the petitioners, insofar as the petitioner in the first petition is concerned, a further dispute is sought to be raised in the context of certain notices that had been issued by the APMC, Doddaballapur, viz., notices dated 3-8-2004 and 9-8-2004 (Annexure-C and I) respectively), which are in the nature of inquisitorial notices issued by the market committee addressed to the petitioner calling upon it to provide for better particulars and full information of the stock of the notified agricultural produces which had been stored in the warehouse at Koralur owned by the Karnataka State Warehousing Corporation, taken on lease by the petitioner for the purpose of storing the notified agricultural produces in this warehouse and for which purpose it is claimed by this petitioner that it has availed of the expertise and services of M/s. Central Warehousing Corporation.

5. The challenge in W.P. No. 39753 of 2004 is concerned, is to issue of such notices, which were in fact followed by issue of a subsequent legal notice dated 21-9-2004 (Annexure-H), under which the petitioner has been specifically put on notice to comply with several requirements of the Act, non-compliance of which could attract possible penal consequences and which, according to the petitioner, has been suitably replied.

6. While the show-cause notice under Annexure-D, dated 9-8-2004 has also indicated there could be possible demands on this petitioner for payment of a sum of Rs. 15,50,678/- by way of market fee in the absence of any proper explanation supported by proper and relevant accounts to indicate that the sale of notified agricultural produce has not taken place in respect of some part of the stock, the notices by themselves as such have not called upon the petitioner to pay any market fee either in respect of the activities of mere storing or even in respect of the activity of mere processing of the imported notified agricultural produce.

7. However, in respect of the petitioner in W.P. Nos. 31351 to 31354 of 2004, during the pendency of this petition before this Court, the APMC, Yeshwanthpur, Bangalore, has issued a demand notice dated 25-1-2005, produced at Annexure-D along with the application filed u/s 151 of the CPC, etc., on 3-2-2005, to the effect that the petitioner is liable to pay such market fee on account of the fact that certain agricultural produces which this petitioner had imported from outside the State to the market area has undergone certain processing within the market area and as such this petitioner is liable to pay market fee for having processed such quantity of notified agricultural produces within the market area and in this demand, a reference is made not only to the earlier show-cause notices, but also a circular dated 8-7-2004, issued by the APMC, which in turn refers to an earlier circular dated 18-5-2004, issued by the Director of Agricultural Marketing Board.

8. The petitioners are generally aggrieved by this circular dated 18-5-2004, issued by the Director of Agricultural Marketing, and followed by the circulars issued by respective APMCs, and have also sought for quashing of such circulars on the premise that the circulars are ultra vires the provisions of Section 65(2) of the Act.

9. While M/s. ITC Limited, the petitioner in W.P. No. 39753 of 2004 has sought for quashing of the notices dated 3-8-2004, 9-8-2004, 3-9-2004, 21-9-2004 and also the circular dated 18-5-2004 issued by the Director of Agricultural Marketing, Bangalore, they have also sought for striking down the Explanation (ii) inserted to the Act in terms of the amending Act 22 of 2004, dated 17-5-2004 as unconstitutional.

10. All other petitioners have confined their challenge to the legality of levy of market fee on the activities of processing as these petitioners are admittedly market functionaries involved in the activity of processing notified agricultural produce and have in this regard sought for similar declaration in respect of

Explanation (ii) as inserted by Act 22 of 2004 to the main Act. They have sought for declaration that the explanation is ultra vires, the main provisions of Section 65(2) of the Act. These petitioners have also sought for quashing of the circular dated 18-5-2004 issued by the Director of Marketing Board and consequential circulars issued by the respective Market Committees.

11. The challenge to the validity of the provisions of the Act as inserted by the amending Act 22 of 2004 is principally on the ground that the respondents have sought to mulct the petitioners with a liability in respect of the activity of processing of notified agricultural produces which takes place in the market area on the premise that the provisions as introduced by the amending Act 22 of 2004 enables them to so levy the market fee. The challenge to the provision is in the context of the stand of the respondents that the provisions added to the main Act by way of this amendment is one which creates a liability for payment of market fee in respect of processing notified agricultural produces in the market area. Incidentally, these petitioners have sought for quashing of the demand notices issued by the respective Market Committee wherever the demand is one quantifying the amount on the premise that the activity of processing also is an activity which attracts levy of market fee. A few facts as pleaded by the petitioners leading to the filing of these writ petitions are as under:

12. Insofar as petitioner in W.P. No. 39753 of 2004 namely, M/s. ITC Limited, Bangalore, is concerned, the pleadings are that the petitioner, a limited company of varied business activities, has been carrying on activities in the processing of even notified agricultural produces; that in the sale of an agricultural produce, the petitioner in the course of its business purchases wheat in the market areas and market yards located within the States of Madhya Pradesh and Uttar Pradesh; that they cause transportation of such wheat through the Railways which reaches Whitefield Railway Station near Bangalore; that they have made arrangements through M/s. Central Warehousing Corporation to have such wheat bags unloaded from the Railway wagons at this place, have it transported by local carriers upto the warehouse located at Koralur Village within the notified market area of APMC, Doddaballapur; that they have taken on lease the godown/ warehouse at Koralur from M/s. Karnataka State Warehousing Corporation; that M/s. Central Warehousing Corporation who cause transportation of their wheat bags from the Railway Station at Whitefield to the warehouse at Koralur also take care of storing of the wheat bags at the warehouse; that the said M/s. Central Warehousing Corporation as per the directions of the petitioner causes further movement of the wheat bags from the warehouse to various processors with whom the petitioner has arrangements for the purpose of processing the wheat. It is the version of this petitioner that the petitioner while has taken on lease the warehouse, owned and constructed by M/s. Karnataka State Warehousing Corporation for the purpose of storage of wheat and other notified agricultural products which it has purchased within other market areas outside the State and which according to this petitioner has also suffered levy of market fee in that area, the services and expertise of M/s. Central Warehousing Corporation is

availed for the purposes of transportation from the Whitefield Railway Station to the warehouse at Koralur, for the actual storing and preserving of the agricultural produces at the warehouse and also for the purpose of further transporting of such produces to the different purchasers who in the present case are all located outside the notified market area of APMC, Doddaballapur.

13. With such admitted facts, contention on behalf of this petitioner is that indulging in such activities by the petitioner by itself does not oblige the petitioner either to obtain a licence in terms of Section 8 of the Act nor does it place the petitioner within the jurisdiction of the APMC, Doddaballapur, for the purpose of exercise of power and for incidental activities for which the Market Committees are enabled under the provisions of Section 66 of the Act. It is for this reason, the petitioner has found fault with the notices referred to above whereunder the petitioner had been called upon to furnish certain information, particulars and was also apprised that it may be liable to pay market fee.

14. The further contention of this petitioner is that while the petitioner is not even amenable to the scrutiny by the Market Committee in respect of any of its admitted activities, the question of levy of market fee on the petitioner is far-fetched; that they are not liable to pay any market fee in respect of their admitted activities; that there is no liability created under the Act for payment of any market fee by the petitioner in respect of such activities carried on by the petitioner.

15. In respect of other petitions as noticed above, these petitioners are all market functionaries and have by themselves applied for and have obtained licences u/s 8 of the Act. But, their grievance is confined to levy of market fee on their activity of processing within the market area.

16. On issue of notices, the respondents have entered appearance through their Counsel. While Sri B.G. Sridharan, learned Counsel has appeared for the APMC, Bangalore, Doddaballapur and Mysore, Sri Thimmegowda, learned Counsel has appeared on behalf of APMC, Bellary, Sri C.S. Patil, learned Counsel has appeared for APMC, Gangavati, learned Advocate General has appeared on behalf of the State and Director of Agricultural Marketing and assisted by Sri Kempanna, learned Government Pleader.

