

(1990) 02 MAD CK 0037

In the Madras High Court

Case No : Writ Petitions No"s. 3674 and 3675 of 1985

Sekar Coffee Manufacturing Company	APPELLANT
Vs	
Coffee Board and another	RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

Citation : (1990) 77 STC 318

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Advocate : Sundara Swamy for K. Srinivasan, for the Appellant; K.J. Chandran for M/s. Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

K.S. Bakthavatsalam, J.—The prayer in the Writ Petition No. 3675 is as follows :

..... to issue a writ of mandamus or appropriate writ or direction or order in the nature of writ and directing the respondents to refund the amounts

already collected by the respondents by way of contingency deposit from the petitioner and pass such other order ...

2. The petitioner, a coffee manufacturing company, is doing business for more than 30 years. The petitioner-company takes part in the coffee pool

auction whenever and wherever such auction is held by the Coffee Board, and the petitioner-company used to bid at the auction on the marginal

release price fixed by the Coffee Board and the petitioner, being a successful bidder takes delivery of the coffee seeds from the godown in the

State of Tamil Nadu after depositing the necessary bid amount and other dues. It is alleged in the affidavit that so far as the function of the Coffee

Board is concerned, its rights and duties are governed by the provisions of the Coffee Act, 1942, that under the provisions of the enactment, every

grower of coffee has to get himself registered and must deliver its marketable coffee to the Coffee Board, that a separate provision has also been

made regarding the finance of the Board and that the said provision deals with a general fund and a pool fund, as provided under sections 31 and

32 of the Coffee Act. It is further alleged in the affidavit that the general fund would consist of all amounts paid to the Board by the Central

Government under sub-section (1) of section 31 of the Coffee Act, and all sums transferred to the General Fund under the proviso to sub-section

(2) of section 32 and all fees levied and collected by the Board under the Act, and that the Pool Fund shall be credited with all sums realised by

sales by the Coffee Board from the surplus pool. It is also alleged in the affidavit that the Government of Karnataka effected an amendment to the

karnataka Sales Tax Act in the year 1970 by which section 6 was inserted therein by which a levy of purchase tax was made on goods transferred

from Karnataka to other States, otherwise than by sale, that pursuant to the said amendment, the Government of Karnataka, through the

Commissioner for Sales Tax of Karnataka levied the purchase tax from 1974-75 onward, that the said demand has been challenged by the Coffee

Board in W.P. Nos. 15536 to 15540 of 1982 before the High Court of Karnataka and that those writ petitions were pending when these writ

petitions came to be filed. Now it transpires the High Court of Karnataka has dismissed the above-mentioned writ petitions on 16th August, 1985

[See Coffee Board v. Commissioner of Commercial Taxes 1985] 60 STC 142 and it was affirmed by the Supreme Court on 11th May, 1988,

which is reported in Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others, . The case of the

petitioner herein is that when the cases were pending before the High Court of Karnataka, the Coffee Board demanded and collected contingency

deposits at 6.45 per cent from the wholesale dealers in Tamil Nadu, that in order to meet the said contingency, the Coffee Board issued a circular

dated 16th May, 1984, to all pool sale dealers to provide for meeting the contingency liability of purchase tax in respect which the said writ

petitions were pending before the High Court of Karnataka at that time, that the said circular came to be issued after a meeting of certain pool sale

dealers and after discussion, that in and by virtue of the circular, the Coffee Board makes it a condition that the coffee purchased by a pool sale

dealer at each auction will be delivered only if the dealer pays at the time of taking delivery, a contingency deposit at the rate of 6.45 per cent on

the value of the stocks. It is further alleged in the affidavit that the said demand was protested by the dealers stating that the Coffee Board had no

jurisdiction to levy such contingency deposits nor the Rules framed under the Act authorise such a levy, that in spite of the protest the Coffee

Board continues to demand the contingency deposit and that the petitioner had to deposit the aforesaid contingency deposit under protest. It is

also alleged by the petitioner that it has deposited nearly Rs. 6 lakhs by way of contingency deposit and it has been collected illegally and without

jurisdiction. It is further alleged by the petitioner that the Coffee Board can only make such levies that are permissible under the Coffee Act or the

