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(1995) 02 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No''s. 33418 to 33420 of 1994

Prem Rice Mill — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 65
Karnataka Rice Procurement (Levy) Order, 1984 — Clauses 3, Clauses 4, Clauses 7

Citation : (1995) ILR (Kar) 1605 : (1995) 3 KarLJ 38

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.R. Satenahalli, for the Appellant; N. Devadas, Government Advocate for R-1 to R-4 and B.G. Sridharan, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this Petition the petitioner has prayed for issuance of Writ of Prohibition, prohibiting the Enforcement Officer appointed under the Karnataka Agricultural Produce Marketing (Regulation) Act, from demanding and collecting the market fee in respect of the transactions made by the petitioners in respect of Rice which is controlled by the Levy Order or orders issued by virtue of Entry-48 of List II and Entry-33 of List-III of 7th Schedule, since they are not covered under the enactment of Entry-26 and 28 of List-11 of 7th Schedule and for the issuance of writ, order or direction in the nature of Writ of Mandamus communicating and directing the respondent-Market Committees to allot shop cum-godown to the petitioners in the respective Market Yards and for such further or other reliefs. The petitioners have also claimed interim relief to the effect that respondents and their subordinates be directed not to demand or collect market fee in respect of transactions made by the petitioners under levy order and to further direct the respondents not to seize the accounts books of the petitioners pending disposal of the Writ Petition.

2. The petitioners case in brief is - the petitioners are the Rice Millers, situated in

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the respective places mentioned in the cause title and they have obtained necessary licenses from the competent authorities under the provisions of the Karnataka Agricultural Produce Marketing Committees Licensing Order, 1986 and also under Rice Milling Industries (Regulation) Act, 1958. According to the petitioners'' case, petitioners are purchasing paddy in the market yard, after paying the market fee to the respective Market Yards and thereafter the paddy being converted into rice. The petitioners'' case is that the rice., i.e., converted rice is covered by the Levy Order known as "Karnataka Rice Procurement Levy Order, 1984", which has been issued under the Essential Commodities Act. The petitioners'' further case is that under the Karnataka Rice Procurement Levy Order, 1984, it is the obligation of petitioners to surrender the levy rice to the Government or the agent appointed by the Government. That after surrendering the levy rice to the Government, it is also the obligation cast on the petitioners to make appropriate application seeking direction to transport the rice in Form-D and the respective Form-D''s have to be issued by the Deputy Commissioner, which contains restrictions restraining the persons to transport commodities under the Certificate. It is further case of the petitioners that it is further obligation to have transfer certificate for releasing the commodities contained in Form-D to appropriate persons mentioned in the transfer certificate and as such the transfer certificate contained in Form-D cannot be attracted by the provisions of Karnataka Agricultural Produce Marketing (Regulation) Act, with respect to the commodities controlled by the Yard. The petitioner has annexed Annexure-A, to the effect, that this position of taw has been clarified as such by the Chief Marketing Officer. The petitioners'' grievance is that inspite of the certificate in Form-D being issued while transporting the rice under Form-D with the certificate issued by the Tahsildar, lorries of the petitioners were stopped unnecessarily and market fee is being collected with penalty, without issuing any receipt to that effect, as mentioned in detail in paragraph-2 of the Writ Petition. The petitioners'' further case is that under Karnataka Agricultural Produce Marketing (Regulation) Act, vide., Section-8(2), trade outside the Market Yard with respect to the notified goods or agricultural produce is prohibited, but when a transaction takes place after the levy order, the transaction is permitted to take place outside the yard in the respective place and the produce, under the Levy Order. The petitioners'' further case is that as regards the marketing of essential items or commodities like rice, marketing fee was never imposed nor was it collected by the respective Market Committees. Market fee was only charged on purchase of paddy, but no market fee was charged in respect of rice in pursuance of the directions issued by the Chief Marketing Officer and this position was till 1.3.93 i.e., after that date the Marketing Committees are insisting the payment of market fee on the rice which is being given or surrendered by the petitioners to the Government or to the agents of the Government under Levy Control Order. The petitioners'' case is that provisions relating to Marketing Regulations are firstly not applicable to the transactions under the Levy Order, which are issued under the Essential Commodities Act in concurrence with the Central Government and secondly they are repugnant to the Levy Order. The petitioners'' case is that

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the produce namely., the rice which is surrendered to the Government or Governmental agencies in pursuance of the Karnataka Rice Procurement Levy Order, 1984 the grading of the rice is provided and the surrender of the rice to the Government on the procurement of rice fixed and the deductions by the Government is being done. In view of Clauses 6, 7 and 8 of the Levy Order, it is obligatory on the petitioners to surrender and to furnish the details regarding purchase, sale and to surrender the levy rice on the Government rate i.e., on the price or rate fixed by the Government. The petitioners case as such is the transactions made or surrenders of the rice made under Levy Control Order is not a transaction of the nature which may amount to sale and as such the collection of market fee in respect of those transactions is illegal and it is the Act which is one to be called to be one without jurisdiction and without authority conferred by law to Karnataka Agricultural Produce Marketing Committees, under the Karnataka Agricultural Produce Marketing (Regulation) Act. The petitioners'' case is that the field is occupied by the Levy Order and the surrender of the essential commodities i.e., rice to the Government agencies under the orders of the Deputy Commissioner or the Government Authorities, is beyond the scope of State and the Marketing Committees, so far as the question of imposing of market fee under Karnataka Agricultural Produce Marketing (Regulation) Act, is concerned and so the market fee is not liable to be charged from the petitioners in respect of the rice supplied to the Government or surrendered to the Karnataka Government under the Rice Procurement Levy Order, 1984.

3. I have heard Sri. B.R. Satenahalli, learned Counsel for the petitioners and Sri. N. Devadas, learned Government Advocate as well as the Counsellor the Marketing Committee Sri. B.G. Sridharan.

4. On behalf of the petitioners Sri. B.R. Satenahalli submitted that the rice surrendered under the Levy Order to the Government or Government Agencies on the basis of procurement price, demand by the Government is not a transaction of sale and it not being a sale, the market fee is not chargeable on it and the petitioners are neither liable for payment of the market fee nor any market fee can be realised from the Government by the petitioners.

