

A KRISHI UTPADAN MANDI SAMITI, GHAZIABAD
AND ANR.

v.

M/S. METAL CRAFT & ORS.
(Civil Appeal No. 8690 of 2001)

B JULY 7, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ.]

C *Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 –*
s.17(iii)(b), Explanation appended thereto – Market fee – Levy
of – Held: Physical presence of agricultural produce within
market area is necessary for levy of market fee – On facts,
transaction of sale of the rice exported by Respondent No.1
D *did not take place within the market area of Appellant-Mandi*
Samiti – Hence, Appellant-Mandi Samiti was not entitled to
levy market fee.

E The question which arose for consideration in the
present appeal is whether the transaction of sale of the
rice exported by Respondent No.1 took place within the
market area of the Appellant-Mandi Samiti and therefore
the Appellant was entitled to levy market fee under
s.17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi
Adhiniyam, 1964.

F Dismissing the appeal, the Court

HELD:1.1. A plain reading of s.17(iii)(b) of the Uttar
Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (Act)
shows that the Committee is empowered to levy and col-
lect market fee which shall be payable on transaction of
G sale of agricultural produce in the market area. The words
“specified agricultural produce in the market area” have
great relevance. The manner of realization of market fee
has been enumerated in sub clauses (1), (2), (3) & (4) of

H

s.17(iii)(b). Reference is to “produce”. This apparently shows that physical presence of the agricultural produce within the market area is necessary for levy of market fee. The Explanation to s.17(iii)(b) appended at the end of the Section lays down that unless the contrary is proved any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of the licensed traders shall be presumed to have been sold within such area. The Explanation has application only if the agricultural produce is physically present within the market area. The explanation becomes redundant if the stand of the appellant that s.17(iii)(b) is applicable even in cases where agricultural produce is neither physically brought nor is in existence within the market area. [Para 9] [184-H; 185-A,B,C & D]

1.2. Under s.17(iii)(b), the measure of levy of the fee is on the price of the goods sold. It obviously means that there must be a complete transaction of sale or a concluded sale. If there is only an agreement and the agreement fails, the remedy for the aggrieved party is to file suit for damages. Obviously, no fee can be charged on damages. The action for levy of fee can arise only on a concluded sale and as the sale has not taken place within the market area of Ghaziabad, no mandi fee can be levied. [Para 13] [188-E,F & G]

Ram Chander Kailash Kumar & Co. v. State of U.P., AIR (1980) SC 1124- relied on.

P.S.N.S. Ambalavana Chettiar and Company Ltd. v. Express Newspapers Ltd. AIR (1968) SC 741 and *Jute and Gunny brokers Ltd. & Ors. v. The Union of India and Ors. etc.* AIR (1961) SC 1214 – referred to.

2. The stand of the appellant is that the market fee is levied on “transaction of sale” and not on “sale” only and, therefore, what is to be seen is where the transaction took place and not the situs of the sale. If this argument is ac-

A cepted then even an agreement to sale without the pres-
ence or existence of the agricultural produce will come
within the ambit of the charging provision. It would also
mean that if the agreement takes place outside the bound-
aries of State of Uttar Pradesh, the provisions would still
B become applicable. [Para 14] [188-G,H; 189-A]

3. A bare perusal of the order passed by the
revisional authority under the Act.shows that the Appel-
lant-Samiti as well as the revisional authority proceeded
on the basis that since the contract for goods was en-
C tered into at Ghaziabad and then goods were sent through
transport from Punjab, Haryana and Madhya Pradesh di-
rectly through ports, therefore, the market fee was levi-
able. The High Court rightly noted the admitted position
that the rice was never brought or was in existence within
D the market area of Mandi Samiti, Ghaziabad or for that
matter within the State of Uttar Pradesh. The High Court
recorded a categorical finding that the sale took place only
when the rice was loaded on the sea at the port in terms
of the agreement. That being so, there was no transac-
E tion of sale within the market area of the Mandi Samiti,
Ghaziabad. Therefore, the High Court rightly held that the
Mandi Samiti was not entitled to levy any market fee. [Para
15 & 16] [189-B,C,D & E]

F CIVILAPPELLATE JURISDICTION : Civil Appeal No. 8690
of 2001

From the final Judgment and Order dated 6/7/2001 of the
High Court of Judicature at Allahabad in C.M. W.P. No. 10342
of 1998

G Pradeep Misra for the Appellants.

