

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 3871 of 2000 (O&M)

Date of decision: 01.8.2018

M/s Guru Nanak Industries

.. Petitioner

vs

State of Punjab and others

.. Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
 Hon'ble Mr. Justice Amit Rawal

Present Mr. Roshan Lal Batta, Senior Advocate with
 Mr. J. S. Saggi and Mr. Mandeep K. Sajjan, Advocates,
 Mr. Neeraj Khanna, Advocate for
 Mr. Deepak Suri, Advocate, for the petitioner (s).

Mr. Jagmohan Ghuman, Deputy Advocate General, Punjab.

Mr. P. K. S. Gill, Advocate, for respondent nos. 2 and 3 in
CWP No. 18374/2003,Mr. Alok Mittal, Advocate, for respondent no. 2 in
CWP No. 11743/2004,Mr. S. P. Garg, Advocate, for respondent nos. 2 and 3 in
CWP No. 14731/2003,Mr. Sanjeev Sharma, Advocate, for respondent nos. 2 and 3 in
CWP Nos. 543/2001 and 11562/2003,Mr. S. S. Rangi, Advocate, for respondent nos. 2 and 3 in
CWP No. 3871/2000,Mr. S. C. Pathela, Advocate, for respondent nos. 2 and 3 in
CWP No. 9429/2010.

Rajesh Bindal, J.

This order will dispose of a bunch of writ petitions bearing
CWP Nos. 3871, 14399, 16206, of 2000, 543, 10449 of 2001, 3659, 12882,
15111 of 2002, 11559, 11560, 11561, 11562, 14731, 18374 of 2003, 11738
to 11752, 16317, 16477 of 2004, 3915, 6225, 8277, 14131 of 2005, 8990 of
2006, 6184 of 2008, and 9429 of 2010, involving identical issue.

The common issue involved in the aforesaid writ petitions is challenge to the vires of Rule 29(7) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short, 'the Rules'). Beside this, orders passed by the different authorities under the Punjab Agricultural Produce Markets Act, 1961 (for short, 'the Act'), have also been impugned.

The facts in detail have been noticed from CWP No. 3871 of 2000.

The petitioner herein is engaged in the business of rice shelling. In the process of manufacturing rice, the petitioner purchase paddy from various *mandis* situated in the State of Punjab and also from outside the State. It is claimed that there is no dispute regarding payment of market fee on the paddy purchased from within the State of Punjab. The dispute arose with regard to the paddy purchased from the State of Haryana. It is claimed in the petition that for the paddy purchased from the State of Haryana, the entire transaction takes place outside the State of Punjab, namely, purchase, weighment and delivery and it is only that paddy is transported to the rice sheller situated in the State of Punjab. Transaction of sale completed outside the State of Punjab. Details of the quantum of paddy purchased from outside the State of Punjab was furnished by the petitioner to the market committee. Immediately thereafter the petitioner was served with a notice for payment of market fee and rural development fund thereon.

The petitioner replied to the aforesaid notice claiming that no market fee or rural development fund is payable as the transaction of purchase of paddy had taken place in the State of Haryana, where the market fee was paid and said sale or purchase had not taken place in any market area in the State of Punjab. Still the demand notice was issued. The matter

was taken up in appeal before the Secretary, Mandi Board, whereby the demand was upheld. Order was challenged in revision before the Special Secretary, Department of Agriculture, Punjab. Number of documents were produced before him to substantiate the claim. Even the revision was also dismissed.

In the petition, besides challenging various orders passed by the authorities under the Act, challenge has been made to Rule 29(7) of the Rules, which has been relied upon to raise and uphold demand against the petitioner.

Mr. Roshan Lal Batta, learned senior counsel appearing for the petitioners submitted that Section 23 of the Act is the charging section which provides for levy of fee. It provides that fee is leviable on agricultural produce bought or sold by a licensee in the notified market area at the rates specified. Proviso to the aforesaid section provides that no fee shall be leviable in respect of any transaction in which delivery of agricultural produce bought or sold is not actually made. Exceeding the powers vested in the aforesaid section regarding charging of fee while framing the Rules, it has been provided in Rule 29(7) of the Rules that even if agreement to sell or purchase is entered in a market area or the agricultural produce is weighed or the delivery thereof is taken, the same shall be deemed to have been bought or sold in that market area. With the aforesaid Rule deeming fiction has been added, expanding the definition of sale and purchase, which term otherwise is well known and mere weighing of goods have been termed to be sale and purchase. In support of the arguments, reliance was placed on judgment of Hon'ble the Supreme Court in Agricultural Market Committee vs Shalimar Chemical Works Limited AIR 1997 Supreme Court

2502. It was submitted that similar provision contained in Rule 74(2) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 (for short, 'the AP 1969 Rules'), was struck down by Hon'ble the Supreme Court.