Rules made thereunder, that there is no provision either under the Act or under the Rules authorising such levy, that the Coffee Board cannot by a

circular say that the goods sold in the pool sale of auction will be delivered only on making the contingency deposit and that the demand for

contingency deposit paid is clearly illegal and without jurisdiction. It is also alleged by the petitioner in the affidavit filed in support of the petition

that the Coffee Board having challenged the said assessment proceedings itself, it is not open to the Coffee Board to seek the contingency deposit

from the dealer as a contingency measure to meet its liability, and that a pool sale dealer in an auction conducted by the Coffee Board cannot be in

any event liable to pay the purchase tax, that the liability to pay purchase tax could only be fastened either on the Coffee Board or the grower of

the coffee. A reference to the affidavit, filed by the Coffee Board, before the Karnataka High Court is made in the affidavit filed herein by the

petitioner. After making the reference it is alleged in the affidavit that the liability cannot be passed on to the pool sale dealer, that it is not open to

the Coffee Board to levy the contingency deposit, that the contingency deposit cannot be a condition for the sale of pool coffee and that to demand

is, therefore, purely arbitrary. The petitioner further alleges in the affidavit that the conduct of the Board in directing the pool sale dealers to deposit

the contingency deposit for internal sale and at the same time not making any such demands from the export dealers is discriminatory in nature, that

pursuant to the threat of the Coffee Board not to allow dealers to bid at the auction otherwise, some dealers have been directed to execute an

agreement to the effect that the dealers are liable to deposit the contingency deposit and that the said agreement is unenforceable being executed

without lawful authority. It is also stated in the affidavit that the said agreement is executed under pressure. With these allegations, the petitioner has

come before this Court with the prayer as stated supra.

3. W.P. No. 3674 of 1985 is filed praying for the issuance of a writ of mandamus to forbearing the respondents in demanding the contingency

deposit at 6.45 per cent on the value of the goods delivered at Tamil Nadu as per the circular dated 16th May, 1984 and further to direct the

respondents to refund the amounts already collected by the respondents by way of contingency deposit.

4. A counter-affidavit has been filed by the respondent-Coffee Board, stating that the petitioner has set out truly the circumstances under which the

circular dated 16th May, 1984, came to be issued by the Coffee Board to all wholesale dealers calling upon them to furnish a contingency deposit

at 6.45 per cent on the value of coffee delivered to Tamil Nadu in the auction. It is claimed in the counter-affidavit that the Karnataka State

pressed into service section 6 of the Karnataka Sales Tax Act and demanded purchase tax from the Coffee Board in respect of the coffee that

was delivered to the Coffee Board by the growers in the State of Karnataka, which was either stock transferred by the Coffee Board to other

States or was directly exported out of the country by the Coffee Board. It is stated in the counter-affidavit that in respect of the assessment year

1974-75, the Commissioner of Commercial Taxes, Bangalore Division made a suo motu revision of the assessment of the Coffee Board under the

Karnataka Sales Tax Act, levying purchase tax on such coffee which was the stock transferred to other States by the Coffee Board and which

was directly exported out of India by the Coffee Board, that it is true that the Coffee Board disputed the said assessments in writ petitions and that

they were waiting for the final disposals ending on the files of Karnataka High Court. (It is to be seen that his counter-affidavit has been filed in the

year 1985, when the above-mentioned writ petitions were pending before the Karnataka High Court). It is also claimed in the counter-affidavit that

the Coffee Board is a statutory body, that its finances have to be managed as set out by the Act, that after meeting the establishment expenses and

the liability for tax, the balance has to be distributed to the growers whose coffee is pooled with and is marketed by the Coffee Board, that no

portion of the proceeds realised by the sale of coffee is retained by the Coffee Board, that the Coffee Board pays in various installments to the

growers the entirety of money after meeting the expenses and taxes, and as such there will be no funds left with the Coffee Board for payment of

purchase tax at a later date if such liability is fastened on the Coffee Board. It is also claimed in the counter-affidavit that the liability to purchase tax

will be of the order of about Rs. 8 cores in a year, that it will not be open to the Coffee Board to pay out of the funds that may come into its hands

in the later years as those funds will be held in trust by the Coffee Board for the growers of that year who have delivered the coffee and that is why

the Coffee Board decided to provide for the contingency of payment of purchase tax, though levy of purchase tax itself was questioned by the

Coffee Board before the Karnataka High Court at that time. It is also claimed in the counter-affidavit that the pool sale dealers of coffee, including

the petitioner herein, objected to such a course of action being adopted by the Coffee Board, that they threatened to boycott the auction scheduled

to be held on 3rd May, 1984, and as such the Coffee Board had discussions with the pool sale dealers on 3rd May, 1984, 4th May 1984, and