5. The learned Counsel submitted that u/s 65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, market fee is leviable and is liable to be collected by the Market Committee from every seller at the rate mentioned therein in respect of the agricultural produce sold in the market area. According to Sub-section (2) of the Act, it is provided that levy and collection of market fee is to be made from the buyer in respect of produce brought by such buyer in the market area at the rate mentioned therein. Learned Counsel submitted that Sub-section 2A of Section 65 of the Act provides the manner in which market fee shall be realised. Learned Counsel submitted that the market fee is really levied on the sale of agricultural produce by the trader, but in the manner as provided under sub-section-(2A). Learned Counsel further submitted that the Government procures the commodities on which the Levy Order is imposed, and the persons

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as petitioners are obliged to surrender the same. It is another thing that procurement price is fixed by the Government, yet there is no transaction of sale or purchase and therefore, there is no question of Marketing Act be applicable. The learned Counsel invited my attention to Clause 3(3) of the Karnataka Rice Procurement (Levy) Order, 1984, and it is provided therein that no stock of rice shall be removed from the mill premises without delivery of the rice relating to such stock in accordance with Sub-clause (2) and without obtaining the release certificate under Clause (8). He also invited my attention to Clause (4) to contend that the Order ordains that no delivery is to be made by the miller or by the dealer before the stock is removed from the mill premises and without obtaining the release certificate, He submitted that in this view of the provisions of the Levy Order, the supply and the transaction is to take place not in the Market or Market Yard but it is to be supplied at the mill premises and it is after the delivery thereof the remaining non levy rice may be removed. So transaction relating to levy rice and its delivery cannot be deemed to have taken place in the Market Yard and when the delivery is compulsory and is to be made on the procurement price by the Government, itself, without any levy or volition or free will in that matter of the petitioners, the transaction of surrender and delivery of the procurement rice or levy rice to the Government, cannot be termed to be sale and therefore the learned Counsel for the petitioner submitted as it does not amount to sale and is not liable to imposition of any market fee and whatever it being collected forcibly or otherwise is illegal.

6. In support of his contention that the levy rice is not safe, learned Counsel for the petitioners made a reference before me to the case of Chhitter Mal Narain Das Vs. Commissioner of Sales Tax, . The learned Counsel for the petitioner further made reference to the Decision of SALAR JUNG SUGAR MILLS LTD. v. STATE OF MYSORE AND ORS 1972 (29) STC 246 Mys. Learned Counsel for the petitioner further made reference to the Decision of Their Lordships of the Supreme Court in the case of. Vishnu Agencies (Pvt.) Ltd. Vs. Commercial Tax Officer and Others, , in support of his contention that surrender or supply of essential commodities under the procurement of Levy Orders issued under the Essential Commodities Act, on the procurement price determined by the State does not amount to be sale. On behalf of the opposite parties, the contentions made on behalf of the learned Counsel for the petitioners have been contested. It has been contended that the market fee leviable on transactions of sale or purchase of notified agricultural produce including paddy and rice. It has further been submitted that the transaction namely the surrender of the fixed quantity of rice by the petitioners under Karnataka Rice Procurement Levy Order to the State Government on the basts of the purchase price determined under the Order is nothing but a sale or transfer of the agricultural produce and market fee is leviable on it and the petitioners are liable to deposit and it is not the concern of the opposite parties whether they realise from the Government. It has been contended that the petitioners'' Counsel is wrong in submitting that the transaction of surrender of rice to the Government under Rice Procurement Order

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is not sale. The learned Counsel further submitted that this has been the view taken by this Court in the Decision given by the Division Bench as well as by learned Single Judge of this Court. The learned Counsel for the opposite parties made a reference to the Decision of the learned Single Judge in Writ Petition Nos. 7069 to 7071 of 1984 decided by the learned Single Judge of this Court on 31.5.1984 Sri Lakshmi Rice Mills and Ors. v. The Chief Marketing Officer of Agricultural. The learned Counsel submitted that this Decision of the learned Single Judge namely Decision of Hon''ble Mr. Justice K.A. Swami, had been affirmed in a Division Bench Decision of this Court delivered in Writ Appeal Nos. 381 to 383 of 1985, vide., Judgment dated 25.2.1985 Shri Lakshmi Rice Mills & Ors. vs The Chief Marketing Officer of Agricultural Produce Marketing Committees. Learned Counsel further made reference to the Division Bench Decision of this Court in Writ Petition Nos. 7614 to 7616 of 1990 decided on 12.7.1991 M/s. Nadiga Industries & Rice Mills vs State of Karnataka, by Hon''ble Mr. S.Mohan, Chief Justice and Hon''ble Mr. Justice N.D.V.Bhat. A reference has also been made to an earlier Decision in Sri Gangadhara Rice Mills Vs. State of Karnataka, . Reference has also been made to the two Division Bench Decisions of the Allahabad High Court in the case of MAHALAXMI RICE MILLS, BAREILLY AND ORS. v. STATE OF U.P., AND ORS 1989 EFR 359. and to the Decision given by the Division Bench of the Allahabad High Court in the case of HIND RICE MILLS, BAREILLY v. STATE OF UP. AND''OTHERS 1991 (1) EFR 537, and on the basis of these Authorities it has been emphatically contended on behalf- of the opposite parties namely Agricultural Produce Market Committee and the learned Government Advocate that the supply of rice by the petitioners to the State Government under Rice Procurement Levy Order is a transaction which amounts to sale within the meaning of the provisions of the Act and as such Marketing Committee is entitled to charge and to realise the market fee from the petitioners. It may be liability of the purchaser in whose favour the sale of rice has been made in the form of levy but the market fee is realisable from the petitioners. It has been contended therefore there is no repugnancy.

7. I have applied my mind to the contentions made on behalf of the petitioner as well as on behalf of the opposite parties.

