(2000) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30451 of 1998

Sree Rama Traders, Kakinada APPELLANT

Vs

Agricultural Market Committee, Kakinada and another RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12(1), 23(1), 33, 35, 7(1)
Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 — Rule 48, 74

Citation : (2000) 2 ALD 439 : (2000) 2 ALT 337 : (2000) 1 APLJ 147

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. Darsi Sudhakara Rao, for the Appellant; Mr. Posani Venkateswarlu for Agricultural Marketing Committee, for the Respondent

Judgement

1. Sree Rama Traders, Chittoorivari Street, Kakinada seeks a declaration that the petitioner being the second purchaser is not liable to pay market fee on the agricultural produce (Forest produce) purchased from the Girijan Co-operative Corporation in view of the said Corporation which is primarily liable being exempted from levy in view of the orders of the Government in G.O. Ms. No.94, dated 15-2-1989.

2. The petitioner is a licensee under the A.P. Agricultural (Produce and Livestock) Markets Act, 1966 (hereinafter referred to as ''the Act'') inter alia doing business in certain commodities notified as agricultural produce. The petitioner during the course of business purchased items such as Tamarind from the Girijan Co-operative Corporation. The 1st respondent -Agricultural Market Committee by its letter dated 13-7-1998 issued the petitioner a show-cause notice calling upon the petitioner to obtain licence u/s 7(1) of the Act and Rule 48 of the AP (Agricultural Produce and Livestock) Markets Rules, 1969 (hereinafter referred to as ''the Rules'') for the years 1997-98 for doing business in the notified produce namely, tamarind. As the petitioner has violated the said requirement under the

provisions of Section 7(1) of the Act, he was called upon by the said letter dated 13-7-1998 to show-cause why prosecution should not be launched against him u/s 23 of the Act. The letter further states that if no written explanation is received from him within the time stipulated, he will be liable for punishment by the Court in a fine upto Rs.5,000/- together with imprisonment for 6 to 12 months. By proceedings dated 19-5-1998 the 1st respondent called upon the petitioner to pay market fee in the amount of Rs.19,471/- for the years 1994-95 and 1995-96. The petitioner having not paid, show-cause notice dated 13-7-1998 was issued calling upon the petitioner to pay the amounts and on failure to do so, the petitioner would be deemed to have violated the provisions of Section 12(1) of the Act and be liable for prosecution u/s 23(1) of the Act.

3. To the above notices, the petitioner submitted his objections under his representation dated 23-7-1998.

4. In brief the petitioner contends that in view of the orders of the Government in G.O. Ms. No.93, dated 15-2-1989 granting exemption from payment of market fee on purchases made by the Girijan Co-operative Corporation from the Tribals in respect of such minor forest produce items as are reserved for monopoly purchase by the Corporation provided the purchase is made in the Domestic Requirement Depots or other purchasing Centers of the Corporation, the petitioner is not liable to pay the market fee. There are two facets of this submission. Firstly, it is contended that the exemption granted by the Government as set out in G.O. Ms. No.93, dated 15-2-1989 is for the purpose of enabling the members of Girijan community to sell their produce despite the competition of the open market in respect of the commodities procured by them from the forest and recognising the handicaps which inure on such enterprise of the Girijans, the Government has, in exercise of powers u/s 35 of the Act, granted exemption and that it would be in consistent with the purposes which occasioned the exemption to hold that the commodities which have been exempted from the payment of market fee and under the orders of the Government would, however, have to be mulcted with the payment of the market fee at subsequent points in the transaction. Sri Sudhakar Rao, learned Counsel for the petitioner would contend such point to be the purpose underlying the grant of exemption by the State.

5. It is also contended that on an interactive analysis of the provisions of Section 12 of the Act and Rule 74 of the Rules, the conclusion is irresistible as also legal implication that goods exempted from the payment of market fee would result in extinction of the liability to pay the market fee. It is further contended that a true and fair construction of the orders of exemption issued by the Government would disclose that the liability for payment of the market fee on the commodities is itself extinguished by virtue of the orders of the Government that in the circumstances, no fee is leviable whether by the Girijan Co-operative Corporation or by subsequent purchaser or seller of the same.

6. Section 12 of the Act enables the market committees to levy fees on any

notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. Sub-section (2) of Section 12 states that fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock provided that where the purchaser cannot be identified, the fees shall be paid by the seller. On a fair and grammatical construction of provisions of Section 12, it is clear that the liability to pay market fee is not limited to the first purchase or sale in a notified market area. In any view of the matter, the provisions of Section 12 couched in the broad terms do not necessarily lead to any such inference.