10th May, 1984, that the pool sale dealers participated in such discussions and that the officer bearers of the association of the pool sale dealers of

coffee also took part. It is also claimed in the counter-affidavit that after a detailed discussion the pool sale dealers requested the coffee Board to

the effect that Coffee Board should accept and implement the system by which it will collect a contingency deposit based on weighted averaged

percentage to be arrived at and that the contingency deposit should be refunded to be dealers if the court were to hold that there was no liability to

purchase tax on the Board and that in the event of liability to purchase tax being upheld by the court it should be appropriated by the Coffee Board

towards the purchase tax liability. It seems that based on the recommendation of the pool sale dealers and their association, a circular dated 16th

May, 1984, was issued, fixing the contingency deposit to be paid at 6.45 per cent in respect of sales ex-Tamil Nadu by the Coffee Board and that

the petitioner had all along been paying the contingency deposit of 6.45 per cent from 17th May, 1984, till the date it filed the writ petition before

this Court. It is also alleged that the petitioner did not make any protest and that there was no duress or compulsion in the matter of collection of contingency deposit. The allegation that under duress and coercion the petitioner was compelled to part with contingency fund is denied. It is also claimed in the counter-affidavit that if the minimum reserve price is raised, the pool sale dealers will be obliged to purchase coffee only over and above the said minimum reserve price, that what is paid by them will go into the pool fund of the Coffee Board, that it will go thereafter either as sales tax liability or surplus to the coffee growers, and that by collecting such amount separately by way of contingency deposit they thought that they will stand to gain as in the event of the Coffee Board being held not liable to purchase tax and that the Coffee Board had agreed to change its stand and to collect contingency deposit as desired by them. It is further claimed in the counter-affidavit that when all the pool sale dealers are going to collect to pass on the incidence of such liability to their buyers as the entirety of coffee grown in India is only marketed through the Coffee Board, no discrimination could be alleged by the petitioner herein. It is also stated that there is no violation of principles under article 14 of the Constitution arises in this case. It is also claimed in the counter-affidavit that in respect of coffee sold to pool sale dealers the minimum release price is fixed by the Government by adding excise duty and pool expenses and for coffee sold to exporters, the minimum reserve price is fixed by deducting from international market prices, incidental charge, transportation, etc., and that in the fixation of minimum reserve price for export auctions, the pool expenses are not a factor which is taken into account. It is also stated in the counter-affidavit that the Board sells coffee to the exporters above the minimum reserve price which is based on international market prices of which is much higher than the minimum reserve price fixed for pool sales based on the floor price assured to the growers and as such the need for collection of contingency deposit separately from the exporters does not arise. It is also claimed in the counter-affidavit that the coffee sold to exporters has not been assessed for purchase tax by the Karnataka State Government and as such the petitioner cannot allege that there is a discrimination in this case. It is clearly stated in the counter-affidavit that the circular dated 16th May, 1984, was issued by the Coffee Board only after the said discussions with the pool sale dealers, that the

subject-matter of the circular was made before the 109th meeting of the Coffee Board held on 14th June, 1984, at Bangalore, that there is no provision under the Coffee Act for collection of such a contingency fund, that the Coffee Board is empowered to market the coffee, that it has to discharge its statutory obligations when marketing the coffee belonging to the growers and as such it is empowered to collect tax and other liabilities that may be fastened on the Coffee Board. It is also clearly stated in the counter-affidavit that how the applicable sales tax or purchase tax is being collected at the request of the pool sale dealers. It is further claimed that the petitioner has not stated in the affidavit the true circumstances in which the contingency deposit came to be collected by the Coffee Board, that the petitioner herein had suppressed the fact that the Coffee Board was requested to revoke its decision to raise the minimum reserve price, that it was requested by the pool sale dealers and their association to collect the contingency deposit, that this is a suppression of material fact and that it has a direct bearing on this issue, in this writ petition. It is also stated in the counter-affidavit that when the writ petitions were pending before the Karnataka High Court, the Coffee Board was making certain payments and as such, being a statutory body, the Coffee Board cannot go without protecting its interests as ultimately it is the interests of the growers which is sought to be protected.