On the other hand, learned counsel for the State submitted that the Rule cannot be said to be ultra vires as Rules have been framed within the powers conferred on the State in terms of provisions of the Act. Rule 29 (8) of the Rules clarifies that in case two eventualities out of three, as mentioned in Rule 29(7), take place in different notified market areas, which of them will have the jurisdiction to levy the fee.

Mr. Alok Mittal, learned counsel appearing for the Marketing Board in CWP No. 11743 of 2004, submitted that Rule 29(7) of the Rules only clarifies the situs of sale. It is not in the form of deeming provisions, rather it explain the position as to which of the market area will have the jurisdiction to levy fee. Substantive provisions of Rule 23 of the Rules have not been diluted or expanded. In case the sale or purchase is complete outside the State of Punjab, no market fee is leviable. In fact, each case has to be examined on its own merits. Rule cannot be said to be ultra vires. In fact, despite repeated opportunities, sufficient material was not produced by the petitioner showing that the transaction of sale and purchase was complete outside the State of Punjab.

Similar contention was raised by learned counsel for the Mandi Board in CWP No. 18374 of 2003.

Mr. S. P. Garg, learned counsel appearing for the Mandi Board in CWP No. 14731 of 2003 submitted that Section 23 of the Act talks about payment of market fee only where actual delivery takes place. Meaning

thereby delivery is an important factor to be considered for the purpose of levy of fee. The same has been clarified in Rule 29(7) of the Rules. It cannot be said to be ultra vires. Judgment of Hon'ble the Supreme Court in Shalimar Chemical Works Limited's case (supra), is distinguishable, where the Rule was found to have been framed in excess of the jurisdiction vested with the delegated authority.

Heard learned counsel for the parties and perused the paper book.

Relevant provision of Section 23 of the Act and Rule 29 of the Rules are extracted below:-

Section 23 of the Act

23. Levy of fees. A committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad-valorem basis –

- (i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and
- (ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees].

Provided that –

- (a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made ; and
- (b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.

Rule 29 (1), (7) and (8) of the Rules

29. Levy and collection of fees on the sale and purchase

of agricultural produce. - (1) Under section 23 a committee shall levy -

- (i) fees on the agricultural produce bought or sold by licensee; and
- (ii) also additional fees on the agricultural produce when sold by a producer to a licensee;
in the notified market area at the rate fixed by the Board from time to time.

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(7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area.

- (a) If the agreement of sale or purchase thereof is entered into in the said area; or
- (b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area;
or
- (c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.
- (d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

(8) If in the case of any transaction any two or more of the acts mentioned in sub-rule (7) have been performed within the boundaries of two or more notified market areas the market fee shall be payable to the committee within whose jurisdiction the agricultural produce has been weighed in pursuance of the agreement of sale or, if no such weighing has taken place, to the committee, within whose jurisdiction the agricultural produce is delivered.”

The petitioners had placed strong reliance upon judgment of Hon'ble the Supreme Court in Shalimar Chemical Works Limited's case (supra). In the aforesaid case, the assessee was dealing in 'copra', a notified agricultural produce. Section 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the AP 1966 Act') provided for levy of fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. Explanation I to the aforesaid section provides that if any notified market produce, livestock or products of livestock are taken out of a notified market area, it shall be presumed to have been purchased or sold within such area, unless the contrary is proved. The charging section in the case in hand was similar to one provided under the AP 1966 Act, namely, charging of fee on sale or purchase in a notified market area. In exercise of powers conferred under the AP 1966 Act, Rule 74(2) of the AP 1969 Rules was framed, which in turn provided that fee shall be leviable as soon as the notified agricultural produce livestock and products of livestock is purchased or sold by a licensee. A deeming fiction was added to include even weighment/measurement or counting in the market area before the produce is taken out. To similar effect is Bye-law 24(5) as framed by the Committee therein. Validity of the aforesaid provisions was under challenge before the Andhra Pradesh High Court. The Court opined that provisions in Rule 74(2) of the AP 1969 Rules and Bye-law 24(5) relying to the 'Rule of Presumption' were beyond the scope of the Act, hence, were struck down. Material on record was considered to opine that the transaction of sale or purchase had taken place outside the State of Andhra Pradesh. Relevant provisions under consideration before Hon'ble the Supreme Court in the aforesaid judgment

are extracted below:-

“**Section 12 of the Act** provides for the levy of fees by the Notified Market Committee. The relevant portion of this Section is reproduced below:

"12. Levy of fees by the market committee :

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area (at such rate, not exceeding (two rupees) as may be specified in the bye-laws) for every hundred rupees of the aggregate amount for which the notified agricultural produce, live-stock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I :- For the purposes of this Section, all notified agricultural produce, livestock or products or livestock taken out of a notified market area shall, unless the contrary is provided, be presumed to have been purchased or sold within such area.”

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Rule 74(2) reads as under:

"Rule 74(2)-Such fees shall be leviable as soon as the notified agricultural produce, livestock and products of livestock is purchased or sold by a licensee. The notified agricultural produce, livestock or products of livestock shall be deemed to have been purchased or sold after the notified commodity has been weighed or measured or counted or when it is taken out of the notified market area."

Bye-law 24(5) is as follows :

"The fees shall be leviable as soon as the notified agricultural produce, livestock, or products of livestock is purchased or sold by licensee.

EXPLANATION :- The notified agricultural produce or livestock or products of livestock shall be deemed to have been purchased or sold after the said notified commodity has been weighed, measured or counted or when it is taken out of the notified market area."

Hon'ble the Supreme Court while considering the parameters laid down with reference to delegated legislation and applying the same in that case opined that the rules had widened the definition as provided for under the Act by adding deeming fiction which was beyond the legislation policy as, such a fiction could be created only by the legislature and not by delegatee. Judgment of the High Court was upheld. Relevant portions from the judgment of Hon'ble the Supreme Court are extracted below:-

"26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to Taxing Statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary Rules and Regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making Rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

27. Applying the above principles to the instant case, it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a licence issued to him by the Committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the "moving" of the commodity from within the market area to a place outside the market area.

28. The Government to whom the power to make Rules was given under Section, 33 and the Committee to whom power to make Bye-laws was given under Section 34 widened the scope of "presumption" by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the Legislature and not by a delegate in exercise of the rule making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore ultra vires. The

reliance placed by the Assessing Authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighment of "Copra" within the notified area committee that the transaction of sale took place in that market area." (Emphasis supplied).

Hon'ble the Supreme Court had also examined the factual aspect on which findings had been recorded by the High Court to hold that the transaction of sale or purchase of goods had taken place outside the State of Andhra Pradesh. For the purpose even provisions of the Sale of Goods Act, 1930 were also referred to in detail.

Competence of the State legislature to levy market fee which is brought in the market area not for the purpose of sale but for manufacture or further processing came up for consideration before Hon'ble the Supreme Court in Gujarat Ambuja Exports Limited vs State of Uttarakhand and others (2016) 3 SCC 601. It was opined that the same was beyond legislature competence of the State. Para 36 of the judgment is reproduced hereunder vide which Section 27(c)(iii) of the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011, was struck down:-

“36. A perusal of the abovementioned judgments makes it clear that Entry 52 of List I governs the process of manufacture and production. Therefore, in the instant case, the State Legislature did not have the competence to enact the impugned provisions which sought to levy market fee and development cess even on those agricultural produce which were not being brought into the market for the purpose of sale, but for the purpose of manufacture or further processing. Since the State

Legislature was not competent to enact the impugned provision of Section 27(c)(iii) of the Act, the same is liable to be struck down as the same was enacted by the State Legislature without having the legislative competence to do so.”

The issue was subsequently considered by Hon'ble the Supreme Court in Agricultural Produce Market Committee vs Bitor Industries Limited and another (2014) 3 SCC 732. In the aforesaid judgment, the provisions of Gujarat Agricultural Produce Markets Act, 1963 (for short, 'the Gujarat Act') were under consideration. Market fee was sought to be levied on the castor seeds, which was bought from outside the State. Section 28 of the Gujarat Act provided for levy of market fee on agricultural produce bought or sold in the market area. Explanation to Rule 48 of the Gujarat Agricultural Produce Markets Rules, 1965 (for short “the Gujarat Rules”) provided that sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale. While interpreting the aforesaid two provisions with reference to the material placed on record by the parties and also considering the provisions of the Sale of Goods Act, Hon'ble the Supreme Court opined that the conclusion arrived at by the learned Single Judge of the High Court concerned, was correct to the extent that the castor seeds were bought within the local market area as the term of the sale suggest that, hence, the market fee was leviable.