8. From the perusal of the Petition in the present case, it appears that there is no dispute as to whether there is liability to pay market fee in respect of paddy purchased by the petitioner, even if that paddy from which rice was taken out after husking and a part of which, was surrendered to the Government under Levy Control Order. The petitioners have themselves stated in the Petition that the petitioners are purchasing the paddy in the Market Yard, after paying the market fee in respect of that paddy. So admittedly petitioners do not assert or contend that they are not liable to pay any market fee on the paddy purchased by them in the Market Yard, nor even on the ground that part of paddy converted into rice is surrendered to the Government. Their simple case is that after having purchased the paddy and having paid the market fee is respect of entire paddy purchased by them, they dehisce the paddy into rice and when rice come out,

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under the Control Order they were compelled and required under the Rice Procurement Levy Order, 1984 to surrender certain percentage of the quantity of rice confirming to specifications and that usually taken place at their Mills, on the basis of procurement price. Their further case is that this transaction of surrender of rice under Rice Procurement Levy Order to the Government by them did not amount to sale and therefore it is not sale at all nor a sale in the market yard and therefore that rice itself which has been surrendered to the Government, cannot be said to have been subject matter of sale to the extent of surrender being made to the Government and therefore no market fee is leviable on it u/s 65 of the Act, while the opposite parties denied this assertion. Therefore the principal Question that arises for Consideration in this Writ Petition is whether the petitioners i.e., the millers who after having purchased the paddy and after having paid the market fee in respect of purchase of paddy are liable to pay market fee with respect to the surrender or supply of levy rice by them to the Government under Rice Procurement Levy Order, 1984, deeming it to be a sale and whether such a transaction can be deemed to be a sale. Before this question can be answered it will be in the fitness of things to make a reference to certain materially relevant provisions of the Act. Section 65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 reads as under:-

"65. Levy of Market Fees, - (1) In respect of the agricultural produce sold in a market area, there shall be levied and collected by the market committee thereof, from every seller, market fees at the rate of one percent of the sale proceeds of the produce so sold,

Provided that the State Government may, by order, in public interest exempt any market committee from such levy and collection in respect of any agricultural produce.

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

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

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

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

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

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

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

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

(2B) The Market fee payable under clauses (i), (ia), (ii) or (iii) of Sub-section (2A) shall be paid to the market committee within such time as may be specified in the bye-laws.

9. A perusal of the Section, particularly Sub-section (i) of Section 65 indicates that market fee leviable on the sale of agricultural produce in a market area, and is to be collected from every seller at the rates mentioned therein. Sub-section (2) of Section 65 per se shows that market committee shall levy and collect fee from every buyer in respect of agricultural produce bought by such buyer in the market area. Sub-section (2A) of Section 65 provides the mode as to how it has to be realised.

Section 2(5) of the Act, defines the expression "Buyer" as under: -

" "Buyer" or "Purchaser" means a person who buys or agrees to buy goods."

Sub-section (40) of Section 2 defines the "Seller" as under: -

" "Seller" means a person who sells or agrees to sell goods."

Vide., Section 2(48) of the Act, "Trader" means a person who buys notified agricultural produce either for himself or as agent of one or more persons for the purpose of selling, processing, manufacturing or for any other purpose, except for the purpose of domestic consumption.

10. The question now is what is the meaning of sale.

The expression ''Sale'' is defined vide., Section 54 of the Transfer of Property Act as under :-

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

In Sale of Goods Act, 1930, Section-4 of the Sale of Goods Act defines Sale and Agreement to sell. It reads as under: -

"4. Sale and Agreement to sell.- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the

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buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

11. A reading of Section 4 per se indicates that the sale is a contract partly, where under the contract of sale the property in goods is transferred from seller to buyer but where the transfer of property in goods is to take place in future or at a future time or subject to some conditions thereafter to be fulfilled then that is known as agreement to sell and an agreement to sell becomes sale at the time when the time prescribed for delivery of property in goods elapses or the conditions subject to which the property in goods to be transferred are fulfilled. A reading of these two definitions per se show that the expression ''sale'' indicates a concept of contract and as such ordinarily essential ingredients of contract are to be present. For a valid contract of sale it means, there should be transferor and transferee and both must agree to the same - one offering the other accepting and that consent to the contract should be free one and the act of transfer should be an act of free volition.

12. Section 10 of the Indian Contract Act defines what agreement are contracts. It reads as under:-

"10. What agreements are contacts.- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

13. A bare reading of Section 10 of the Contract Act per se shows that apart from other elements, free consent of the parties is one of the essential ingredients of a contract and of a contract for sale or of sale, apart from other ingredients of competence of the parties to enter into the contract, the lawful consideration and lawful object. A reading of Section 54 of the Transfer of Property Act, Section 4 of the Sale of Goods Act along with Section 10 of the Contract Act per sej reveals that in the matter of sale also, the free consent of the parties should be there. If free consent of the parties is wanting, then there may not be case of sale and it may be something else. Section 3 of the Essential Commodities Act does not define the expression "safe". u/s 3 of the Act, the

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power has been conferred on the Government to control production, supply and distribution of the essential commodities and for that purpose power has been conferred on the Government of India that it may by order, provide for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. Sub-section (2) further provides that an order issued under sub-sectional) may also provide for prohibiting, withholding from sale of essential commodity ordinarily kept for sale, as well as for requiring any person holding in stock, or engaged in the production or in the business of buying or selling, of any essential commodity, to sell the whole or a specified part of the quantity held in stock or produced or received by him, or in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Government, Central or State or to an officer or to the agent of such Government or to Corporation owned by such Government or to any specified persons. Under this Section the person holding the stock or engaged in production of essential commodity is compelled to transfer the delivering goods as per order and the persons has no volition or free will in such matters. Under Karnataka Rice Procurement (Levy) Order, the procurement price is paid to the stock holder who is required to supply and unless he has surrendered the definite quantity of levy rice and unless he has been issued the Form-D Certificate by the Tahsildar, he is not entitled to take out anything from his stock for sale. Really the surrender of the levy or the quantity of goods under Rice Procurement Levy Order becomes compulsory and he has got no free consent such as the one required to be for the purpose of entering into contract of sale. In the case of Chhitter Mal Narain Das v. Commissioner of Sales Tax, the Bench consisting of the Hon''ble Two Judges of the Supreme Court had been pleased to take the view that delivery of essential commodity, such as wheat or rice under the provisions of the Wheat Procurement (Levy) Orders issued under Essential Commodities Act, is not sale on account of the fact that in Their Lordships'' opinion, there is no scope of negotiations and there is no contract of sale. Subsequently a question was raised in the case of Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer to the effect whether in the context of the Control Orders issued by the Government relating to supply and the distribution of essential commodity (cement in that case), the transactions under which the appellants in that case supplied the cement to the persons who were issued permits by the authorities to obtain commodity from appellants, involved an element of volition or consensuality if the transactions would amount to sale but not otherwise. After having examined that question in the context of the provisions of the Sale of Goods Act and the Control Orders, issued under the Essential Commodities Act and the various Authorities referred before Their Lordships, Their Lordships of the Supreme Court observed in paragraphs 32 and 33 as under:-

"32. These limitations on the normal right of dealers and consumers to supply and obtain the goods, the obligation imposed on the parties and the penalties prescribed by the Control Order do not, in our opinion, militate against the

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position that eventually, the parties must be deemed to have completed the transactions under an agreement by which one party bound itself to supply the stated quantity of goods to the other at a price not higher than the notified price and the other party consented to accept the goods on the terms and conditions mentioned in the permit or the order of allotment issued in its favour by the concerned authority. Offer and acceptance need not always be in an elementary form, nor indeed does the Law of Contract or of Sale of Goods require that consent to a contract must bo express. It is common place that offer and acceptance can be spelt out from the conduct of the parties which covers not only their acts but omissions as well. Indeed, on occasions, silence can be more eloquent than eloquence itself. Just as correspondence between the parties can constitute or disclose an offer and acceptance, so can their conduct. This is because, law does not require offer and acceptance to conform to any set pattern or formula.