5. A reply affidavit has been filed by the petitioner-company stating that the question was pending adjudication before the High Court of Karnataka till it came to be decided by order dated 16th August, 1985, in the case in *Coffee Board v. Commissioner of Commercial Taxes* [1985] 60 STC 142; (1985) 2 KLJ 397 wherein High Court of Karnataka held that the delivery of coffee constituted a sale by the grower and purchase by the Board and that subject-matter of this writ petition relates to the period prior to the decision of the Karnataka High Court upholding the levy of purchase tax. It is also alleged in the reply affidavit that the Supreme Court upheld the judgment of the High Court of Karnataka which is reported in *Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others*, , with regard to the imposition of purchase tax upon the Coffee Board that after the judgment of the Supreme Court, the first respondent-Coffee Board purported to pay the

purchase tax from out of the pool fund constituted u/s 30 of the Coffee Act on the ground that the purchase tax was a liability of the Board arising in

the course of the discharge of the marketing functions of the Board and that the amount was payable out of the pool fund belonging to the growers.

It is also alleged in the reply affidavit that this was challenged by several coffee growers in W.P. No. 9601 of 1988 before the High Court of

Karnataka and a Division Bench of the High Court of Karnataka dismissing the writ petition by its order [See Consolidated Coffee Ltd. v. Coffee

Board 1989] 74 STC 272 dated September 16th, 1988, upon a detailed analysis of the scheme and the Coffee Act, the Karnataka Sales Tax Act

and the judgment of the Supreme Court of India, held that the first respondent-Board is authorised in law to pay the purchase tax out of the pool

fund which it was required to maintain u/s 30 of the Coffee Act. It is also stated in the reply affidavit that in the light of the subsequent

developments, the collection of a contingency deposit from the petitioner is rendered wholly unnecessary and illegal. It is also stated in the reply

affidavit that the continued retention of the amount collected from the petitioner, in spite of the charge over the pool fund, results in deprivation of

petitioner's property without authority of law and in violation of article 300-A of the Constitution. It is further alleged in the reply affidavit that the

Board, being a statutory authority, cannot seek to collect the same amounts from both of its customers such as the petitioner and other growers

and as such it is stated that in view of the subsequent developments, and judgments of the Karnataka High Court and also the Supreme Court, the

failure of the first respondent-Board to refund the contingency deposit collected from the petitioner is contrary to law and that the petitioner is

entitled to refund. It is also stated by the petitioner in the reply affidavit that the petitioner is entitled to get the refund of the deposit with interest at

the rate of 16 per cent per annum.

6. It is stated by Mr. Sundara Swamy, the learned counsel for the petitioner, that the Writ Petition No. 3674 of 1985 has become infructuous on

the ground that the Coffee Board has stopped the collection of contingency deposit in view of the Circular issued in the year 1984. The learned

counsel contends that the short question falls for consideration is whether the dealer in coffee is bound to pay contingency deposit which is almost

equivalent to purchase tax to be paid by the Coffee Board to the State.

7. Mr. Sundara Swamy, the learned counsel for the petitioner, further contends that the collection of contingency deposit is without authority of law

and that there is no provision to collect from buyers like petitioner herein, especially when they pay sales tax. The learned counsel contends that by

this way the petitioner has to pay tax twice one by way of purchase tax and another by way of sales tax. The learned counsel also contends that

the Coffee Board, being a statutory body, cannot make any collection without authority of law. He also contends that during the period from 16th

May, 1984 to 15th November, 1985, the petitioner was a buyer, that he was paying the sales tax during that period and that the petitioner was not

liable to pay purchase tax under the guise of contingency deposit. The learned counsel further argues that under the Karnataka Sales Tax Act, the

taxable amount is on purchase.

8. The learned counsel further contends that the dealers' acceptance of contingency deposit is not arising out of law, but it is done by contract.

According to the learned counsel for the petitioner it cannot be done. It is argued by the learned counsel for the petitioner that the judgment of the

Karnataka High Court settles the issue as to who is to bear the purchase tax and hence the circular has no meaning at all. It is also stated by the

learned counsel that no tax can be collected by an agreement. He also contends that even assuming that the petitioner-company has accepted to

pay the tax, it cannot be collected in so far as this is collected without authority of law. The learned counsel for the petitioner further contends that

in the case of export sales no contingency deposit is collected and as such the collection of contingency deposit is in violation of article 14 of the

Constitution. The learned counsel refers to the judgment of the Karnataka High Court which is reported in Coffee Board v. Commissioner of

Commercial Taxes, Karnataka [1985] 60 STC 142 which is also affirmed by Supreme Court in Coffee Board, Karnataka, Bangalore Vs.