T.N. Singh for the Respondents.

The Judgment of the Court was delivered by

H **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to

the judgment of a Division Bench of the Allahabad High Court holding that the appellant was not entitled to levy market fee under Section 17(iii) (b) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (in short the 'Adhiniyam') if the agricultural produce is neither brought nor taken out of the market place, and deciding in favour of respondent no.1. A B

2. Background facts in a nutshell are as follows:

Respondent is a registered partnership firm having its business premises and office at 14, Navyug Market, Ghaziabad, and it carried on the business of sale and purchase of iron and steel and also export of rice. It wanted to purchase broken rice from the rice millers of U.P. for the purpose of export to foreign countries and accordingly, made an application on July 31, 1997, to Krishi Utpadan Mandi Samiti, Ghaziabad, for grant of a licence. It was also stated in the application that the respondent had exported rice in November, 1996 by purchasing it from places outside U.P. Appellant No.1 asked the respondent no.1 to deposit the licence fees for the years 1995-96, 1996-97 and 1997-98, which was done as per the demand. Thereafter, the appellant no.1 sent a demand notice to the respondent no.1 on October 12, 1997, demanding market fee at the rate of 2 per cent amounting to Rs.12,94,860.00. The respondent no.1 sent a reply on October 18, 1997, stating that it had never purchased any rice from inside the State of U.P. nor any transaction of sale or purchase of rice was carried out within the State, It was accordingly requested that the demand notice/order dated October 12, 1997, be rescinded. The appellant no.1, however, initiated proceeding for recovery of the amount in question and issued a citation dated December 6, 1997. The respondent no.1 thereafter, filed C.M. Writ Petition No, 43329 of 1997 in the High Court which was disposed of on December 17, 1997, with a direction to appellant no.1 to decide the respondent no.1's representation within a month and the recovery proceeding were suspended for six months. The respondent no.1 appeared before appellant no.1 on the date fixed, namely January 14, 1998, along with the relevant records and submitted that the rice had C D E F G H

A been purchased from places outside the State of U.P. and had
been sent directly to the ports for being exported to South Af-
rica and as such, it was not liable to pay any market fee. The
appellant passed an order on January 25, 1998, holding that
the transaction of sale of the rice exported by the respondent
B no.1 firm took place within the market area of Ghaziabad, and,
accordingly, the market fee imposed by the order dated Octo-
ber 12, 1997 was valid and proper. Feeling aggrieved, the re-
spondent no.1 preferred a revision under Section 32 of the Act
before the Rajya Krishi Utpadan Mandi Parishad, Lucknow (ap-
C appellant no.2) which was dismissed by order dated March 9,
1998. The writ petition under Article 226 of the Constitution of
India, 1950 (in short the 'Constitution') was filed for quashing
the orders dated October 12, 1997 passed by appellant no.1
and the order dated March 9, 1998 passed by appellant no.2.
D The learned Single Judge, who heard the petition, was of the
opinion that the controversy raised involved a substantial ques-
tion of law of general importance and made a reference to larger
Bench. That is how the matter came before the Division Bench.

E The case of the respondent no.1 was that the rice was
exported by it because certain dealers in South Africa wanted
to buy rice from India. The respondent no.1 quoted the rates
and entered into negotiations. After the deal was settled, the
rice was purchased from rice millers in Haryana, Punjab, Madhya
Pradesh from where it was directly dispatched to the ports of
F Mumbai and Kandla and clearing and forwarding agents of the
respondent no.1 loaded the same on the ship. After the goods
had been loaded a Bill of Lading was prepared and signed by
the Master of the ship in the capacity of carrier acknowledging
the receipt of the goods. The Bill of Lading was given to the
clearing and forwarding agents and on receipt of the Bill of Lad-
G ing by the buyer through the respondent no.1's bankers, the rice
were retired by the buyer in South Africa. The sale price of the
rice was received by the respondent no.1 through its banker
viz. Oriental Bank of Commerce at Delhi. It is the specific case
H of the respondent no.1 was that the entire quantity of the ex-

ported rice was purchased from places outside the State of U.P. and was directly sent to the ports without it ever coming within the market area of Ghaziabad or in the State of U.P. It was also asserted that the sale was affected only at the ports when the goods were loaded in the ship and the Bill of Lading was handed over to the respondent no. 1's clearing and forwarding agents. A B