17. Elaborate submissions have made on behalf of the petitioner by Sri Shanthi Bhushan, learned Senior Counsel and followed by Sri Subash B. Adi, B.R. Satenahalli, Sri S.V. Subramanyam, Sri E.R. Indra Kumar, M/s. Khaitan and Company, Sri H. Kantha Raja and Kalyan Kumar, Counsels appearing for the petitioners in their respective writ petitions.

18. Appearing on behalf of the petitioner, M/s. ITC Limited in W P. No. 39753 of 2004, submission of Sri Shanthi Bhushan, learned Senior Counsel is that the notices issued by the Market Committee, Doddaballapur, calling upon the petitioner to furnish details, particulars and information in terms of Notices at Annexure-C, D, F and H to this writ petition are without jurisdiction; that they

are not supported under the provisions of the Act; that APMC, Doddaballapur, cannot trouble the petitioner for such information; that notices which also indicate that there is a possibility of the petitioner being prosecuted in the event of non-compliance amounts to harassment to the petitioner unless the petitioner is relieved of the obligation to respond to the same; that the activities as narrated in the petition and as pointed out does not bring the petitioner within the meaning of the words ''importer'' or ''market functionary'' and if so, no obligation on the part of the petitioner to obtain a licence u/s 8 of the Act. It is also the submission of Sri Shanthi Bhushan, learned Senior Counsel that the provisions of Section 66 of the Act which reads as under:

"Section 66. Power to order production of accounts and power of entry, inspection and seizure.--(1) Any officer or servant of the State Government empowered by it in this behalf, may, for purposes of this Act, require any person carrying on business in any kind of notified agricultural produce to produce before him the accounts and other documents and to furnish any information relating to the stocks of such agricultural produce, or purchases, sales and deliveries of such agricultural produce by such person and also any other information relating to payment of the market fees by such person.

(2) All accounts and registers maintained by any person in the ordinary course of business in any notified agricultural produce and documents relating to the stock of such agricultural produce or purchases, sales and deliveries of such agricultural produce in his possession and the offices, establishments, godowns, vessels or vehicles of such person shall be open to inspection at all reasonable times by such officers and servants as may be authorised by the State Government in this behalf.

(3) If any such officer or servant has reason to suspect that any person is attempting to evade the payment of any market fee due from him u/s 65, or that any person has purchased any notified agricultural produce in contravention of any of the provisions of this act or the rules, or the bye-laws in force in the market area, he may for reasons to be recorded in writing, seize such accounts, registers or documents of such person as may be necessary, and shall grant a receipt for the same and shall retain the same only so long as may be necessary for examination thereof or for a prosecution.

(4) For purposes of Sub-section (2) or Sub-section (3), such officer or servant may enter or search any place of business, warehouse, office, establishment, godown, vessel or vehicle where such officer or servant has reason to believe that such person keeps or for the time being keeps any accounts, registers or documents of his business, or stocks of notified agricultural produce relating to his business.

(5) The provisions of Section 100 of the Cr. P.C., 1973 shall, so far as may be, apply to a search under Sub-section (4).

(6) Where any books of account or other documents are seized from any place

and there are entries therein making reference to quantity, quotations, rates, receipt or payment of money or sale or purchase of goods, such books of account or other documents shall be admitted in evidence without witness having to appear to prove the same; and such entries shall be prima facie evidence of the matters, transactions and accounts purported to be therein recorded.

(7) If such officer or servant has reason to suspect that any person is attempting to evade payment of any market fee due from him u/s 65, he may, while seizing accounts registers or documents under Sub-section (3) also seize so much of the notified agricultural produce as in his opinion would be sufficient to meet the amount of fee which may be found due from such person and also the penalty leviable u/s 65-A, and retain the same with him until the fee and the penalty are paid or for ten days, whichever is earlier. After the expiry of the period of ten days, if the fee or other amount due is not paid, the officer or servant shall dispose of the notified agricultural produce in public auction and adjust the sale proceeds towards the fee or other amount due. If the sale proceeds are more than the fee or other amount due, the excess amount shall after deducting the charges incurred by the market committees, by refunded in the prescribed manner:

Provided that in the case of perishable notified agricultural produce, the officer or servant may dispose of the same before the expiry of the period of ten days if in his opinion such disposal is necessary".

Empowers the Market Committees to exercise the authority in the market area and to supervise the activities of market functionaries within the market area and the requirements on the part of the market functionaries to respond to the queries and provide satisfactory answers to the questions posed by the Market Committees vis-a-vis transactions of any agricultural produce in the market area, all should be understood as for the purpose of Section 8 of the Act, the licensing provision and not independent of it; that the provision being one which can make in roads into the freedom and the business activities of a person should be interpreted and understood as one strictly for the purposes of the Act and if so, it should be understood as a provision which can be called-in-aid by the Market Committees for obtaining such information only in respect of such market functionaries who are obliged to obtain a licence u/s 8 of the Act. In this context, learned Senior Counsel has placed reliance on the following decisions of the Supreme Court:

(a) The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., ;

(b) Krishi Utpadan Mandi Samiti and Others Vs. Pillibhit Pantnagar Beej Ltd. and Another, ;

(c) The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others,

19. Learned Counsel by drawing attention to the provisions of Section 8 particularly the expression ''Operate in the market area'' as it occurs in Sub-

clause (ii) of Clause (b) of Sub-section (1) of Section 8 (Section 8(1)(b)(ii)) submits that the petitioner by itself does not operate within a notified market area of the respondent 3-Market Committee; that from the stage of transportation of the notified food items from the Whitefield Railway Station to its godown at Koralur, storing it at Koralur, causing that to be further transported to the processor outside the market area are all carried out on its behalf by its appointed agent/business associated M/s. Central Warehousing Corporation with whom they have an agreement for such purposes; who are remunerated for rendering such services to the petitioner; that the petitioner by itself does not physically enter the notified market area of the respondent 3-Market Committee and if so there is no obligation on the part of the petitioner to obtain a licence. It is further submitted that if there is no obligation even to obtain a licence, then in the light of the interpretation that should be accorded to the provisions of Section 66 of the Act, the Market Committee cannot call upon the petitioner to furnish any information nor threaten the petitioner for any possible penal action for non-compliance with such notices.

20. Further submission of Sri Shanthi Bhushan, learned Senior Counsel for the petitioner in this regard is that assuming for argument sake, a person whose notified agricultural produce is stored within the notified market area is a market functionary within the meaning of this phrase and as such for such purposes, the petitioner though could have been considered as a person obliged to obtain a licence, still as the petitioner has made proper arrangement for such compliance through its agent namely, M/s. Central Warehousing Corporation, the Market Committee can only look upto such person who actually operates in the market area for compelling it to obtain a licence or even for furnishing of the information and particulars of the notified agricultural produces stored in that market area. In this regard, learned Senior Counsel submits that we are in the era of what is known as ''business processes outsourcing''; that the practice of business processes outsourcing has come to stay; that it is an accepted business norm and practice which has developed for the past about 10 to 15 years; that a person who is in a business activity which has several stages can depending on the convenience and other commercial considerations delegate some part of the business activities to independent third parties who may have skilled expertise to perform that part of the business activity; that to the extent that some part of the business activity is so entrusted to a third person, the obligations of the person carrying on the business for compliance with various requirements is also passed on to the person to whom such activities are entrusted to i.e., to the extent any part of the business is out sourced, obligations are fastened on the out sources who performs the act and having regard to such current business practices, the petitioner has also sought to apply this practice to its business activity; that the petitioner has hired services of M/s. Central Warehousing Corporation for this precise purpose; that it is open to the petitioner to so arrange its business affairs and activities in such a manner that it is not only commercially profitable for the petitioner but can also relieve the petitioner of

certain other statutory obligations and if such business practices which have come to be in vogue are to be recognised, it should be so held that the petitioner by itself is not obliged to comply with the requirements of Section 8 of the Act, but, it can be secured compliance even though its business associate.