Commissioner of Commercial Taxes, Karnataka and Others, . The learned counsel also refers to the decision in Consolidated Coffee Ltd. and

Others Vs. The Coffee Board and Another, for the proposition that the purchase tax liability is on the Board and contends that they cannot pass it

on to the dealers.

9. Per contra, Mr. K. J. Chandran, the learned counsel appearing for the Coffee Board contends that the petitioner herein is concerned only with

the auction held on 3rd May, that when the minimum reserve price was raised persons like petitioner objected and as such the revision of price

was stopped when the auction was boycotted. The learned counsel also contends that only after discussions with the association in which the

petitioner is also member, that the dealers like petitioner in that discussion wanted the contingency deposit to be collected at the rate of purchase

tax. It is also contended by the learned counsel for the respondents that the petitioner has given an undertaking and as such the petitioner-company

is estopped from asking for the refund of the contingency deposit, u/s 115 of the Evidence Act. The learned counsel further contends that when the

petitioner-company had the benefit of the reduced reserve price, they cannot now turn around had ask the question of refund of contingency

deposit. The learned counsel refers to the decisions in State of Mysore v. Mysore Spinning and Manufacturing Co. Ltd. [1960] 11 STC 734 (SC)

in Adusumilli Gopalakrishnayya and Another Vs. Kosuri Venkataratnam and Others, and in Motilal Padampat Sugar Mills Co. Ltd. v. State of

Uttar Pradesh [1979] 44 STC 42, for this proposition. The learned counsel also contends that the issue raised by the learned counsel for the

petitioner is purely on the question of contract and that it will not attract a petition field under article 226 of the Constitution even assuming that the

contingency deposit has been collected from the petitioner.

10. Mr. Sundara Swamy, the learned counsel for the petitioner, replies that no question of estoppel arises in this case and that the petitioner herein

has not given any undertaking as contended by the Coffee Board. The learned counsel also refers to the "law relating to estoppel" by

representation by George Spencer Bower-II edition at page 131 for this proposition.

11. I have considered the arguments of the learned counsel for the petitioner and of the respondents. The short question which arises for

consideration in this case is whether the respondent-Coffee Board is liable to refund the contingency deposit collected by them at the time of sale

of coffee. The Coffee Board, constituted under the Coffee Act, 1942, is the statutory authority on which the exclusive right to purchase and sell the

coffee produced in the country is conferred. The entire coffee grown by all estates has to be delivered to the Coffee Board u/s 25(1) of the Coffee

Act, and the growers' only right was to receive payments therefore as referred to in section 34 of the Act. Until the year 1974-75, the Coffee

Board had not been paying any tax on its sales of coffee produced from growers on the ground that as an agent of agriculturists who were exempt,

it was also exempted. All the coffee so pooled was not earmarked or specified for intra-State, inter-State or export sales. All the pooled coffee

was graded and their sales in and outside the country were regulated by the Coffee Board. The Coffee Board did not purchase any specific coffee

of any specific grower for purposes of direct exports. On such procurements of the Coffee Board, the authorities either proposed to levy or levied

purchase tax u/s 6 of the Karnataka Sales Tax Act, 1957. The Board challenged the levy of purchase tax levied u/s 6 of the Karnataka Sales Tax

Act and a Division Bench of the Karnataka High Court upheld the levy of purchase tax and the said judgment is reported in Coffee Board v.

Commissioner of Commercial Taxes, Karnataka [1985] 60 STC 142. The Coffee Board took the matter on appeal to the Supreme Court and the

Supreme Court affirmed the judgment of the High Court of Karnataka which is reported in Coffee Board v. Commissioner of Commercial Taxes

[1988] 70 STC 162. It is to be seen that the judgment of the High Court of Karnataka is dated 16th August, 1985 and the judgment of the

Supreme Court is dated 11th May, 1988. When the matter was pending before the Karnataka High Court, with regard to the liability of the

purchase tax, it seems the Board wanted to raise the minimum reserve price in respect of auctions. At that time, when the auction is scheduled to

be held on 3rd May, 1984, the dealers like the petitioner boycotted the auction. So, a circular has been issued by the respondent-Board on 16th

May, 1984 and for the sake of convenience, the said circular is extracted as follows :

... Coffee Board, Bangalore

AC. III/S. Tax 84/474 Dated : 16-5-1984.