33. In order, therefore, to determine whether there was any agreement or consensuality between the parties, we must have regard to their conduct at or about the time when the goods changed hands. In the first place, it is not obligatory on a trader to deal in cement nor on any one to acquire it. The primary fact, therefore, is that the decision of the trader to deal in an essential commodity, is volitional. Such volition carries with it the willingness to trade in the commodity strictly on the terms of Control Orders. The consumer too; who is under no legal compulsion to acquire or possess cement, decides as a matter of his volition to obtain it on the terms of the permit or the order of allotment issued in his favour. That brings the two parties together, one of whom is willing to supply the essential commodity and the other to receive it. When the allottee presents his permit to the deafer, he signifies his willingness to obtain the commodity from the dealer on the terms stated in the permit. His conduct reflects his consent. And when, upon the presentation of the permit, the dealer acts upon it, he impliedly agrees to supply the commodity to the allottee on the terms by which he has voluntarily bound himself to trade in the commodity. His conduct too reflects his consent. Thus, though both parties are bound to comply with the legal requirements governing the transaction, they agree as between themselves to enter into the transaction on statutory terms - one agreeing to supply the commodity to the other on those terms and the other agreeing to accept it from him on the very terms. It is therefore not correct to say that the transactions between the appellant and the allottees are not consensual. They, with their free consent, agreed to enter into the transaction."

In paragraph-52, Their Lordships further observed as under:-

"52..... Decisions in cases of ''compulsory acquisition'', where such acquisition is patent as in Kirkness 1955 AC 696 or is inferred as in Chhitter Mal Narain Das Vs. Commissioner of Sales Tax, fall in a separate and distinct class. The observations of Lord Reid in Kirkness that ''sale'' is a nomen juris - the name of a particular consensual contract - have therefore to be

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understood in the context in which they were made namely, that compulsory acquisition cannot amount to sale....."

14. A perusal of paragraph-44 per se show that the Supreme Court in the Vishnu Agencies case distinguished the Decision of Chitter Mal Narain Das''s case. The material Observations read as under:-

"This decision is clearly distinguishable since the provisions of the Wheat Procurement Order were construed by the Court as being in the nature of compulsory acquisition of property, obliging the dealer to supply wheat from day to day. Cases of compulsory acquisition of property by the State stand on a different footing since there is no question in such cases of offer and acceptance nor of consent, either express or implied."

Their Lordships further observed the position of law as under: -

"The true position in law is as stated above, namely, that so long as mutual consent, express or implied, is not totally excluded the transaction will amount to a sale. The ultimate decision in Chitter Mal''s case can be justified only on the view that Clause-3 of the Wheat Procurement Order envisages compulsory acquisition of wheat by the State Government from the licensed dealer."

15. A perusal of this case per se shows that the view expressed in Chhitter Mal Narain Das''s case has not been overruled instead has been distinguished by Their Lordships of the Supreme Court in the case of Vishnu Agencies, and in accordance with the view of the Vishnu Agencies case as well, the cases of compulsory acquisition of property by the State stand on different footing, since there is no question of offer or acceptance nor there is any question of consent and where there is compulsory acquisition of property, it will not amount to sale. As such in order to determine the material question it is necessary to refer to the provisions of the Karnataka Rice Procurement (Levy) Order, 1984. Clauses, 3, 4, 5, 7 and 12 of the Levy Order read as under:-

"3. Miller to sell rice:- (1) Every miller shall sell everyday beginning with the date of commencement of this order to the State Government or the purchase agent at the purchase price 33 1/3 per cent of the total quantity of rice conforming to specifications obtained by milling paddy owned by him in his rice mill everyday.

Provided that these provisions shall not apply to Basmati rice meant for export from the State.

(2) The rice required to be sold to the State Government or the purchase agent under Sub-clause (1) shall be delivered by the miller to purchaser agent or to such other persons as may be authorised by the State Government or the purchase agent to take such delivery.

(3) No stock of rice shall be removed from the mill premises without delivery of the rice relating to such stock in accordance with Sub-clause (2) and without obtaining a release certificate under clause-8.

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(4) Every miller shall mill the paddy acquired or owned by him before the close of the marketing season.

Clause-4. Dealer to sell rice:- (1) Every dealer shall sell to the State Government or to the purchase agent at the purchase price 33 1/3 per cent of the total quantity of -

(a) each variety of rice conforming to specifications got milled by him every day out of his stocks of paddy, and

(b) each variety of rice conforming to specifications purchased or otherwise acquired by him for the purpose of sale from persons other than millers or dealers;

Provided that these provisions shall not apply to Basmati rice meant for export from the State.

(2) No stock or rice got milled by the dealer shall be removed from the mill premises without delivery of the rice relating to such stocks in accordance with Sub-clause (1) (a) : and without obtaining a release certificate under clause-8.

Provided that nothing contained in Clause 3 and in this clause shall apply to the rice obtained for personal consumption by a cultivator form the stocks of paddy grown by him or by an agricultural labourer out of the stocks of paddy earned by him as wages, subject to the following conditions, namely:-

(i) that the cultivator shall not mill more than five quintals of paddy and the agricultural labourer shall not mill more than one quintal of paddy at a time in a month; and

(ii) that he shall produce from Village Accountant and when there is no resident Village Accountant from the concerned Revenue Inspector, a certificate that the paddy so milled is for his personal consumption. Such a certificate shall be handed over to the miller.

(3) Every dealer shall get the paddy purchases or otherwise acquired by him milled into rice before the close of the marketing season.