21. The submission of learned Senior Counsel in this regard is that the provisions of Section 8 as also the provisions of Section 66 to the extent it is so permitted in the statute, should be so interpreted as to recognise such current business practices and commends this Court to interpret the provision in such a manner that adoption of business processes outsourcing is not excluded from the purview of the activities of the petitioner. Learned Senior Counsel has virtually urged this Court to apply and adopt a novel method of interpretation, an interpretation of a statutory provision which should keep in tune with the changing times and the current business trends. Learned Counsel submits that, in fact, it is precisely for such purpose and to take advantage of the provision of the statute to the extent that it so enables the petitioner, the petitioner has organised its activities in such a manner that the petitioner by itself does not physically carry out any operations in the market area by itself, but has it carried through its business associate and if that is the factual situation, the petitioner should not be exposed to avoidable harassment at the hands of the respondent 3-Market Committee by calling upon the petitioner to furnish particulars, details, informations etc., and the threat of possible prosecution if not complied.

22. Learned Counsel has submitted in this regard that so long as the business associate of the petitioner has complied with or fulfilled the provisions of Section 8 or even the provisions of Section 66 of the Act, the respondent 3-Market Committee cannot compel the petitioner also to fulfil the very obligations by calling upon the petitioner to do so.

23. With regard to the liability for payment of market fee on the part of the petitioner, submission is that while the charging section of the Act does not create a liability for payment of market fee in respect of either the activity of storing or the activity of processing of a notified agricultural produce within the market area; even if such activities by themselves could have compelled a person carrying on such activity to obtain a licence in terms of Section 8 of the act and as according to the learned Counsel, the petitioner does not even carry out these operations in the market area by itself, the petitioner being called upon to pay any market fee is too far-fetched, without any authority of law and not even the amendment brought about to the main Act by Act 22 of 2004 has enabled the Market Committee to call upon either the petitioner or any other market functionaries who do not carry on the activity of buying of a notified agricultural produce within the market area subject to levy of market fee and accordingly submits that any proposal for levy of market fee on the petitioner or demand in pursuance thereto is not tenable; that the action for such purposes deserves to be quashed. Learned. Counsel in this regard has also drawn my attention to the interpretation of taxing statute; that the taxing statute should be

strictly construed for understanding the scope of a charging section and cannot be enlarged or scope of the levy cannot be widened by the process of interpretation etc.; that unless the very language of the provision creates a liability, no liability can be fastened on the subject by any other mode or means.

24. Other learned Counsel appearing for other petitioners have also adopted the same line of argument and have laid emphasis on the construction of taxing statutes in the context of interpretation of the provisions of Section 65 of the Act and particularly to get over the stand on the part of the respondents that the amending Act 22 of 2004 and the addition of the Explanation (ii) to the provision to Sub-section (2) of Section 65 has the effect of subjecting to tax the activity of processing of an imported notified agricultural produce subjected to processing within the market area.

25. Sri Subash B. Adi, learned Counsel for the petitioner has cited a decision of the Supreme Court in the case of Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd., for the purpose of interpreting the provision of Section 65 of the Act.

26. Statement of objections have been filed on behalf of the respondent-Market Committee as also on behalf of the State and the Director of Agricultural Marketing.

27. In the statement of objections filed on behalf of respondent 3-Market Committee to Writ Petition No. 39753 of 2004 by M/s. ITC Limited, it is inter alia contended that the petitioner has been to the knowledge of the respondent-Market Committee carrying on activities in respect of notified agricultural produces within the market area; that the officials of the respondent 3-Market Committee had an occasion to visit and inspect the warehouse at Koralur taken on lease by the petitioner; that they had found large stocks of wheat and other notified agricultural produces being stored there; that it had also come to the notice of the respondent-Market Committee that the records and documents available could not properly explain the source of acquisition of the agricultural produces stored in the warehouse; that while the stand of the petitioner was that the entire quantity of agricultural produces stored in the warehouse had all been acquired by the petitioner i.e., purchased by the petitioner outside the market area, the documents available could not fully support the stand; that the person in charge of the warehouse also could not give satisfactory explanations and answer all the discrepancies noticed by the officials of the Market Committee; that it was in such circumstances, it became necessary for the Market Committee to issue notices to the petitioner to place better information and particulars, particularly with regard to the stock of agricultural produce found in the warehouse. It is also the stand of the Market Committee that the activities of the petitioner clearly attracts the provisions of Section 8 and the petitioner is a person who is obliged to obtain a licence; that the petitioner having not obtained such a licence, could expose itself to other consequences as provided for under the Act. It is specifically averred that the respondent 3-Market Committee has

the authority in law to cause the kind of enquiry that it has done; that it is also perfectly justified in not only suggesting that the petitioner should obtain a licence calling upon the petitioner to obtain a licence failing which the petitioner is put on notice about possible penal consequences.

28. It is also the specific stand of the respondent 3-Market Committee which, in fact, is the stand of the other Market Committees also, that even a person who is not obliged to obtain a licence u/s 8 of the Act, nevertheless should comply with the requirements pursuant to a query by the Market Committee in exercise of its powers u/s 66 of the Act. On facts, it is asserted that while the petitioner has not obtained a licence from the Committee so far, which is characterised as a shortcoming on the part of the petitioner, it is also asserted that though M/s. Central Warehousing Corporation, through whom the petitioner claims to have been carrying on its activities within the notified market area, of the respondent 3-Market Committee also had not obtained a licence when the notices were issued by the Market Committee and it is evident that during the pendency of the writ petition before this Court, M/s. Central Warehousing Corporation has applied for and has been given a licence to function as a market functionary as a stockist with effect from 4-12-2004 for the purpose of carrying on activities of storing notified agricultural produces.

29. The respondent 3-Market Committee at the threshold had raised a preliminary objection and contended that the writ petition is premature; that it is not required to examine such aspects in the exercise of writ jurisdiction, as the Committee, in fact, had issued notices providing opportunity to the petitioner to comply with the requirements; that there is no cause for the petitioner to approach this Court at such a stage and has prayed for dismissal of the writ petition on this ground itself.

30. The controversy with regard to obtaining a licence under the provisions of Section 8 and also with regard to requirements to comply with any such notices or queries put forth by the Market Committee in exercise of its power u/s 66 of the Act having arisen only in the case of the petitioner in W.P. No. 39753 of 2004 filed by M/s. ITC Limited, I shall deal with this aspect first and then proceed to consider the question of scope of the charging section and the liability for payment of market fee in respect of the activity such as storing or processing of notified agricultural produces within the market area.

31. The Act is a piece of regulatory law with an object of providing for an assured market for the agricultural produces i.e., to provide for stable market to the produce growth by the farmers or agriculturists. It also has the object of protecting the growers from being exploited by traders and business people to the detriment of the growers who have by past experience had been shown to have always suffered in getting a commensurate or reasonable price for their products. The Act is to protect a farmer and to promote his interest by providing for an assured safe market for his produces. It is in this context that the Act provides for declaration of market, market area, market yard and the

constitution of the market committees who function on a democratic basis providing for self-governance to the committees with representation being over a cross-section of different players in such activities, which is being led on the participation by the growers, the overall supervision by the Marketing Board on the aspects of finance and other regulatory provisions of the Market Committee and to achieve a sustained growth in the development of its markets.