To All pool sales dealers

Dear Sir,

Sub : Levy of purchase tax on Coffee Board in respect of coffee sold in pool (sic)

auctions - making a provision for meeting the contingent liability
of purchase tax - reg.

The Government of Karnataka have levied purchase tax on the value of coffees transferred from Karnataka to other States otherwise than by way

of sale. The Government of Kerala have introduced purchase tax on coffee with effect from 1st April, 1984, at the point of first purchase in that

State. The Board has taken the stand in the assessment proceedings relating to Karnataka that there is no purchase of coffee by it from the planting

community and has contested the assessments in writ petition before the Karnataka High Court. Since the outcome of these writ petitions is not

known, it has become necessary to make a provision to meet the contingent liability of purchase tax. However, the Forty-sixth Amendment to the

Constitution by Parliament with effect from 3rd February, 1983, holding that the compulsory acquisition is also a sale has also contributed to the

urgency of the matter.

The modality of making a provision for meeting the contingent liability of purchase tax has been discussed with pool sales dealers by the Board on

3rd May, 1984, 4th May, 1984 and 10th May, 1984. After discussing the matter in detail the pool sale dealers have agreed that the Coffee Board

will work out the average purchase tax liability on transferred stocks taking into account, purchase tax at 12 per cent on stocks transferred from

Karnataka, at 6.6 per cent on stocks transferred from Tamil Nadu and 6.9 per cent on stocks transferred from Kerala and to work out the

weighted average percentage and this percentage should be collected from the dealers by the Coffee Board on the auction price as ""contingency

deposit"". This amount of contingency deposit should be shown as such separately in the pool coffee invoices. Accordingly, the percentage to be

collected as contingency deposit on the auction prices has been worked out with reference to coffee sold in each State and it is as follows :

1. Karnataka ... 0.06%
2. Tamil Nadu ... 6.45%
3. Andhra Pradesh ... 8.89%
4. Maharashtra ... 11.7%
5. Kerala ... 7.39%

In respect of Kerala, after careful consideration it was decided to collect the entire amount as contingency deposit on the total quantity of coffee

transferred into Kerala and on quantity of coffee pooled and sold in Kerala, since the coffee pooled and sold in Kerala attracts purchase tax which

is to be contested by the Board and if the decisions were to be in favour of the Board the entire deposit has to be refunded to the dealers after

deducting the legal expenses. The percentage to be added on the auction prices towards purchase tax liability on coffee pooled and sold in Kerala

and on coffee transferred into Kerala from other States been worked out and the details as under :

1. On account of liability on coffee pooled and sold in 6.29%

Kerala

2. Contingent liability on coffee transferred into Kerala 1.10%

and sold in Kerala

Total ... 7.39%

The coffee purchased under a pool sale by a dealer at each auction will be delivered only if he pays at the time of taking the delivery the

contingency deposit at the rate indicated above in respect of all States in addition to the sales tax at the prevailing rates in the respective States. For

Kerala, the dealer has to pay 7.39 per cent on the auction prices as contingent liability but no sales tax and additional sales tax on sale of coffee

with effect from 1st April, 1984 ...

In view of the circular mentioned above, the petitioner-company herein was one of the persons who was challenging the contingency deposit

towards the liability of the Board, which may occur or may not occur because at that time, the writ petitions filed by the Board were pending

before the Karnataka High Court. A reading of the circular extracted above, clearly shows that the dealers like the petitioner herein have accepted

to pay the contingency deposit for making provision for meeting the contingent liability of purchase tax. Though it is clearly stated in the circular that

the Board was taking the stand by way of a precautionary measure, the Board thought it fit to take that measure. It is equivalent to the rate of