Clause-5:- Furnishing of Particulars :- Every dealer and every miller who comes into possession of any stock of paddy or rice not being his own shall;

(a) furnish full particulars of the owner or other persons from whom he has secured the possession of such stock to the Enforcement Officer or to such other person as may be authorised by him in this behalf;

(b) prove, when so required, to the satisfaction of the Enforcement Officer or the person authorised by him in this behalf, that he has no power of disposal by sale or otherwise over such stocks of paddy or rice;

(c) continue to keep such stock in his custody and not part with its possession in any manner whatsoever until a direction is received by him from the

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Enforcement Officer, or the person authorised by him, regarding the manner of disposal of such stock.

Clause-7 : Delivery of Rice:- (1) The rice required to be sold to the State Government or the purchase agent under clauses 3 and 4 shall be delivered by the miller or the dealer, as the case may be, to the State Government or the purchase agent in such lots, in such manner, at such place and at such time as the State Government or the purchase agent may direct.

(2) The rice required to be sold under Clause 3 or Clause 4 as the case may be, shall conform to the specifications of rice prescribed in Schedule III and IV applicable to the respective varieties or rice and shall not contain refractions beyond the rejection limits shown therein and in case any stock of rice offered for sale does not conform to such specifications, it shall be reconditioned or rectified by the miller or the dealer, as the case may be, before being offered for sale so as to bring it in conformity with such specifications.

Clause-12. Power of Entry, Search and Seizure etc.,:-1 (1) Any Police Officer not below the rank of Sub-Inspector of Police and any officer of the Department of Food and Civil Supplies not below the rank of a Food Inspector or any officer of the Revenue Department not below the rank of a Revenue Inspector, may with a view to securing compliance with this order, or satisfying himself the provision of this order have not been contravened;

(a) enter and search any place, premises, animals, vessels, vehicles or other conveyances in which he has reason to believe that a contravention of this order has been, is being or is about to be committed;

(b) seize, remove or authorise the seizure or removal of any paddy or rice in respect of which he has reasons to believe that a contravention of this order has been, is being or is about to be committed along with the packages, coverings or receptacles in which such rice or paddy is found or the animals, vessels, vehicles, or other conveyance used in carrying such rice or paddy and thereafter shall take or authorise the taking of all measures necessary :-

(i) for securing the production of the rice or paddy so seized before the Deputy Commissioner as required by Section 6A of the Essential Commodities Act, 1955 (Central Act 10 of 1955) or in court and,

(ii) for securing production of such packages, coverings, receptacles, vessels, vehicles or other conveyances and animal, so seized before the Deputy Commissioner or Court if so required, and for their safe custody pending such production.

(c) require the owner, occupier or any other person incharge of any place, premises, vehicles, or vessel in which he has reason to believe that any contravention of the provisions of this order has been, is being or is about to be committed to produce any books or accounts or other documents showing transactions relating to such contraventions;

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(d) take or cause to be taken, extracts from or copies of any documents showing transactions relating to such contraventions which are produced before him,

(2) The provisions of Sections 100 and 165 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to search and seizure, shall, so far as may be apply to searches and seizures under this order."

16. A reading of Clause-3 of the Levy Order per se shows that the Miller is deemed to sell every day 33 1/3 per cent of the total quantity of rice conforming to the specifications obtained by milling paddy owned by him in his rice mill every day to the State Government or to the purchase agent i.e., Food Corporation of India. It further directs the miller that the rice so required to be sold to the Government or purchase agent shall be delivered by the miller to the purchase agent or to such person as may be authorised by the Government or by purchase agent to take the delivery. Sub-clause (3) of Clause-3 is very important provision and it per se shows that without making delivery of the rice relating to stock as required under sub-clauses (1) and (2), the miller is not entitled to remove any part or any portion of stock of rice. Sub-clause (3) ordains that no stock of rice shall be removed from the mill premises without delivery of rice relating to such stock in accordance with Sub-clause (2) and without obtaining the release certificate under Clause (8). Similarly Sub-clause (2) of Clause-4 also makes a similar provision to the effect that no stock of rice got milled by a dealer shall be removed from the mill premises without delivery of the rice relating to such stocks in accordance with Sub-clause (1)(a) and without obtaining release certificate. Clause-6 of the Levy Order puts a restraint on transportation and movement of rice and paddy and it provides that no person shall transport the rice to any place outside the State in respect of which release certificate has not been obtained. Clause-7 of the Levy Order ordains that the miller or the dealer as the case may be, it shall deliver the rice which is required to be sold to the State Government or to the purchase agent, under Clauses-3 and 4, to the State Government in such lots, in such manner, at such places and at such time, as the State Government or the purchase agent may direct. A reading of Clause-8 per se shows that until and unless that delivery has been made of the levy rice to the State Government or to the purchase agent i.e., the Food Corporation of India, as per Clauses - 3, 4 and 7, a person is not entitled to the grant or issuance of release certificate. It is after the delivery of the levy rice has been made in accordance with Clause-7 of the Order, then as per Clause-8 of the Levy Order, the licensed miller or the licensed dealer may move an application in Form-C to the Deputy Commissioner for issue of release certificate for the purpose of sale or transportation of levy free rice inside or outside the State, and along with that application the applicant i.e., the licensed miller or dealer is required to file the receipt in original issued by the Purchase Officer in respect of delivery of levy rice. It is after that has been completed, then as per Sub-clause (3) of Clause-8, the Deputy Commissioner is ordained to issue immediately or within 10 days, the release certificate for movement and disposal of levy free rice. Clause-9 of the Order requires the miller and dealer to maintain the accounts and registers