32. The salient provisions are noted in the definition clause which reads as under:

"Section 2(1) ''Agricultural produce'' means the produce or goods specified in the schedule;

Section 2(5) ''Buyer'' or ''purchaser'' means a person who buys or agrees to buy goods;

Section 2(12-A) ''Director of Agricultural Marketing'' means the officer appointed by the State Government as such and includes any other officer or officers empowered by the State Government, by notification to exercise or perform such of the powers or functions of the Director of Agricultural Marketing under the provisions of this Act or the Rules as may be specified in such notification;

Section 2(14-A) ''Importer'' means a person who imports or causes goods to be imported on his own account or as an agent for another person from outside the market area into a market area for the purpose of selling, processing, manufacturing or for any other purpose except for one''s own domestic consumption, but shall not include a public carrier;

Section 2(18) ''Market'' means any notified area declared or deemed to be declared to be a market under this Act;

Section 2(18-A) ''Marketing'' means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution;

Section 2(19) ''Market area'' means any area declared to be a market area u/s 4;

Section 2(19-A) ''Market charges'' means all charges in connection with the handling of agricultural produce such as the commission of commission agents, brokerage, remuneration for weighmen, loading, unloading, cleaning, sorting, counting, sieving and dressing of agricultural produce;

Section 2(20) ''Market Committee'' or ''Committee'' means a Market Committee constituted for a market area under this Act;

Section 2(21) ''Market functionary'' or functionary'' includes a broker, a commission agent, an exporter, a ginner, an importer, a presser, a processor, a stockist, a trader and such other person as may be declared under the rules or the bye-laws to be a market functionary;

Section 2(22) ''Market sub-yard'' means a specified place declared or deemed to be declared to be a market sub-yard under this Act;

Section 2(23) ''Market yard'' means a specified place declared or deemed to be declared to be a market yard under this Act;

Section 2(28) ''Notified agricultural produce'' means any agricultural produce which the State Government has by notification issued under Sections 4 and 5 declared as an agricultural produce the marketing of which shall be regulated in the market area;

Section 2(32) ''Process'' means any one of the series of treatments to which raw agricultural produce is subjected to make it fit to use or consumption;

Section 2(33) ''Processor'' means a person who processes notified agricultural produce by mechanical means;

Section 2(34) ''Producer'' means a person who produces notified agricultural produce on one''s own account.--

(i) by one''s own labour; or

(ii) by the labour of any member of one''s family; or

(iii) under the personal supervision of oneself or any member of one''s family by hired labour or by servants on wages payable in cash or kind but not in share of the produce.

Explanation.--For the purposes of this clause, a producers'' society shall be deemed to be a producer.

Section 2(40) ''Seller'' means a person who sells or agrees to sell goods;

Section 2(48) ''Stockist'' means a person other than a licensed commission agent who stocks the goods belonging to other persons, and includes a warehouseman;

Section 2(50) ''Warehouse'' means any building, structure or other protected enclosure which is or may be used for the purpose of storing agricultural produce being goods on behalf of the depositors but does not include cloakrooms attached to hotels, railway stations, the premises of other public carriers and the like;

Section 2(52) ''Yard'' includes the market yard, the market sub-yard and the sub-market yard".

33. The scheme of levy of market fee on the activity of buying of agricultural produce in the market area is another salient aspect of this legislation. The finance aspects for such sustained activities such as providing for markets, developing the markets, providing such facilities to the market functionaries are all sought to be financed by receiving revenue by what is known as ''market fee'' on the value of the agricultural produces transacted in the market area. Here again, the levy is sought to be fastened on the buyer and the growers himself is not subjected to any levy or liability.

34. In an enactment of this nature, regulation of the activities in the market, market area and the market yard is inevitable. While exploration of the grower is to be prevented, realisation of the market fee for maintaining the activities under the Act has to be ensured. The regulation can be for both purposes. It is in this context, it compels every person who is a market functionary and who has his activities within the market area to obtain a licence as provided for u/s 8 of the Act. In fact, Section 8 prohibits the activities referred to therein being carried on by other than the person who has obtained a licence. Section 8 reads as under:

"Section 8. Control of marketing of agricultural produce.--(1) After the market is established.--

(a) no local authority shall, notwithstanding anything contained in any law for the time being in force establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of any notified agricultural produce:

Provided that a local authority may establish or continue any place for retail sale of any notified agricultural produce other than cattle, sheep and goats subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of this Act, and the rules and the bye-laws and standing orders of the Market Committee;

(b) no person shall, without or otherwise than in conformity with the terms and conditions of a licence granted by the Market Committee in this behalf--

(i) use in any place in the market area for the marketing of the notified agricultural produce; or

(ii) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, warehouseman, or in any other capacity in relation to the marketing of the notified agricultural produce:

Provided that nothing contained in Clause (b) shall apply.--

(i) to the sale of such agricultural produce if the producer of such produce is himself its seller; or

(ii) to the purchase of such produce if the purchaser is a person who purchases such produce for his domestic consumption.

(2) No place except the market yard, market sub-yard or sub-market yard, as the case may be, shall be used for purchase or sale of notified agricultural produce.

(3) Nothing in Sub-section (2) shall apply to.--

(a) the purchase or sale of notified agricultural produce by.--

(i) a Taluk Agricultural Produce Co-operative Marketing Society;

(ii) a Primary Agricultural Co-operative Credit Society; and

(iii) any other Co-operative Society permitted by the State Government;

(b) the sale of notified agricultural produce by a retail trader".

What is of particular importance and relevance for the purposes of present petitions is the provisions of Section 8(1)(b)(ii). In this regard, the phrases of ''processor'', weighman'', ''warehouseman'' and the residuary phrase "in any other activity" in relation to the marketing notified agricultural produce is of considerable importance. So far as the petitioner is concerned, on admitted facts, the petitioner is the owner of considerable quantities of a notified agricultural produce which is stored in a warehouse situated within the market area, notified to be the market area of the respondent 3-Market Committee. To this extent, there is no dispute. There is also no dispute that it is for the purpose of benefit of the petitioner that such agricultural produces are brought and stored in the warehouse and without any dispute the petitioner has control over the agricultural produces stored in the warehouse. It is at the behest of the petitioner such agricultural produce has been brought in the market area, is stored in the market area and in fact, also leaves the market area as per the instructions and directions of the petitioner. Under such facts and circumstances, the petitioner clearly comes within the definition of an ''importer'' as defined u/s 2(14-A) of the Act. On the plain reading of this phrase, the petitioner is an importer notwithstanding the argument relating to the concept of business processes outsourcing and notwithstanding the fact that, in fact, physically it is M/s. Central Warehousing Corporation who while acting as an Agent of the petitioner brings the agricultural produces into the market area and stores it in the market area. While on facts, the arguments fails because the warehouse admittedly is taken on lease by the petitioner and if so is in the possession of the petitioner and the petitioner is definitely responsible for the agricultural produce stored or stocked in its warehouse, petitioner, in fact, also happens to be the owner of the very agricultural produce stored in this warehouse. It is the petitioner who causes the goods, namely, wheat and other agricultural produces to be brought inside this warehouse in the market area, the petitioner definitely is an importer. The definition of the term ''market functionary'' u/s 2(21) includes an importer, a stockist etc. The petitioner answers the definition of not only an importer but also a stockist. Though there can be a debate as to whether the petitioner by itself becomes a warehouseman or not, there cannot be any dispute that the petitioner is an importer and also that the petitioner is a stockist within the meaning of these phrases as it occurs in the definition section of the Act. The obligation to obtain a licence u/s 8 on such person is clear and categorical.