The case of the present appellants was that the business establishment of the respondent is at 14, Navyug Market Ghaziabad and the entire transaction was done from the said place. The purchase order was received and accepted by it at Ghaziabad and the sale price was also received there and therefore the transaction of sale took place in Ghaziabad. It was also pleaded that the transport of the goods and how it was actually exported was wholly irrelevant for ascertaining where the transaction of sale took place. C D

The High court did not accept the said stand and allowed the writ petition filed.

3. In support of the appeal, learned counsel for the appellants submitted that since the transaction took place within the jurisdiction of the market area, the levy was justified and the High Court was wrong in its view. E

4. Learned counsel for the respondent no.1 on the other hand supported the judgment of the High Court. F

5. It is to be noted that before the High Court the learned counsel for the appellant no.1 had fairly admitted that rice exported by the appellant was never brought within the market area of Mandi Parishad, Ghaziabad within the state of U.P.

6. Section 17(iii)(b) is the charging section which reads as follows: G

"17. Powers of the Committee-A Committee shall, for the purposes of this Act, have the power to –

(i)

H

- A (ii)
- (iii) levy and collect:
- (a) such fees as may be prescribed for the issue or renewal of licences, and
- B (b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates being not less than one percentum and not more than two percentum of the price of the agricultural produce so sold as the State Government may specify by notification,, and such fee shall be realised in the following manner -
- C
- D (1) if the produce is sold through a commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;
- E (2) 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;
- F (3) if the produce is purchased by a trader for another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee : and
- (4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committees :

G Provided that no market fee shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only."

H 7. The object for which the Act was enacted is as follows:

- (i) to reduce the multiple trade charges, levies and exactions charged at present from the produce-sellers; A
- (ii) to provide for the verification of accurate weight and scales and see that the producer-seller is not denied his legitimate due; B
- (iii) to establish market committees in which the agricultural producer will have his due representation;
- (iv) to ensure that the agricultural producer has his say in the utilization of market funds for the improvement of the market as a whole; C
- (v) to provide for fair settlement of disputes relating to the sale of agricultural produce.
- (vi) to provide amenities to the producer-seller in the market; D
- (vii) to arrange for better storage facilities;
- (vii) to stop inequitable and unauthorized charges and levies from the producer-seller; and E
- (viii) to make adequate arrangements for market intelligence with a view to posting the agricultural producer with the latest position in respect of the markets dealing with his produce." F

As the prefatory note and preamble clearly show the object of the Act is to save the agricultural producer from innumerable charges, levies etc. and to enable them to have a say in the proper utilization of amounts paid by him to reduce multiple charges levies, exactions charged from the producer and seller and generally to help the agricultural producer to sell his produce to his best advantage. G

8. At the end of the Section there is an explanation which reads as follows:

A "Explanation – For the purpose of clause (iii), unless the
contrary is proved, any specified agricultural produce taken
out or proposed to be taken out of market area by or on
behalf of a licensed trader shall be presumed to have
B been sold within such area and in such case the price of
such produce presumed to be sold shall be deemed to be
such reasonable price as may be ascertained in the
manner prescribed."

In exercise of the powers conferred by Section 40, Rules
have been framed, which are known as U.P. Krishi Utpadan
C Mandi Niyamavali, 1965 (hereinafter referred to as the
'Niyamavali') and Rules 66 and 68 reads as follows:

D "(66) Market Fee (Section 17 (iii)- The Market Committee
shall levy and collect market fee in the Market Area in
accordance with the provisions of sub-clause (b) of clause
(iii) of Section 17 of the Act at such rate as may be specified
in the bye-laws:

E Provided that no market fee shall be levied and charged
prior to the date on which provisions, Section 10 of the Act
are enforced :

F Provided further that when the specified agricultural
produce is presumed to have been sold in accordance
with the explanation given under clause (viii) of Section 17
of the Uttar Pradesh Krishi Utpadan Mandi Adhinyam,
1964 the price of such produce shall be the price prevailed
for that type of produce in that market just on the previous
working day.