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indicating the details of stock of paddy and rice levy as well as the levy rice delivered in Form-A and is required to furnish returns. Clause-12 of the Order, confers power of entry, search and seizure by a police officer not below the rank of Sub-Inspector and on a officer of the Food Department not below the rank of Food Inspector to enter and search any place with a view to secure the compliance of the Order and to satisfy that the provisions of the Order have not been contravened. They have been conferred power to seize and remove or to authorise seizure and removal of any paddy or rice in respect of which the person inspecting the premises has reason to believe that a contravention of the Order has been or is being or is about to be committed as indicated in Clause-12. A complete reading of the Order per se reveals that the obligation to deliver the specified quantity of the rice as indicated in Clauses 3 or 4 has been created and the miller or the dealer is bound to surrender and deliver the levy rice every day and until and unless he has done so, he is not entitled to move or to remove anything from the rice stock for sale to any person nor for transportation out side the State. A reading of these Clauses further shows that there is no volition left with the miller or the dealer as the case may be in the matter of delivery of requisite quantity of rice as indicated in Clauses-3 and 4. Really Clause 3 or 4 compel the licensed miller or dealer to deliver the rice to the State Government or to the purchase agent namely, the Food Corporation of India every day and until and unless they have done so in accordance with the requirements of Clauses 3 and 4 and 7, in view of Sub-clause (3) of Clause 3 and Sub-clause (2) of Clause-4, the miller or the dealer have been prohibited from removing the stock or part of stock from the mill and the second restraint upon them is that they have to obtain the Release Certificate and Release Certificate should only be granted as per Clause-8 of the Order, after the delivery of levy rice has been made and then the licensed miller or the licensed dealer can apply for grant of Release Certificate for the purpose of sale or transportation of levy free rice inside or outside the State. The scheme of the provisions of the Karnataka Rice Procurement (Levy) Order, 1984 in my opinion does not leave the miller or the dealer in particular of having his free consideration or consent, as firstly it ordains and puts an obligation upon them to compulsorily deliver the levy rice i.e., 33 1/3rd percent of the stock every day of the rice to the State Government or to purchase agent and to deliver the same as per the requirements of Clause-7 and until and unless it has been done as per Clause-8, he is not free even to sell or to transport, his even that portion of rice which is levy free and further Clause-12 also indicates that the authorities have to look into the matter and they have got power to seize the quantum of rice or paddy which the officer authorised to inspect the stock, accounts has reason to believe to have been retained in contravention of the provisions of Levy Control Order.

17. In my opinion, as such the cases of surrender of the commodity like wheat to the Government in such cases as the one covered by the present Karnataka Rice Procurement (Levy) Order, 1984 does not leave the least opportunity of free consent or volition in favour of miller or dealer. It is a case really in the nature of

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compulsory acquisition of the specified quantity of commodity by the State Government from the stock of the miller or the dealer,

18. As I have mentioned earlier that in the case of Vishnu Agencies, Their Lordships of the Supreme Court have laid down that true position in law is that so long as mutual consent - express or implied is not totally excluded, transaction will amount to sale and cases of compulsory acquisition of property by the State Government stand on a different footing, since there is no question in such cases of offer and acceptance nor of consent - either express or implied.

The present case stands on same footing as the case of levy wheat under U.P., Wheat Procurement Levy Order. In the case of Chhitter Mal Narain Das v. Commissioner of Sales Tax, Their Lordships of the Supreme Court opined that under Clause-3 of the UP. Wheat Procurement (Levy) Order, 1959, the machinery set up was for compulsory acquisition of the stock of licensed dealer by the State Government. In my opinion the order in question i.e., Levy Order in the present case Karnataka Rice Procurement Levy Order, 1984, leaves no room for exercise of free judgment, or discretion to the miller or the dealer. It dos not leave an opportunity of dissension under which the miller or dealer is obliged to deliver that quantum of levy rice and until and unless he does that the miller or the dealer is not a free agent to deal with levy free rice. So this appears to be a case of compulsory acquisition of the 33 1/3rd per cent of the total stock of rice and that being the position, there being complete lack of free consent in the matter of supply of levy rice, the sale transaction cannot be said or termed to be a sale even in accordance with the law laid down in Vishnu Agencies case, in which the decision of Their Lordships of the Supreme Court in Chitter Mal Narain Das''s case has only been distinguished with the observation that in cases where there is compulsory acquisition, there cannot be a sale and that in the case of U.P., Wheat Procurement (Levy) Order, it had been taken to be a case of compulsory acquisition.

20. Thus in accordance with the law laid down in M/s. Chhitter Mail Narain Das case, I am of the opinion that supply of rice under Karnataka Rice Procurement (Levy) Order, 1984, cannot be termed to be a sale. In my opinion Their Lordships of the Supreme Court in Vishnu Agencies case have not deviated from the law laid down in M/s. Chhitter Mal Narain Das''s case instead they have confirmed the view that in cases where there is not the least occasion for exercise of volition or free consent, such as the case of compulsory acquisition of wheat, in the case of M/s. Chitter Mal Narain Das, the transaction of that nature cannot amount to sale.

21. That being the position that as regards proportion of the levy rice surrendered to the Government or purchase agent under the Order gf 1984, the sale transaction cannot be termed to be the transaction of sale and as market fee is leviable in respect of commodity sold or purchased in the market area, the market fee is ieviable, but as mentioned earlier the above mentioned transaction not being a sale at all, market fee is not ieviable on it u/s 65 of the Karnataka

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Agricultural Produce Marketing Act.

22. the Decision in the case of Nadiga Industries and Rice Mill v. State of Karnataka and Ors. referred to reads as under: -

"These writ petitions raise identical issues as were dealt with by us in the case reported in Sri Gangadhara Rice Mills Vs. State of Karnataka, . Hence, applying the same these petitions will stand dismissed."

A perusal of this order per se indicate no discussion on the point or law and in order to see whether this can be said to he precedent, a consideration has got to be made to the Decision of Gangadhara Rice Mills case. A perusal of Gangadhara Rice Mills case per se shows that the point which has arisen in the present case was not involved in Gangadhara Rice Mills case, Following quotation of paragraph-2 and last part of paragraph-4 of that decision will per se indicate what point has been involved there and what Decision has been given. Para-2 reads as under:-

"The point urged before us is that under Section-65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (''the Act'' for short), it is not permissible to levy such market fee on the same commodity twice, one at the stage of paddy and later at the stage of rice which amounts to multipoint levy and therefore, it will be against Section-65 of the Act."

A perusal, of para-2 further will show that at the Bar in support of the contentions, reference was made to two Decisions of Their Lordships of the Supreme Court in the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, , and to the Decision of Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, . The Division Bench after consideration of these two cases and after having referred to Section 65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, laid it down as under:-

"From the reading of the above Section it is clear that there is no bar upon the number of sales that could take place in respect of a commodity which has been notified. The conclusion of the learned single Judge in this regard, in our considered view, is correct."

