(1994) 06 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No''s. 2436 and 2438 of 1993

M/s. Southern Textiles Ltd. and others APPELLANT

Vs

State of Tamil Nadu and another RESPONDENT

Date of Decision : 15-06-1994

Acts Referred:
Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 — Section 24(1)

Citation : AIR 1995 Mad 11

Hon'ble Judges : K.A. Swami, C.J;Somasundaram, J

Bench : Division Bench

Advocate : Vijay Narayan, for the Appellant; A.S. Venkatachalamurthy, Govt. Pleader and S.T.S. Murthy, for the Respondent

Judgement

K. A. Swamy, C. J.

1. In these two writ petitions, the petitioners have sought for issue of a writ in the nature of mandamus directing the respondents to forbear from

levying and demanding any market fee in respect of cotton, which has been stored without processing in the petitioners"" mills for more than 30

days, or, in respect of the rejected cotton and returned to the Up-country cotton seller. It is contended on behalf of the petitioners that the Textiles

Commissioner, under the provisions of the Cotton Control Order, 1986, has permitted the petitioners to store cotton for over a period of 30 days.

Therefore, the storing of cotton beyond the period of 30 days, under the order issued by the Textiles Commissioner, does not come within the

proviso to S. 24(1) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (hereinafter referred to as the Act). We have

already held in our judgment in the case in W.P. No. 2429 of 1991 etc. (Raja-palaym Paruthi Panju Sangam v. Govt. of Tamil Nadu dated 28-4-

1994 that the provisions contained in S, 24(1) of the Act, as to the presumption arising out of the retention of the goods for over a period of 30

days, is a rebuttable presumption. Therefore, it is open to the petitioners to prove that the cotton was stored pursuant to the order of the Textile

Commissioner beyond the period of 30 days and as such, it cannot be deemed to be a sale so as to attract the levy of market fee. That being so,

the relief, as sought for, cannot be granted, except to clarifying that in such a case, the market fee cannot straightway be demanded without

affording an opportunity to the persons concerned to rebut the presumption.

2. The second prayer made in the petition relates to levy of market fee on transporting the rejected cotton when it is being transported by the

purchaser to the seller. As the market fee is leviable only when the sale and purchase of the notified agricultural produce takes place within the

market area, it is open to the petitioners to show that what is being transported is not the agricultural produce purchased in the market area, but the

one purchased outside the State and it is being returned to the seller as rejected. In such an event, the transporting of such rejected cotton to the

seller cannot at all be prevented, or obstructed on the ground that market fee is payable. Accordingly, we dispose of these writ petitions in the

following terms:

(1) In the case of cotton stored by the Cotton Mills pursuant to the order of the Textile Commissioner permitting the Cotton Mills to store the

cotton for a period exceeding 30 days, no market fee can be demanded from such textile mill owner on such stored cotton without affording an

opportunity to him to rebut the presumption, arising out of the proviso to Section 24(1) of the Act.

(2) In the case of transport of rejected cotton to the seller outside the State, no sale takes place. Therefore, the transporting of such rejected

cotton cannot be obstructed or prevented. However, the textile mill owners, who are transporting such rejected cotton have to prima facie show to

the concerned Market Committee that what is being transported is only the rejected cotton to the seller. There will, however, be no order as to

costs.

3. Order accordingly.