The proposition was again considered by Hon'ble the Supreme Court in M/s Arihant Udhyog vs State of Rajasthan and others AIR 2017 SC 3074, where provisions of the Rajasthan Agricultural Produce Markets

Act, 1961 (for short, 'the Rajasthan Act') and the Rajasthan Agricultural Produce Markets Rules, 1963 (for short, 'the Rajasthan Rules') were under consideration. Section of the Rajasthan Rules provided for levy of fee on the agricultural produce bought or sold in the market area, whereas explanation (a) to Rule 58 of the Rajasthan Rules was similar to but was under consideration before Hon'ble the Supreme Court in Biator Industries Limited's case (supra). While relying upon the judgment of Biator Industries Limited's case (supra), Hon'ble the Supreme Court opined that Section 17 of the Rajasthan Act and Rule 58 of the Rajasthan Rules framed thereunder will depend upon the question as to whether agricultural produce is bought or sold by the licensee in the market area. An answer to the aforesaid question would depend as to when and on what stage the title of the goods passes. If the entire transaction takes place outside the State of Rajasthan, no market fee is payable and answer to the aforesaid question would depend upon the provisions of the Sale of Goods Act. Section 17 of the Rajasthan Act and Rule 58 of the Rajasthan Rules are extracted below:-

“Section 17 of the Act

Power to collect market fees. – The market committee shall collect market fees from the Licences in the prescribed manner on agricultural produce bought or sold by them in the market area at such rate as may be specified by the State Government, by notification in the official gazette, subject to a maximum of Rs 2/- per hundred rupees worth of agricultural produce.

Provided also that Mandi Fee leviable on the sale or purchase of Mustard Seed shall be Rs. 1/- on one hundred rupees.

Provided also that Mandi Fee leviable on the sale or purchase of Oil Seeds shall be Rs. 1/- on one hundred rupees.

Rule 58 of the Rules

Market area Cess –

(1) A market area committee shall collect cess on agricultural produce bought and sold in the market area at such rate as may be specified by the Government by way of notification:

Provided that no cess shall be levied on any such notified agricultural produce on which cess has been levied in any market area if the seller or the purchaser of such notified produce files a declaration in Form XI, in the prescribed manner, that no notified agricultural produce, cess has already been levied in any other market area of the State.

Explanation – (a) For the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a Market area if it has been weighed or measured or surveyed by a licensed weighman, measurer or surveyor in the Market area for the purpose of sale, notwithstanding the fact the property in the agricultural produce has by reason of such sale, passed to a person in place outside the market area.”

While referring to the provisions of Sale of Goods Act and terms of the contract between the parties regarding sale of goods and the provisions of the Sale of Goods Act, Hon'ble the Supreme Court opined that the sale of agricultural produce had taken place within the market area in Rajasthan as the sale rectified in that area, seller being responsible for

delivery of goods at the place of the buyer. Relevant paras therefrom are extracted below:-

“14. From the aforesaid arguments it becomes clear that applicability of Section 17 of the Act read with Rule 58 of the Rules would depend upon the question as to whether agricultural produce is bought and sold by the licensee in the market area. It is also the common case of the parties that the answer to the aforesaid issue would depend upon the question as to when and at what stage the title in the goods passes. If the entire transaction takes place outside the State of Rajasthan and the ownership in the goods also passes outside Rajasthan, then the market fee is not payable. It is also the common case of the parties that answer to the aforesaid question would depend upon the applicability of Section 4 read with Section 19 of the Sale of Goods Act, 1930, which provisions are to be applied keeping in view the terms and conditions on which the goods are sold. That is the exercise which is done by the High Court by looking into the terms on which the goods were sold by Jawahar Exim Ltd. to Arihant Udyog. Insofar as Arihant Udhdyog is concerned, this was the only invoice produced before the High Court and is also made Annexure P-3 in the present proceedings. On going through the same, we do not find any fault in the approach of the High Court.

15. Section 4 of the Sale of Goods Act deals with the contract of sale and defines ‘sale’ as well as ‘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 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.”