23. Thus a perusal of Gangadhara Rice Mills case and the order of the Division Bench in the matter of M/s. Nadiga Industries and Rice Mill, per se reveal that the question which is involved in the present case has not been before the Division Bench in those two cases. In the present Writ Petition the question involved is whether rice or paddy surrendered or delivered to the State Government or to the Food Corporation of India, under and in pursuance of obligation fastened under the Karnataka Rice Procurement (Levy) Order, 1984, can be termed to be a sale or not? That question has not been involved in those two Cases. In the two Rulings relied by the learned Counsel for the Marketing Committee, the question was only whether it is permissible to levy market fee at

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a stage of paddy and at the stage of rice as well as at multiple points of sale of a commodity. So these Decisions for the purpose of present case cannot be treated to be precedent and binding on this Court. A Ruling is a precedent in respect of a matter which it decides and which has been decided after hearing before it and on the point decided by it but not on a question which has not been before the Court.

24. On behalf of the opposite parties reliance was also placed on the Decision of the learned Single Judge of this Court in Writ Petition Nos. 7069 to 7071 of 1984 and it was contended that the Decision of the learned Single Judge (Hon''ble Mr. Justice K.A. Swami) has been affirmed by Division Bench of this Court in Writ Appeal Nos. 381/1985 decided on 25.2.1985. It may be mentioned here that the Writ Appeals which have arisen from the Judgment of the learned Single Judge, in above mentioned Writ Petition Nos. 7069-7071/84 had been rejected out right with the order which read as under:-

"Heard. Rejected."

In view of this order of the Division Bench affirming the Single Judge''s decision, it would be just and proper to refer to the Judgment of the learned Single Judge, and it is to be examined what is the principle of law that has been laid down by the learned Single Judge, which has been affirmed by the Bench, in the context of the question involved and argued before the learned Single Judge, Vide., paragraph-3 of the Judgment it has been observed by the learned single Judge as under:-

"Though several facts are alleged and contentions are raised in these petitions, but Sri. R. Gopal learned Counsel for the petitioners, has urged on the following points :

(i) that the market fee is not payable by the petitioners on the value of the paddy or rice they purchase and surrender or have surrendered towards levy either under the Levy Order, 1981 or the Levy Order, 1983;

(ii) that the amount demanded under the various notices is not correct."

Learned Single Judge elaborated the contention of the learned Counsel for the petitioner in that case, which has been to the following effect :-

"When the petitioners purchase paddy or rice from the growers, under the Levy Orders referred to above, they are required to surrender 50 per cent of the purchase they make towards levy; therefore, in effect, 50 per cent of the purchase made by them will be for and on behalf of the State Government, therefore, in respect of the 50 per cent of the purchase of rice or paddy made by them cannot be made liable to market fee."

Therefore, the question that had been raised before the Court in the above case of Laxmi Rice Mills and others has been to the effect, whether the dealer is liable to pay the market fee on the purchase of the paddy or rice by him, particularly

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50 per cent of the quantum of paddy or rice purchased by him, which he after purchase is required at a subsequent stage to surrender to the Government or the purchase agent, the learned Single Judge referred this transaction of purchase of paddy or rice by the dealer or miller from the transaction of surrender of 50 per cent of such purchase towards levy under Levy Orders. The purchase of rice or paddy in the market by petitioner precedes surrender of levy, Inasmuch as surrender of levy rice takes place only subsequent to the purchase, the liability to pay market fee rises as soon as the purchase of notified agricultural produce in the market area takes place.

25. Thus the question before the Court was not to the effect that the surrender of levy rice under the levy orders was a sale in between the miller or the dealer and the Government The question with which the Court was concerned in that case was that, the transaction that had taken place earlier to surrender namely the sale of paddy or rice by a producer or by a miller to another miller or another dealer. The question was whether purchaser of the rice from the producer or rice from the miller, liable to be subjected to payment of market fee in respect of purchase made by him. The learned Single Judge held that the said transaction was distinct and separate from the transaction of surrender of the agricultural produce covered by Levy Order or to the extent it was covered by the Levy Order. The learned Single Judge, therefore, held that on a purchase made by a dealer from another dealer or from a producer thereof, the purchaser is liable to pay market fee, even if he at a subsequent stage is required to surrender a part thereof to the Government. The learned Single Judge further rejected the contention of the learned Counsel for the petitioners to the effect that the purchaser of the paddy or rice to the extent of 50 per cent cannot be deemed or considered to be making of purchase on behalf of State Government. Therefore in the case of M/s. Laxmi Rice Mills and Others, no such question was involved or raised nor was decided as is involved in the present case. There is no dispute in the present Petition whether the present petitioners were liable to pay market fee on the paddy purchased by them in the market area out of which rice and 50 per cent thereof, they have to surrender. Here it is admitted position that the petitioners have paid the market fee over entire paddy purchased by them in the market area from the producers. Here the only question involved is whether in respect of transaction of surrender of levy rice, the petitioners are liable to pay the market fee irrespective of the question whether it is realisable from the Government by the petitioners and whether the transaction of surrender of the levy rice under Rice Procurement (Levy) Order could be said to be a transaction amounting to sale of the quantum of rice which the petitioners had to surrender under Karnataka Rice Procurement (Levy) Order, issued under Essential Commodities Act. So the Decision referred to in the case of Gangadhara Rice Mills and others - petitioners, namely Writ Petition Nos. 7069-7071/84 decided on May 31, 84 as affirmed by the Division Bench in Writ Appeal Nos. 381 to 383/85 vide., Judgment and Order dated 25.2.85, do not apply to the present case and the Decision does not lay down any law on the subject or on the

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question involved in the present case so as to operate as a binding precedent. A decision is a binding precedent in respect of law laid down after hearing the parties on the question involved therein. As the question in the present case was quite different from the one that has been raised in the above mentioned Writ Petition in M/s. Laxmi Rice Mill''s case, in my opinion these Decisions are of no assistance to arrive at a conclusion, because here the only question is, whether the transaction of surrender of levy rice by the miller to the Government or purchasing agent namely - the Food Corporation of India, amounts to sale or not and whether the market fee is leviable in respect of that transaction of surrender.

26. That the case of Salar Jung Sugar Mills Ltd. v. State of Mysore And Ors. (S.C.,) stands on a different footing. The following observations made in that case are relevant to show that the aforesaid case does not apply to the present case and is distinguishable on the facts and in the context of the Control Order. -

"The assent must be mutual and bind both sides. The proposal by one man must be accepted by another and this acceptance must be unconditional. The assent must be communicated to the other party or some act must be done which the other party has expressly or impliedly offered to treat as communication, Judged by these standards in the forefront exists the agreement between the parties in the present case. The statutory orders required parties to enter into agreement. The parties did infact enter into agreements. The agreement contains intrinsic evidence that the growers agreed to sell and the factory agreed to buy goods,"

It is at page 263 it is further observed as follows :-

"The agreement between the factory owner and the sugarcane grower furnishes the guide to ascertain the real character of the transaction between the parties. These are the features. The factory agrees to buy. The grower agrees to sell. It is true that 95 per cent of the sugarcane will be sold. The parties have the choice to increase the quantity above 95 per cent. The quantity to be bought and sold is cultivated or to be cultivated by the grower.