35. It is precisely for this reason that the petitioner has raised a contention and has put forth an argument that if the practices of business processes outsourcing is to be recognised and even applied for the purpose of understanding the provisions, the petitioner may be relieved of the obligation and consequently that the obligation can be on the person in whose favour the petitioner has

outsourced the activity or in the sense entrusted such part of its activity and that should take care of the interest of the petitioner even if the petitioner by itself does not obtain a licence.

36. The practice of business processes outsourcing is a practice that has come into vogue in recent times over the past ten to fifteen years in certain areas of business activities and business management. This is a practice which is particularly prevalent in the light of developments of what is known as ''Information Technology''. There has been an astounding break through in the fields of communication and dissemination of knowledge. The methods of communication have vastly changed. Mode of communication and dissemination of knowledge has also undergone a revolutionary changes. The conventional concept of dissemination of knowledge through the print media has given way to the dissemination of knowledge through digital processes. Breakthrough in science and technology has achieved the wonder of storing vast information at the tip of a point. Access to information is also made easier, quick and without hassle through the medium of digital communication; through the net and through the employment of satellites. Business activities are not necessarily carried out through conventional processes at a place known as office but can also be carried out at the place of the employee, at the place of the business partners wherever they may be located, accessed between one businessman and another located in different parts of the globe without moving from their place has become possible. It is in the development of such breakthrough in science and technology and getting a part of the business activity executed from persons who are not necessarily located at the main place of business of a particular businessman that has brought in the concept of business processes outsourcing. Commercial consideration such as variances in the service charges at different places on the earth has contributed to the growth of this practice. To what extent such concept is relevant or applicable to the present situation is the question. The subject-matter is one of regulation of the activities of a person transacting or involved in the transaction of a notified agricultural produce in the market area. Certain obligations such as obtaining a licence are cast on such a person. The obligation is on the very person who carries on such activity within the market area. So long as a person carries on that activity which is an activity within enumerated ones for which obtaining of licence is mandatory u/s 8 of the Act is carried on by a person, there is no escape for that person from the obligation of obtaining a licence. In fact, non-compliance results in penal consequences. I am of the view a provision which imposes or creates certain obligations oh a person, the non-compliance of which attracts penal consequences is not an activity that can be said to be delegated to some other person for the purpose of avoiding the consequences. It is immaterial whether a person carries out or fulfills the obligation by himself or through an agency. The fulfillment is for the purpose of ensuring compliance by the very person and not that of the agent. In the present case, it is already noticed that the petitioner definitely answers the test of a market functionary. If so, the obligation of obtaining a licence is on the petitioner.

It is no good answer to say that M/s. Central Warehousing Corporation who carries on the warehousing activity within the market area has obtained a licence. If at all, M/s. Central Warehousing Corporation has obtained a licence, it can save their claim to the extent they were required to obtain a licence under the Act. The benefit does not pass on to the person like the petitioner. It could have been a different matter if the agent acts as an agent for the principal, applies licence in the name and on behalf of the principal i.e., the petitioner M/s. ITC Limited, the licence is so obtained and in fact, necessary compliance are also secured on behalf of the petitioner by the agent. If all such compliances are procured by the agent in the name of the petitioner, perhaps that can be a good answer as the purpose of the Act is served. If the agent answers the queries on behalf of the principal and to the satisfaction of the Committee and nothing further is required to be done. So long as this has not happened, the Market Committee can definitely look upto the petitioner for such information, such particulars and for production of such accounts and documents. In fact, in the present case, it is precisely for this reason, the Market Committee has also issued notices to the petitioner as it was found that the answers given by the persons in charge of the warehouse and documents and accounts produced by them were not to the satisfaction of the Market Committee. The concept of business processes outsourcing cannot be called-in-aid to get over the obligation of obtaining a licence for carrying on an activity which is otherwise permitted only under the licence.

37. The argument that provisions of Section 66 should be construed in the light and for the purpose of Section 8(3), in fact, does not absolve the petitioner in the present case from any obligation as the petitioner is a person who is required to obtain licence by itself. But, the argument having been canvassed, I am examining this aspect also.

38. While the provisions of Section 66 of the Act can definitely be held to be an enabling provision in favour of the Market Committee for effective implementation of the provisions of the Act and sub-serves such purposes, it should be noticed that the power in favour of the authorities is to the extent indicated in the very provision itself The provision is one in the context of ensuring prevention, of evasion and non-compliances and also enables the Market Committee to take remedial measures by not only realising the amount of market fee sought to be evaded but also by imposing a penalty which enables u/s 65-A of the Act and coercive steps for realisation of the same.

39. While it cannot, be doubted that the provision is intended to check and prevent persons from indulging in the activities for which one has to obtain a licence to prevent one from carrying on the same without obtaining a licence, but also for ensuring that true accounts and state of affairs are revealed so that the loss of revenue is also prevented. The provision also gives a power of entry, search and seizure in favour of the officers of the Market Committees. The provision being one for prevention of evasion and prevention of malpractice in

the market area, the construction should be one which is not necessarily confined to understand the provision as one which is co-extensive with the provisions of Section 8 of the Act but which can go beyond. This is particularly so because there can be persons who are committing acts of infraction of provisions of Section 8 and also infraction of provisions of Section 65 of the Act. The provision acts as an enabling provision for the Market Committee with certain powers for preventing such malpractice. Such limitation that can be placed on a provision like this is that the power should always be exercised bona fide, for the purpose of the Act and within and to the permitted extent and not beyond. Whether in a given case, it has been so done or not, is always a question of fact which will have to be examined and answered on the examination of the facts and circumstances of the particular case.

40. This Court has also noticed one more development during the pendency of the writ petition before the Court. When the question of requirement on the part of the petitioner to respond to the notices issued by the Market Committee was being debated, at the suggestion of the Court, the petitioner volunteered, without prejudice to its contentions and rights, to make available the books of accounts and other documents for the scrutiny of the Market Committee and the Market Committee was also directed to furnish a report in the light of the said material being scrutinized. A report of the Market Committee on such scrutiny while indicates that there are considerable discrepancies; that it is possible for the Market Committee to reasonably infer that not all stocks of the agricultural produces stored in the warehouse on the date when inspected have been necessarily brought from outside the State and to the extent of such shortcomings, it could have been possibly a local purchase by the petitioner. The petitioner by filing its response to the same has strongly refuted this report; that it is the confirmed stand of the petitioner that the petitioner has not involved in the activity of buying and selling within the market area; that on such sporadic instances it was necessary for it to buy agricultural produces within the local area of any market area; that the petitioner has done it with notice and by complying with necessary provisions etc. It is not necessary for this Court to examine those aspects of the matter any further in this writ petition for the simple reason that there has been no dispute between the petitioner and the respondents that the activity of buying and selling of notified agricultural produces within the market area invariably attracts levy of market fee and as submitted by Sri Shanthi Bhushan, Senior Counsel appearing for the petitioner, is ready and willing to pay such market fee as it is liable in respect of such activities, it is no more a disputed aspect except to the extent as to whether there was any such buying and selling within the market area which had not been accounted for by the petitioner. This is a matter which can be verified on facts by the respondent-Market Committee under notice to the petitioner and the matter can be proceeded in accordance with the statutory provisions. Except to notice the developments to this extent, it is not necessary to go into this aspect any further that the report of the Market Committee, the response to it filed by the petitioner

are all on record before this Court.