7. However, in exercise of the powers available u/s 33 of the Act to make rules for carrying out the purposes of the Act, the State Government has made the rules. Rule 74 of the Rules to the extent relevant reads as under:

''The fees leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock and products of livestock if paid to a market committee within the state shall not be collected by another market committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the curse of commercial transactions between the licensed traders, and the licensed traders and the consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought".

8. Thus, the rigour of the broad terms of Section 12 have been conditioned by the provisions of Rule 74 of the Rules stating that the fee liable u/s 12 shall not be liable to be collected again if paid to a market committee within the State.

9. In the case on hand, the orders of the Government contained in G.O. Ms. No.93, dated 15-2-1989, clearly grant exemption from payment of market fee only in respect of the purchase made by the Girijan Co-operative Corporation from the Tribals. Neither in terms nor on any reasonable construction does the inference follow that exemption is a exemption simplicitor in respect of the commodity in question nor is there anything in the orders of the Government which removes the commodities from the orbit of the liability to pay market fee under the provisions of the Act.

10. The powers to grant exemption u/s 33 are platitudinous in their sweep. They enable exemption to be granted permanently or for any specified period and also enable exemption of any market committee or a person or class of persons from payment of market fee or any of the provisions of the Act and also on such conditions as the Government may deem it fit to impose. In the reality of the extent of power available under the provisions of the Act, the Government has in its wisdom and in purported exercise of the power u/s 33 of the Act thought it fit to grant exemption from payment of market fee only on purchases made by the Girijan Co-operative Corporation from the Tribals. This order of the Government cannot, in the considered view of this Court, inure totally exempt the commodity

from payment of market fee under the provisions of the Act.

11. Since on established facts, no market fee has been paid and collected on the commodity of tamarind, before the petitioner was called upon to pay the same, the liability of the petitioner to pay the fee in terms of Rule 74 read in the context of Section 12 of the Act is not in doubt.

12. Sri Sudhakar Rao, learned Counsel for the petitioner sought to strenuously urge that decisions exist in the context of Sales Tax Act to the effect that the liability to payment of tax once exempted would result in extinction of the liability to pay tax itself. Be that as it may, we are considering the specific provisions of the A.P. Agricultural (Produce and Livestock) Markets Act and the Rules therein and an analysis of these provisions, in my view, does not warrant a construction that the orders of the Government in G.O. Ms. No.93, dated 15-2-1989 either extinguish the liability to pay the market fee or exempt the petitioner from payment market fee on the sole ground that the Girijan Co-operative Corporation which is the first purchaser of the commodity has been exempted from payment of the market fee.

13. This grievance of the petitioner does not commend itself to this Court for grant of relief.

14. Another grievance in this writ petition is that even in respect of the commodities purchased outside the State of Andhra Pradesh, market fee is sought to be levied on the petitioner, contrary to the provisions of the Act. It is also the grievance of the petitioner that such market fee is sought to be levied at the check posts. The law on this question is no longer res integra. A Division Bench of this Court in Modem Nutrition Company, Hyderabad v. Agricultural Market Committee, 1996 (4) ALD 801 (DB), has held that the condition for the payment of fee is that the agricultural produce, livestock or products of livestock are purchased or sold in the notified market area. Explanation I of Section 12 of the Act can only give rise to a presumption that such articles falling under the definition of ''agricultural produce'', etc., which are subjected to levy u/s 12, if found within the limits of the market area or seen being taking out of the notified market area, are liable to fee, but it shall be open to the owner of the goods concerned to dispute the claim and once he disputed/disputes the claim, unless there is an enquiry, the presumption would not entitle the market committee concerned to realise the fee. It has also been held that the market fee shall be realisable by the concerned market committee only if the agricultural produce or live stock or products of live stock are purchased or sold in the notified market area".

15. In the premises, it is reiterated that the commodity claimed by the petitioner as having been purchased outside the State shall not be liable to payment of market fee at the check post if the petitioner produces evidence or document to show that the purchase of the commodities was made outside the State of Andhra Pradesh. After the entry of the goods in the market area in question and

on the sale of such goods within the market area, the commodities will be liable to payment of market fee. However, that fee shall be leviable from the purchaser and only in the event of the purchaser not being identified, the seller namely the petitioner shall be liable for payment of the same in terms of provisions of Section 12 of the Act. The writ petition is disposed of as above. No orders as to costs.