The very distinction between the sale and agreement to sell enumerated in the aforesaid provision points out that a sale takes place when the property in goods is transferred from the seller to the buyer. If transfer of property in the case is to take place at a future time or subject to conditions that are stipulated in the contract of sale of goods, then the contract is merely an agreement to sell. Section 19 is contained in Chapter-III of the Sale of Goods Act, title whereof is “Effects of the Contract (Transfer of Property as between Seller and Buyer)”. As per this provision, property passes from seller to buyer when it is intended to pass and such an intention is to be gathered from contract for the sale when it pertains to sale of specific or ascertained goods. To understand fully the implication of this provision, we reproduce hereunder the provisions of Section 19:

“19. Property passes when intended to pass

(1) Where there is a contract for the sale of

specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.”

16. Sub-section (3) of Section 19 is another significant provision which mentions that rules contained in Sections 20 to 24 are the rules for ascertaining the intention of the parties, unless a different intention appears in the contract for the sale of specific or ascertained goods. It means, if such an intention as to when the parties to the contract intend the property in goods to be transferred cannot be gathered from the contract, rules contained in Sections 20 to 24 would be applied.

17. Section 20 deals with a situation where specific goods are in a deliverable state. In that case property in goods passes to the buyer when the contract is made, even when time of payment of the price or the time of delivery of the goods or both is postponed. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable {See – Shalimar Chemical Works Ltd. (AIR 1997 SC 2502)}.

18. However, Section 21 is exception to Section 20

which states that where there is a contract for sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such a thing is done and the buyer has notice thereof. Likewise, Section 22 carves out another exception and mentions that even when the specific goods are in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such Act or thing is done and the buyer has notice thereof.

19. Section 23 deals with sale of uncertain goods and appropriation, with which we are not concerned here. Likewise, Section 24 deals with a situation where goods are sent on approval or 'on sale or return' basis, which is also not relevant for our purposes.

20. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.

21. In the case of Arihant Udhyog, intention is to be gathered from the terms and conditions, which have already been noted above. It mentions that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods. Therefore, intention was to retain the title in the goods till its delivery inasmuch as till that time it is the

seller who was responsible for the goods. This condition would clearly spell out that if the goods are destroyed or lost in transit, i.e. before their delivery, responsibility will be that of the seller. Such a responsibility can be only if the ownership remains of the seller. No other document was produced by Arihant Udhyog which could demonstrate the intention that property in goods passed in their favour before these goods were delivered.

22. Thus, insofar as judgment of the High Court in Arihant Udhyog is concerned, no fault can be found therein. The appeal filed by Arihant Udhyog is, accordingly, dismissed.”

Section 23 of the Act provides for levy of fee on agricultural produce bought or sold within the market area. However, in Rule 29 (7) of the Rules, a deeming section has been added providing for certain eventualities which, in turn, would lead to the conclusion that the agricultural produce was bought or sold within the market area, hence, market fee will be leviable. Any one of those eventualities in isolation may not itself lead to conclusion regarding the agricultural produce being bought or sold in the market area, if seen these parameters considered in the light of the principles as laid down in the Sale of Goods Act, 1930. Hon'ble the Supreme Court in Shalimar Chemical Works Limited's case (supra) opined a similar presumption raised to be rebuttable. The legal fiction so created was held to be beyond legislative policy. In the case of M/s Arihant Udhyog's case (supra), Hon'ble the Supreme Court opined that factum of purchase of sale of goods in a market area will depend on their title for the agricultural produce passes. If entire transaction takes place outside the State, market fee will not be payable. In this case also, reference was made to the

provisions of the Sale of Goods Act, 1930.

In the bunch of cases in hand as well, the case sought to be set up by the petitioner is that the transaction of sale or purchase of goods had taken place outside the market area, hence, no fee was leviable. The agricultural produce had been bought in the market area only for processing. To determine that fact, in the light of enunciation of law by Hon'ble the Supreme Court in the above referred cases, finding on the basis of material already placed on record by the petitioner before the authorities or which may be placed on record would be required. Hence, we deem it appropriate to set aside the orders passed by the authorities and remit the matter back to the Secretary, Market Committee concerned for determination afresh to be examined in the light of the material already placed on record or which may be placed on record by the petitioner(s) to establish that sale or purchase of agricultural produce had not taken place within the market area.

The writ petitions are disposed of accordingly.

(Rajesh Bindal)
Judge

01.8.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No