41. In the light of the discussion above, it is inevitable that the petitioner in W.P. No. 39753 of 2004 is bound to respond to the notices under Annexure-C, D, F and H. The question of issuing a writ for quashing does not arise. The argument on behalf of the petitioner for relieving the petitioner from the obligation of not only from obtaining a licence, but also from the obligation of answering to the queries under the notices fail and is rejected.

42. The other and common question agitated on behalf of all the petitioners is the question of liability on the part of the petitioners for payment of any market fee in respect of the activities of processing and stocking of notified agricultural produces within the market area. It is significant to note the stand taken by the respondents in this regard and as revealed in the counters filed.

43. The stand of the Market Committees is that the activity of importing a notified agricultural produce to a market area for the purpose of processing also attracts the levy of market fee as is indicated in one of the notices issued to the petitioners. However, the justification for such a levy is as indicated by Sri B.G. Sridharan, Sri Thimmegowda and Sri C.S. Patil, learned Counsels appearing for the Market Committees is because of the amendment to the Act by Act 22 of 2004 particularly due to the incorporation of Explanation (ii) to the second proviso to Sub-section (2) of Section 65 of the Act.

44. Statement of objections on behalf of the State and the Director of Agricultural Marketing also indicates that the activities of processing of an imported agricultural produce were sought to be subjected to levy of market fee; that it had been noticed that many processors have indulged in importing of agricultural produces from outside the State; that the produce was subjected to a process which, in fact, results in value addition to the agricultural produce, but would not sell it within the State but take it out of the State and while the entire activity was bereft of any income or revenue to a Market Committee, it was at the cost of facilities that had been developed by various Market Committees or the State itself, which facility had been extended to such processing units located within the State and as such it was thought proper to subject such activities also to liability of payment of market fee and it was for achieving this object, the amendment by Act 22 of 2004 was carried on to the principal act and on and after such amendment, the activity of processing by an act of importing notified agricultural produce attracts levy of market fee and therefore the levy of justified.

45. Attention is drawn to Explanation (ii) to the proviso added by Act 22 of 2004 and it is indicated that this has the effect of creating a charge for payment of market fee on the activity of importing a notified agricultural produce either for processing or manufacturing etc. Submission of learned Advocate General appearing for the State in this regard is that the experience of the State was that persons who are dealing with the notified agricultural produces, person who are utilizing the notified agricultural produce for the purpose of producing several

finished products with considerable value addition and for their benefit, were by clever devices avoiding levy of any market fee by the Market Committee by so arranging their affairs that no levy of market fee was possible on them by not effecting either the sale or not buying notified agricultural produce within the market area and while it had resulted in considerable loss of revenue to the Market Committees, it was not productive for the State also as the services of processing units developed in the State by providing many incentives was being utilized by persons like the petitioners without commensurate revenue or benefit to the State and therefore the provision was brought to rope in such persons within the net of the market fee under the Act. Learned Advocate General has made submissions that there is every justification and necessity for including such a provision; that levy of market fee on such persons who have caused imported agricultural produce for processing within the State and by utilizing the services of processing units established within the State is fully justified; that persons who have derived considerable benefit by availing of services of such processing units cannot complain when it comes to the question of paying market fee; that their grievances are not legitimate and therefore the writ petitions deserves to be dismissed.

46. The provisions of Section 65 of the Act before and after the amending Act 22 of 2004 reads as under:

Before After 65. Levy of Market fees. -- 65. Levy of Market fees- -- (1) xx x (1) x x x (2) The Market Committee shall (2) The Market Committee shall levy and collect market fees from levy and collect market fees from every buyer in respect of every buyer in respect of agricultural produce bought by agricultural produce bought by such buyer in the market area, at such buyer in the market area, at such rate as may be specified on such rate as may be specified on the bye-laws which shall not be the bye-laws which shall not be more than two rupees per one more than two rupees per one hundred rupees of the value of hundred rupees of the value of such produce bought except in case such produce bought except in case of livestock where the market fee of livestock where the market fee shall not be more than five rupees shall not be more than five rupees per head of cattle other than sheep per head of cattle other than sheep or goat, and in the case of sheep or or goat, and in the case of sheep or goat such fee shall not be more goat such fee shall not be more than one rupee per head in such than one rupee per head in such manner and at such times as may manner and at such times as may be specified in the bye-laws: be specified in the bye-laws: Provided that in the case of any Provided that in the case of any co-operative society doing business co-operative society doing business in agricultural produce within a in agricultural produce within a market yard, market fee shall be market yard, market fee shall be levied and collected at the rate of levied and collected at the rate of eighty per cent of the market fee eighty per cent of the market fee payable under this Act: payable under this Act: (2-A) The market fee payable Provided further that, if on any under this Section shall be realised agricultural produce market fee has as follows, namely. -- already been levied and collected

(i) if the produce is sold through a under Sub-section (2) in any market agent shall realise the market fee area within the State and such from the purchaser and shall be agricultural produce is processed liable to pay the same to the and sold in any other market area committee; within the State or exported outside the State it shall be exempted from the levy of market fee. (ia) if the produce is sold by an Explanation. -- Nothing in this importer to the purchaser, the proviso shall apply to. -- importer shall realise the market (i) any processed agricultural fee from the purchaser and shall be produce imported from outside the liable to pay the same to the State and sold in any market area Committee; within the State; or (ii) if the produce is purchased (ii) any agricultural produce directly by a trader from a imported or caused of be imported producer, the trader shall be liable by any person either on his own to pay the market fee to the account or as an agent for another Committee; person, from outside the State into (iii) if the produce is purchased by any market area within the State a trader from another trader, the for the purpose of processing or trader selling the produce shall manufacturing except for one''s own realise it from the purchaser and domestic consumption. shall be liable to pay the market fee to the Committee''; and (iv) in any other case of sale of such (2-A) The market fee payable produce, the purchaser shall be under this section shall be realised liable to pay the market fee to the as follows, namely. -- committee. (2-B) The market fee payable (i) if the produce is sold through a under Clauses (i), (ia), (ii) or (iii) of commission agent, the commission Sub-section (2-A) shall be paid to agent shall realise the market fee the Market Committee within such from the purchaser and shall be time as may be specified in the liable to pay the same to the bye-laws. Committee; (3) Notwithstanding anything (ia) if the produce is sold by an contained in this Act, if any importer to the purchaser, the Market Committee in the State importer shall realise the market has already levied and collected fee from the purchaser and shall be market fee under Sub-section (2) liable to pay the same to the from a buyer in respect of any committee; agricultural produce as may be (ii) if the produce is purchased specified by the State Government directly by a trader from a by notification, no market fee shall producer, the trader shall be liable be levied and collected again in to pay the market fee to the respect of such agricultural Committee; produce by any other Market Committee in the State during (iii) if the produce is purchased by such crop season as may be a trader from another trader, the specified in such notification, trader selling the produce shall subject to production of such proof realise it from the purchaser and as may be prescribed for having shall be liable to pay the market collected the market fee. fee to the Committee; and (iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee. (2-B) The market fee payable under Clauses (i), (ia),(ii) or (iii) of Sub-section (2-A) shall be paid to the Market Committee within such time as may be specified in the bye-laws. (3) Notwithstanding anything contained in this Act, if any Market Committee in the State has already levied and collected market fee under Sub-section (2) from a buyer in respect of any agricultural produce as may be specified by the State Government by notification, no market fee shall be levied and collected again in respect of such agricultural produce by any other Market Committee in the State during such crop season as may be specified in such notification, subject to production of such proof as may be prescribed for having collected the market fee.