G (68) No market fee shall be levied more than once on any
consignment of the specified agricultural produce brought
for sale in the Market Yard if the market fee has already
been paid on it in any Market Yard of the same Market
Area and in respect of which a declaration has been made
and a certificate has been given the seller in Form No. V."

H 9. A plain reading of Section 17(iii)(b) of the Act shows

that the Committee is empowered to levy and collect market fee which shall be payable on transaction of sale of agricultural produce in the market area. The words "specified agricultural produce in the market area" have great relevance. The manner of realization of market fee has been enumerated in sub clauses (1), (2), (3) & (4) of Section 17(iii)(b). Reference is to "produce". This apparently shows that physical presence of the agricultural produce within the market area is necessary for levy of market fee. The explanation to Section 17 (iii)(b) appended at the end of the Section lays down that unless the contrary is proved any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of the licenced traders shall be presumed to have been sold within such area. The explanation has application only if the agricultural produce is physically present within the market area. The explanation becomes redundant if the stand of the appellants that Section 17(iii)(b) is applicable even in cases where agricultural produce is neither physically brought nor is in existence within the market area.

10. In *Ram Chander kailash Kumar & Co. v. State of U.P.* (AIR1980 SC 1124) it was inter alia observed as follows:

"This point urged on behalf of the appellants is well founded and must be accepted as correct. On the very wordings of Clause (b) of Section 17(iii) market fee is payable on transactions of sale of specified agricultural produce in the market area and if no transaction of sale takes place in a particular market area no fee can be charged by the Market Committee of that area. If goods are merely brought in any market area and are dispatched outside it without any transaction of sale taking place therein, then no market fee can be charged. If the bringing of the goods in a particular market area and their despatch therefrom are as a result of transactions of purchase and sale taking place outside the market area, it is plain that no fee can be levied."

A 11. In *P.S.N.S. Ambalavana Chettiar and Company Ltd. v. Express newspapers Ltd.* (AIR 1968 SC 741) it was observed as follows:

B “Section 18 of the Sale of Goods Act provides that where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. It is a condition precedent to the passing of property under a contract of sale that the goods are ascertained. The condition is not fulfilled where there is a contract for sale of a portion of a specified larger stock. Till the portion is identified and appropriated to the contract, no property passes to the buyer. In *Gillett v. Hill* [(1834) 2 C&M. 535: 149 E.R. 871, 873], Bayley, B. said:

D “Where there is a bargain for a certain quantity ex a greater quantity, and there is a power of selection in the vendor to deliver which he thinks fit, then the right to them does not pass to the vendee until the vendor has made his selection, and trover is not maintainable before that is done. If I agree to deliver a certain quantity of oil as ten out of eighteen tons, no one can say which part of the whole quantity I have agreed to deliver until a selection is made. There is no individuality until it has been divided.”

F 12. Similarly, in *Jute and gunny brokers Ltd. & Ors. v. The Union of India and Ors. etc.* (AIR 1961 SC 1214) it was held as follows:

G “The contention on behalf of the Union of India is that property in the goods cannot pass in law to the holders of the pucca delivery orders till the goods are actually appropriated to the particular order; therefore, as in this case it is not in dispute that no goods were actually appropriated towards the pucca delivery orders concerned, the property in the goods did not pass to the holders thereof but was still in the mills. Reliance in this