The delivery is to be at the factory. Delivery will be in such lots, on such dates and at such time as shall be agreed upon. The mode of delivery may also be within the scope of agreement. The grower can bargain for higher price. The sugarcane grower can . ask for payment in advance. Payment may be in cash or jn kind. The sugarcane will be accepted after inspection. There is scope for rejection of goods. Various columns in the agreement indicate the villages where sugarcane is to be cultivated and the names of the varieties of sugarcane to be cultivated. The last two columns are estimated quantity offered to be delivered and the period of delivery. All these features indicate with unerring accuracy that there is offer, inspection and appropriation of goods to the contract. The goods will be accepted by the factory after inspection and price will be paid on delivery. The mutual assent is not only implicit but is also explicit..... The agreements speak of inspection of goods. Inspection and appropriation of unascertained goods indicates not only freedom in the formation but also in the performance of

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contracts.

At page-264 Their Lordships observed as under:-

The Control Orders are to be kept in the forefront for appreciating the true character of transactions. It is apparent that the area is restricted. The parties are determined by the order. The minimum price is fixed. The minimum quantity of supply is also regulated. These features do not complete the picture. The entire transaction indicates that the parties agree to buy and sell. The parties choose the terms of delivery. The parties have choice with regard to obtaining supply of a quantity higher than 95 per cent of the yield. The parties can stipulate for a price higher than the minimum. The parties can have terms for payment in advance as well as in cash. A grower may not cultivate and there may not be any yield. A factory may be closed or wound up and may not buy sugarcane. A factory can reject goods after inspection. The combination of all these features indicates that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price. Transactions of purchase and sale may be regulated by schemes and may be liable to restrictions as to the manner or mode of sale. Such restrictions may become necessary by reason of coordination between production and distribution in planning the economy of the country. The contention of the appellants fails.

The transactions amount to sales within the meaning of the Mysore Sales Tax Act."

27. The above observations will show that Control Orders ought to be kept in view in the forefront for appreciating the true character of transaction. In the case of Salar Jung Sugar Mills Ltd., Their Lordships arrived at a conclusion that there was scope for assent and the agreement had to be entered into by mutual assent. So in that case the law has been laid down in the context of the facts of the case and in particular on the basis of the facts and circumstances emerging which indicated the emergence presence of aspect of mutual assent. In Salar Jung Sugar Mills'' case Their Lordships considered the case of Chhittarmal and opined that the case of compulsory acquisition or delivery of goods stand on a different footing, particularly where there was no contract between the licensed dealer and the State, pursuant to which goods were delivered to the State Government. They took the view that in that case, an obligation to deliver arose out of the statute and there was no volition of licensed dealer, the sources of the obligation in the case of Chhitter Mal Narain Das''s was not to be found in consensus into a statutory order and the statutory order did not envisage any consensual agreement, nor did require the State to enter into a formal agreement. Thus principles in the case of Chhitter Mal Narain Das, stood continued to be operative when it held that when surrender of the levy goods is made under the Statutory order compulsorily and non compliance with the same may result in penal action and in such cases there is no question of any contractual or consensual contract and particularly where this levy order did not concede or provide for any contractual transaction between the miller or the

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dealer or supplier and the Government, the transaction beyond any doubt may not amount to be a sale. That view appears to have been upheld and maintained and the present case is the one which is covered by the dictum laid down in the case of Chhittarmal Narain Das. In my opinion the Decision given in the case of Union Territory of Chandigarh Vs. Amrit Roller Flour Mills, is also not applicable to the facts of the present case, because in that case there was an element of choice with the respondents of that case to accept the supply of the wheat from the Government and to carry on that business in supply of atta, maida and suji emerging there from. The respondents in that case carried on the business as the agents, and distributors of atta, maida or suji to supply the same to the dealers of permit. That case stood on the same lines as of Vishnu Agencies case where Vishnu Agencies (Pvt) Ltd., carried on the business as agents and distributors of cement in the State of West Bengal, which was an essential commodity and under Cement Control Orders the Vishnu Agencies would supply cement to the persons in whose name the allotment order or permits were issued. So, there was atleast some element of choice and volition. It was open to the Vishnu Agencies or to the Amrit Roller Flour Mills to under take or to continue with the trade or business as stockists of either cement or suji etc., and to deal in Government articles i.e., they were selling to the persons specified that could be said in that transaction. There was no complete lack of volition as in the present case. That case stands on a different footing and the facts of the case stands covered by dictum of law laid down in Chhitter Mal''s case and as such I am of the opinion that the transaction in the present case namely supply of the levy rice under Karnataka Rice Procurement (Levy) Order by the Miller to the State Government or to purchasing agent namely the Food Corporation of India could not be termed to be sale as the nature of the transaction in view of the provisions of the Levy Orders appears to be in the nature of compulsory acquisition by the State Government from the stock of rice or paddy belonging to the petitioners i.e., millers or licensed dealers and as such in such transaction there is complete lack of volition or free consent or consensual consent and as such it cannot amount to sale and therefore in my view it cannot be taken to be the transaction of sale giving rise to liability to levy of market fee. With all respects I find myself unable to follow the view laid by the Decisions of the Allahabad High Court and those cases which have been cited at the Bar stand on language of the particular Act.

28. Thus considered, I am of the opinion that as regards the rice surrendered or supplied or delivered by the millers the petitioners under Levy Control Order, i.e., to the extent they are bound to supply under Levy Control Order and the transaction relating thereto cannot be subjected to market fee, as there is no transaction of sale.

29. In this view of the matter, I am of the opinion that the Petition should be allowed. The petitioner is entitled to the relief claimed.

30. Let a Writ of Mandamus, be issued to the respondents not to demand and

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collect the market fee from the petitioners in respect of the transactions, covered by the Karnataka Rice Procurement (Levy) Order and the surrender of rice made by the petitioners to the Government or purchasing agent i.e., Food Corporation of India, under the above Levy Order. The Writ is thus allowed. Costs made easy.

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