47. Sri B.G. Sridharan, learned Counsel appearing for some of the Market Committees has taken me through the statement of objects and reasons provided when the Bill was introduced in the assembly and also to the provisions of the amending Act and as incorporated into the principal Act. The Statement of Objects and Reasons are extracted and reads as under:

"Statement of Objects and Reasons (As appended to at the time of introduction).

It is considered necessary to review the present provisions in the Karnataka Agriculture Produce Marketing (Regulation) Act, relating to ''retail sale'' and ''retail trader'' which prescribes the maximum quintals of agricultural produce that can be stocked by a retail trader to ensure transparency and flexibility to meet the situation arising from time to time, therefore it is considered necessary to amend Act to provide for.-

(1) Fixing of maximum quantity of agricultural produce or goods to be stocked by retail traders in the State by State Government through notification from time to time.

(2) Fixing of such quantity for retail sale by the Market Committees within the prescribed maximum limit in their bye-laws which enables the consumers to purchase the commodities for domestic consumption and to restrict the same for subsequent sale or processing.

Further the system of levy of market fee on the sale of notified agricultural produce has been rationalized to provide for levy of market fee at single point once in any Market Committee on the first sale. The subsequent sales of the commodity in any other market area will be exempted from the levy of market fee. Further to this to give impetus to the Agro Processing Sector in the State which ensures value addition to the agricultural produce enabling the farmers to get a better price for their produce and to attract investments from private sector to the Agro Processing Sector which makes the agricultural marketing operations more effective. Therefore, it is considered necessary to amend the Karnataka Agricultural Produce Marketing (Regulation) Act to provide for.--

(1) Exemption from the levy of market fee on agricultural produce on which market fee has already been levied and collected in any market area within the State and such agricultural produce is processed and sold in any other market area within the State or exported outside the State.

Hence the Bill".

A cursory reading of a Statement of Objects and Reasons indicate that the bill is introduced for the purpose of amending the Act to ensure that encouragement is given to Agro Processing Sector in the State which in turn has the effect of value addition to the agricultural produce, enhancing their marketability to the benefit of the farmers who can on such favourable marketing facilities and demand get a better price for their products and for the purpose of attracting investments from private sectors to the Agro Processing Sector which makes the agricultural marketing operations more effective. It is to give effect to such objects, amendment has been introduced. While the reading of the Objects and Reasons definitely indicates that the idea is to give encouragement for setting up of more and more processing units by attracting investments from private sectors and the provision is one for giving such incentive, what is actually contended and appears to have understood for implementation is quite contrary. The object appears to be to give an incentive for increasing the number of processing units and therefore there should be a concession extended. The concession extended is by providing an exemption from levy of market fee in respect of processed notified agricultural produces also subject to the condition that prior to such processing the base products had been subjected to levy of market fee once within any market area in the State. It is a provision for extending a benefit to be notified agricultural produce otherwise which could be subjected to levy of market fee. That is achieved by providing for the second proviso. However, while providing for such a benefit or extending such concession, it is sought to be restricted to only such notified agricultural produces which are grown within the State and the object of the amended provisions as indicated in the Explanation (ii) is not to extend such a benefit in respect of notified processed agricultural produces brought from outside the State and which are imported to any market area. This is on the face of it what appears to be on a reading of the provisions.

48. Section 65 of the Act is the main charging section. The incidence or the event for levying fee is the activity of buying a notified agricultural produce within the market area. The charge is on the activity of buying of a. notified agricultural produce within the market area. Under Sub-section (3) of Section 65, the levy of market fee is sought to be made a single point levy, in the sense that, a notified agricultural produce which has been subjected to levy of market fee in any market area if sold even within the precincts of any other market area and subjected to repeated sales thereafter, nevertheless, exempted from payment of any market fee i.e., only the first sale of a notified agricultural produce is subjected to levy of market fee and not subsequent sales of the same produce. It is on perusal of the schedule to the Act which mentions the agricultural produces in respect of which market fee is leviable on the sale of the same within the market area indicates that it not only contains a primary agricultural produce but also some processed agricultural produces and further processed agricultural produces. Paddy is a notified agricultural produce. The processed product of paddy, namely, rice is another notified agricultural produce. Further produce, namely, broken rice is also a notified agricultural produce under the scheme of the Act and as provided for u/s 65(3) is in respect of the very produce and subject to proof of payment. The object of second proviso appear to extend such

benefit of single point levy even in respect of the processed items of a notified agricultural produce which has suffered levy of market fee earlier and within the State. While, the understanding of these provisions poses not much difficulty, the matter gets complicated by the stand taken by the State and sought to be implemented by some of the Market Committees who have shown enthusiasm by issuing certain proposition notices and have issued demand notice for payment of market fee in few cases by calling upon the licensee who is a mere processor of agricultural produce and who has imported the said produce from outside the State to pay market fee on the value of the imported agricultural produce meant for processing.

49. As it is contended with some vehemence and assertiveness by the learned Advocate General on behalf of the State, though the vehemence did get reduced as the debate progressed, it has become necessary for this Court to examine the scope of levy and the actual liability that is created under the provisions of the Act.

50. There is no dispute that Section 65 is the only charging section in the Act, particularly, Sub-section (2) of Section 65. What stands out now is one for creating charge and charge as noticed earlier is in respect of the activity of buying notified agricultural produce within the market area. If a charge is created in clear and unambiguous terms, the matter ends. It is only to be effectuated. It is only when there is no such charge in express terms, problems arise. The provisions of Section 65 are undoubtedly in the nature of taxing statute. Therefore, the principles of interpretation governing interpretation of taxing statutes necessarily applies though the levy is characterised as a fee. The levy is by an act of Legislature and by far general is nature and on every buyer in the market area. Ultimately, the significance of the term ''fee'' can only be in the context of revenue being commensurate to the expenditure incurred for the objects of the particular act, nature of levy is not far from a levy in the nature of taxes. It is by now well-settled that there are three basic components of a taxing statute. Firstly, subject of the tax in the present situation, is the activity of buying notified agricultural produce within the market area. Secondly, the person liable to pay the tax, namely, the buyer who buys a notified agricultural produce within the market area and thirdly, the rate, being not exceeding 2% of the value of the produce sold in the market area, subject to an element of discretion being made to fix the rate in the range of 1% to 2%. It is also well-settled that if there is any ambiguity in respect of any of the components in the sense the ambiguity is one which is not capable of resolution by applying any principles of accepted norms of construction, then the very taxing statute fails. It is also a well-accepted principle that it is not the function of the Courts to remove the defect but it is the domain of the Legislature to take care of this aspect of the matter. A strict construction of the taxing statute is the accepted norm.

To understand the meaning of a section in a taxing statute, the best way is to look into the very section and understand that through the language employed in the section and the language should be understood in its natural meaning and insofar as taxing statute is concerned, the charge of levy is achieved by the very language and not by any other external aids. The levy is not by either an intendment or process of reasoning or processes of inference referred to. This is the well-accepted path as developed in England and in the decisions of House of Lords which have all been followed by the Supreme Court in a catena of cases. A reference to a few leading cases will suffice for the purpose of our present discussion. One is the case of COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD., and with regard to the construction of the taxing statutes and other decision of the Supreme Court in Mathuram Agrawal Vs. State of Madhya Pradesh, wherein, it is indicated that the changes that are required to make a taxing provision either really effective or to achieve the object for which it had been enacted but if had not achieved that purpose by the inelegant use of the language, it is to be set right only by the Legislature and not by the Courts and at any rate not by the Courts adopting a process of interpretation of the provision to enlarge the scope of a charging section.