H

connection is placed on s. 18 of the Indian Sale of Goods Act, No III of 1930. That section lays down that "where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained." In the present case, as we have already said it is not in dispute that the goods covered by the pucca delivery orders are not ascertained at the time such orders are issued and ascertainment takes place in the shape of appropriation when the goods are actually delivered in compliance therewith. Therefore, till appropriation takes place and goods are actually delivered, they are not ascertained. The contract therefore represented by the pucca delivery orders is a contract for the sale of unascertained goods and no property in the goods is transferred to the buyer in view of s. 18 of the Indian Sale of Goods Act till the goods are ascertained by appropriation, which in this case takes place at the time only of actual delivery. The appeal court in our opinion was therefore right in holding that the property in the goods included in the pucca delivery orders did not pass to the holders thereof in view of s. 18 of the Sale of Goods Act in spite of the decision in the case of the Anglo-India Jute Mills Co. [(1910) I.L.R. 38 Cal. 127]. What that case decided was that in a suit between a holder of a pucca delivery order - be he the first holder or a subsequent holder who has purchased the pucca delivery order in the market - and the mills, there will be an estoppel and the mill will be estopped from denying that cash had been paid for the goods to which the delivery order related and that they held the goods for the holder of the pucca delivery order. That case therefore merely lays down the rule of estoppel as between the mill and the holder of the pucca delivery order and in a suit between then the mill will be estopped from denying the title of the holder of pucca delivery orders; but that does not mean that in law the title passed to the holder of the pucca delivery order as soon as it was issued even though it is not disputed that there

A was no ascertainment of goods at that time and that the
ascertainment only takes place when the goods are
appropriated to the pucca delivery orders at the time of
actual delivery. The appeal court was in our opinion right
B in holding that the effect of the decision in the case of
Anglo-India Jute Mills Co. [(1910) I.L.R. 38 Cal. 127], was
not that the property in the goods passed by estoppel and
that that case only decided that as between the seller and
the holder of the pucca delivery order, the seller will not be
heard to say that there was no title in the holder of the
C deliver order. That case was not dealing with the question
of title at all as was made clear by Jenkins C.J. but was
merely concerned with estoppel. In the present case the
question whether the Government of India will be estopped
is a matter which we shall consider later; but so far as the
D question of title is concerned there can be no doubt in
view of s. 18 of the Sale of Goods Act that title in these
cases had not passed to the holders of the pucca delivery
orders on September 30, 1946, for the goods were not
ascertained till then, whatever may be the position of the
holders of the pucca delivery orders in a suit between
E them and the mills to enforce them."

13. Under Section 17(iii)(b) the measure of levy of the fee
is on the price of the goods sold. It obviously means that there
must be a complete transaction of sale or a concluded sale. If
F there is only an agreement and the agreement fails, the remedy
for the aggrieved party is to suit for damages. Obviously, no
fee can be charged on damages. The action for levy of fee can
arise only on a concluded sale and as the sale has not taken
place within the market area of Ghaziabad, no mandi fee can
G be levied.

14. The stand of the appellant is that the market fee is
levied on "transaction of sale" and not on "sale" only and, there-
fore, what is to be seen is where the transaction took place and
not the situs of the sale. If this argument is accepted then even
H

an agreement to sale without the presence or existence of the agricultural produce will come within the ambit of the charging provision. It would also mean that if the agreement takes place outside the boundaries of State of Uttar Pradesh, the provisions would still become applicable. A

15. It is to be noted that the challenge in the writ petition was essentially to the revisional order passed by the revisional authority under the Act. The revision was filed against the order passed by the Mandi Samiti in respect of rice exported. A bare perusal of the revisional order shows that the Samiti as well as the revisional authority proceeded on the basis that since the contract for goods was entered into Ghaziabad and then goods were sent through transport from Punjab, Haryana and Madhya Pradesh directly through ports, therefore, the market fee was leviable. B
C

16. The High Court rightly noted that the admitted position was that the rice was never brought or was in existence within the market area, Mandi Samiti, Ghaziabad or for that matter within the State of Uttar Pradesh. The High Court recorded a categorical finding that the sale took place only when the rice was loaded on the sea at the port in terms of the agreement. That being so, there was no transaction of sale within the market area of the Mandi Samiti, Ghaziabad. Therefore, the High Court rightly held that the Mandi Samiti was not entitled to levy any market fee. There is no merit in the appeal, which is accordingly dismissed. D
E

B.B.B.

Appeal dismissed.