purchase tax. The learned counsel for the petitioner heavily relies on the judgment of the Karnataka High Court which is reported in Consolidated Coffee Ltd. v. Coffee Board, Karnataka [1989] 74 STC 272 for the proposition that the Board can pay the tax from the pool fund since paying tax is a statutory obligation incurred in the course of "marketing" coffee. I do not think the judgment relied on by the learned counsel for the petitioner is relevant to the question raised in this case. It cannot be disputed that the Board is liable to pay the purchase tax for the period with which we are concerned in this writ petition. It is also not in dispute that the auction was held on the specific understanding that the contingency deposit was collected towards the rate of purchase tax which the Board may ultimately be asked to pay to the State. As such, as rightly pointed out by the learned counsel for the respondent-Board, I am of the view that the petitioner-company should not be allowed to raise a contention at this stage that the collection of contingency deposit is without authority of law. I am not able to understand the argument of the learned counsel for the petitioner that the contingency deposits are collected without authority of law. Practically the amount is paid as purchase tax to the State. When the Board was objecting to the matter that it is not liable to pay the purchase tax, it thought it fit in those circumstances to collect the contingency deposit from the buyers so that it can be ultimately paid to the State if the court holds that the Board is liable to pay the purchase tax. As such, I am not able to see that the amount collected is without authority of law. It is open to the parties to agree to such a condition. After this, an auction has been conducted by the Coffee Board. The highest bidder in the auction knocks away the bid. Virtually this has to be taken as one of the conditions of the auction, though it might not have been thought of at the earlier stage. So, having taken part in the auction with open eyes that such contingency deposit has to be paid and having paid the contingency deposit, I do not think it is open to the petitioner to object to it in this forum before this Court and ask for such refund. In my view, whether the Coffee Board has calculated the price over and above fixed by it, and whether the amount collected is to be reimbursed, or whether the petitioner-company has undertaken to pay the amount, are all questions of facts. We can see in another angle also. The Board has calculated certain amount over the amount fixed in a particular pool auction. The petitioner has paid that

amount. Having paid that amount, is it open to the petitioner-company to object the matter in a petition under article 226 of the Constitution ? I

think it cannot. In my view, it falls within the ambit of the breach of contract between the Board and the petitioner-company with regard to the sale

of coffee in an auction and if at all the petitioner-company is aggrieved, surely in my view, a petition under article 226 of the Constitution is not the

proper remedy. It has been repeatedly held so and also recently held by a Division Bench of this Court in the Shipping Corporation of India v.

Shaik Mohammed Rawther and Company (P.) Ltd. 1987 WLR 638. On this ground alone, I am inclined to dismiss the Writ Petition No. 3675 of

1985.

12. A delivery order of the Coffee Board has been shown before me. In the said delivery order, it has been clearly stated that the sales tax is at 6

per cent and the contingency deposit is at 6.45 per cent, apart from excise and sales tax. As such, the petitioner-company is fully aware, even

when the delivery note was issued, that the purchase tax has to be paid by the Board to the State.

13. Apart from that, the petitioner-company should not be allowed to take a different stand after paying the contingency deposit and having

allowed the Coffee Board to put the coffee in auction and obtaining a benefit in that auction. In Motilal Padampat Sugar Mills Co. Ltd. v. State of

Uttar Pradesh [1979] 44 STC 42 the Supreme Court has put the principle every succinctly. The Supreme Court has observed in the above-

mentioned case as follows :

... The doctrine of promissory estoppel is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is

neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel is that where one party has by his words or

conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the

future, knowing or intending that it would be acted upon by the other party, to whom the promise is made, and it is in fact so acted upon by the

other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow

him to do so having regard to the dealings which have taken place between the

parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. Though the doctrine has been variously described as "equitable estoppel", "quasi-estoppel" and "new estoppel", it is a doctrine evolved by equity in order to prevent injustice

In my view, this principle equally applies to the instant case. As it has been stated in the counter-affidavit filed by the Board that the circular came to be issued only after meeting of the dealers on certain dates as mentioned then the contingency deposit has been collected. Only after that, the auction was held and the petitioner took part in that auction. Having done this, in my view, the petitioner-company should not be allowed to retrace the steps and ask for refund.

14. I do not think the Karnataka High Court has considered the effect of this circular in AC. III/S. Tax 84/474 dated 16th May, 1984. What all the decision states is the liability by the Board to the pool fund. The power of the Board is to use the pool fund for paying the tax on the statutory obligation of purchase tax. No authority for this proposition is placed before me and that even in a case like one before me, the Board should be asked to pay out of the pool fund. Equally, I do not think that there is any question of discrimination arose as contended by the learned counsel for the petitioner. As it has been rightly pointed out by the Board in the counter-affidavit the export sale is exempted from sales tax. It has been held so also in the decision in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, . As such, no discrimination arose as contended by the learned counsel for the petitioner in this case. There are no merits in this writ petition and accordingly Writ Petition No. 3675 of 1985 will stand dismissed.

15. In the result, W.P. No. 3674 of 1985 is dismissed as infructuous. W.P. No. 3675 of 1985 will stand dismissed. However, there will be no order as to costs.

16. Writ petitions dismissed.