51. A reading of the provisions of Section 65 while undoubtedly makes it clear that the charge is only under Sub-section (2) of Section 65 and on the activity of buying, the further provisions like Sub-section (3) makes it a single point levy and the two provisos added to sub-section to the charging section seeks to reduce the rigor of the levy in situations mentioned therein. While provisos (1) and (2) particularly proviso (2) as added by the amending Act 22 of 2004 can only have the effect of reducing the rigor of the charging section i.e., the main provision of Sub-section (2) of Section 65, it can never have the effect of either roping any more activities within the net of the charging section nor has the proviso achieved any such purpose. Even on a plain reading of the proviso, what it seeks to do is only to extend certain benefit or concession even in respect of the activity of buying of a processed notified agricultural produce. However, as it is the second explanation to the second proviso which is very strongly relied upon by the learned Advocate General to support the argument that the action on the part of the Market Committees and particularly for the purpose of levy of market fee on the activity of importing of notified agricultural produce for processing is supported by this explanation, it is necessary for me to examine this provision.

52. A plain reading of Explanation (ii) clearly indicates that while the proviso extends certain benefits, namely, single point levy even in respect of processed agricultural produces so long as the basis agricultural produce has been once subjected to levy of market fee within the State, that benefit is sought to be curtailed and confined to the agricultural produces so produced within the State and does not extend to agricultural produces brought from outside the State and subjected to processing. A reading of the proviso and the explanations clearly indicate that they are in the nature of variation in the scope of levy on this activity subject to fulfilling certain conditions. While, the maximum levy is under Sub-section (2), the proviso only seeks to reduce the rigor of it. A plain reading

of this provision indicates that there is absolutely no hint of enlarging the scope of levy under the provisos or the explanations. So long as the main charging section which provides for the three essential components of the taxing statute confines the levy to the activity of buying, by addition or deletion of any proviso or any explanation, the scope of that levy cannot be enlarged. Assuming that there is scope for reading any statute or even a taxing statute as a whole that is to read the charging section, provisos and the explanations as a whole, even by such a reading, the second explanation does not achieve or produce the result of subjecting to levy the activities of processing an imported agricultural produce or the activity of storing or stocking agricultural produce within a market area to levy of market fee.

53. On a reading of the circular dated 18-5-2004 issued by the Director of Marketing, which is also sought to be quashed, while it recites that it is issued for the purpose of giving effect to the amended provisions of Section 65 as amended by Act 22 of 2004, it also expressly directs the Market Committees to take action for levying market fee in respect of the value of imported notified agricultural produce in the event of processing of such imported agricultural produce. It is this portion of the circular which is contended on behalf of the petitioners to be going beyond the scope of the provisions of Section 65 and on a total misunderstanding of the actual provision of Section 65 as amended by Act 22 of 2004 and as is sought to be implemented by the Marketing Board as also the Market Committees.

54. I have already indicated that though it was sought to be argued on behalf of the respondents that the provisions of the amending Section 3 of the Act 22 of 2004 achieves the object of levy of market fee on the activity of processing an imported notified agricultural produces, unfortunately, this is not so in the actual language of these provisions and it is not even so as per the statement of objects and reasons appended to the Bill at the time of introduction of this legislation in the Assembly. While, the purpose and reason for introducing an amendment may be perhaps was to rope in such activities and to augment revenue in favour of the Market Committees, neither the language of the object and reasons spell it out nor has it been put in that manner in the statute. While providing or not so providing in the statement of objects and reasons in itself would not have been of much consequence in the absence of the very statute having provided for it, by no stretch of imagination or on applying any accepted norm of interpretation can it be understood or described that the amended provision has the effect of subjecting to levy of payment of market fee, a notified processed agricultural produce if it is imported from outside the State and subjected to processing activity in the State. It is not so in the language of the section.

55. While passing I may also indicate that the only activity that is roped in for levy of market fee under the charging section is the activity of buying of a notified agricultural produce within the market area. So long as any activity is brought within the phrase of buying either as understood or on interpretation of

the provisions of the Act or even on common understanding, there is no levy of market fee on any other activity. If the Market Committee is able to make good that the activity is in the nature of buying of an agricultural produce in the market area, it definitely attracts levy and not otherwise. As the question had been raised in the present case, even in respect of the activities of storing or processing and importing of agricultural produce also could be subject to levy as indicated in some of the notices issued by the Market Committees and in terms of the demand raised, it is for such purpose, it is made clear that such activity did not attract levy of market fee in terms of Section 65(2) of the Act. However, it is also clarified that a mere information for liability for payment of market fee u/s 65(2) is not the criteria for obtaining or not obtaining a licence u/s 8 of the Act. The provisions operate in different areas and for purposes mentioned therein. So far as the petitioner in W.P. No. 39753 of 2004 is concerned, it is clear that the activities of the petitioner is one that ropes in the petitioner within the meaning of the phrase ''importer'' and ''stockist'' and is a market functionary obliging the petitioner to obtain licence u/s 8 of the Act. The contention that the petitioner is not obliged by employing the method of what is known as business processes outsourcing and on an interpretation based on such developments cannot be accepted and is rejected.

56. In the result, while the legal position insofar as charging section is clarified, the demand raised on the petitioners otherwise than in conformity with such charge are not sustainable and as a result demand notices dated 30-7-2004 are quashed by issue of a writ of certiorari. Insofar as such of those petitioners who might have paid the market fee as demanded by the Market Committees on the premise that such fee was payable in respect of the activity of importing, processing and storing also, it is open to such petitioners to seek for refund of the amount so paid subject to satisfying other conditions and the Market Committees shall pass orders on the same within a reasonable time. In respect of other notices and demands it is for the petitioners and the Market Committee to work out in accordance with the provisions of the Act.

57. Insofar as legal notice that has been issued to the petitioner in W.P. No. 39753 of 2004 is concerned, it cannot be said that they are not without support of law and are sustainable.

58. However, it is open to the petitioner to respond to the same and to take such remedial action to ensure compliance with the provisions of the Act. Sri B.G. Sridharan, learned Counsel appearing for the Market Committee, clearly submits that the time for responding to the notice that had been issued by the Market Committee to the petitioner is extended by another two weeks within which time they can respond to the same.

59. It is made clear that the circular dated 18-5-2004 issued by the Director of Agricultural Marketing insofar as it is inconsistent to the interpretation placed on the provisions of Section 65 by this Court in this order is not a proper understanding and the Director of Agricultural Marketing is hereby directed to

clarify this position and reissue the circular in conformity with the interpretation placed on the scope of Section 65 of the Act in these cases.

60. It is also clarified that circular issued by the respective Marketing Committees based on the circular of the Director of Agricultural Marketing and also to this extent should fall in line and should be corrected. The question of enforcing the same in consistent with the interpretation placed by this Court on the scope of Section 65 of the Act, does not arise.

61. While W.P. No. 39753 of 2004 is allowed in part and to the extent indicated above insofar as any levy, in respect of activities other than buying of a notified agricultural produce in the market area is concerned, the other petitions are allowed. Rule made absolute in all the writ petitions.

62. I must place on record the valuable assistance rendered by learned Counsels appearing for the parties who have advanced arguments rich in substance, well-researched and supported by case-laws.