Coffee Board, Karnataka, Bangalore

Vs

Commissioner of Commercial Taxes, Karnataka and Others

Civil Appeals Nos. 4522-29 of 1985

(CJI R. S. Pathak, Sabyasachi Mukharji, S. Natarajan JJ)

11.05.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These appeals by certificates are from the judgment and order of the High Court of Karnataka dated August 16, 1985. By the impugned judgment and order the writ petitions filed by the Coffee Board and others were dismissed. In order to appreciate the questions involved in the decision, it may be noted that the appellant herein - Coffee Board contended that the compulsory delivery of Coffee under the Coffee Act, 1942 extinguishing all marketing rights of the growers was 'compulsory acquisition' and not sale or purchase to attract levy of purchase tax; it was further contended that the appellant was only a 'trustee' or 'agent' of growers not eligible to purchase tax and that all export sales were in the course of export to purchase tax and that all export sales were 'in the course of export' immune to tax under Article 286 of the Constitution.

2. It was held by the Division Bench of the Karnataka High Court that an element of consensuality subsists even in compulsory sales governed by law and once there is an element of consensuality, however minimal that may be, whether express or implied, then that would be sale or purchase for purposes of Sale of Goods Act and the same would be exigible to sales to sales or purchase tax as the case may be under the relevant Sales Tax Law of the country.

3. The power conferred on the Board under Section 25(2) of the Coffee Act, to which we will make reference later, to reject coffee offered for delivery or even the right of a buyer analogous to Section 37 of the Sale of Goods Act showed that there was an element of consensuality in the compulsory sales regulated by the Act. The amount paid by the Board to the grower under the Act was the value or price of coffee in conformity with the detailed accounting done thereto under the Act. It was further held by the High Court that the amount paid to the grower neither compensation nor dividend. The payment of price to the grower was an important element to determine the consensuality test to find out whether there was sale under Section 4(1) of the Sale of Goods Act. The Act also ensures periodical payments of price to the growers. The Rules provide for advancing loans to growers. Therefore, according to the Division Bench of the Karnataka High Court without any shadow of doubt these elements indicated that in the compulsory sale of coffee, there was an element of consensuality. When once the Board was held to be a 'dealer' it also followed from the same that there was sale by the grower, purchase by the Board and then a sale by the Board. The purchases and the exports if any made by the Board thereafter on any principle would not be 'local sales' within the State of Karnataka Explanation 3(2)(ii) to Section 2(1) of the Karnataka Sales Tax Act had hardly any relevance to hold that the later export sales were 'local sales' to avoid liability under Section 6 of the Karnataka Sales Tax. The direct export sales made by the appellant for the

period in challenge were not 'in the course of export' and they did not qualify for exemption from purchase tax under Section 6 of the Karnataka Sales Tax Act. The levy of sales tax on coffee, it was held by the High Court fell, under entry 43 of the Second Schedule of the Act and it was governed by Section 5(3)(a) of the Act and not by Section 5(1) of the Act. It was further held that under Section 5 of the Central Sales Tax Act, 1956 purchases and exports made by the Coffee Board are 'for export' and not 'in the course of export' and thus did not qualify for exemption under Article 286 of the Constitution of India. It was observed by the High Court that the Board did not purchase or take delivery of any specific coffee or goods of any grower and exported the same under prior contracts of sale. The Board did not purchase any specific coffee of any specific grower for purposes of direct exports at all. The purchases made and exports made would be 'for export' only and not 'in the course of export' to earn exemption under Article 286 of the Constitution of India. It was further held that Sections 11 and 12 of the Act which regulate the levy and payment of customs and excise duties when closely examined really established according to the High Court that what was grown by the growers and delivered to the Board was not at all compulsory acquisition but was sale. If it was compulsory acquisition and there was payment of compensation, then these provision would not have found their places in the Coffee Act at all, according to the High Court. Levy of Customs and excise duties on compensation was something unheard of, an incongruity and an anachronism in compulsory acquisition, according to the High Court.

4. On an analysis of all the provisions of the Act in general and Sections 17 and 25 in particular it was held by the High Court that on the true principles of compulsory acquisition or eminent domain, it was difficult to hold that on compulsory delivery by growers to the Board, there would be compulsory acquisition of coffee by the Board.

5. In order to determine the questions ar issue, that is to say the nature of the transaction one has to in a case of this nature telescope into the history and project it into the dimensions of the present levy. In November 1935 the Indian Coffee Cess Act, 1935 (Act 14 of 1935) came into operation, for levying cess on coffee produced in and exported out of India, for promoting the consumption in India and elsewhere of coffee produced in India and also for promoting agricultural and technological research in the interests of the coffee industry in India. The purpose seems to have been to develop the coffee industry, popularise the same and win a market in the international field. On September 14, 1940 Coffee Market Expansion Ordinance (No. 13 of 1940) was promulgated by the Central Government and the Pool Marketing Scheme for coffee introduced in India for the first time. A 'internal sale quota' was to be allotted to each coffee estate up to which the owner could sell his coffee in the Indian market. Coffee in excess of the internal sale quota allotted and grown on the estates which were henceforth to be registered, were required to be compulsorily delivered to the surplus pool of the Coffee Market Expansion Board set up under the Ordinance. The Pool Marketing Scheme was inspired by the pool marketing schemes for agricultural produce under Australian statutes. On or about March 2, 1942 the Coffee Market Expansion Act, 1942 (the title of the Act was later changed to Coffee Act in 1955) (hereinafter referred to as "the Act") was enacted and the Ordinance repealed. The Act was to remain in operation for the duration of the second world war and a period of one year thereafter. The Act, inter alia, added a new sub-section (6) to Section 25 of the Act, specifically providing for extinguishment of all the rights of the owners of the registered coffee estates in the coffee delivered by them to the surplus pool of the Coffee Board (hereinafter referred to as 'the Board') set up under the Act except the right to receive payments referred to in Section 34 of the Act. Under Section 34 of the Act the Coffee Board was required to pay to the registered owners who had delivered coffee for inclusion in the surplus pool such payments out of the Pool Fund (comprising of the monies realised from the sale of coffee pooled with the Board) as the Board may think proper, the amount so paid being dependent upon the

quantity and the kind of the coffee delivered to the Board.

6. On or about March 26, 1943 the Act was amended, inter alia, to enable the Coffee Board with the previous approval of the Central Government not to allow any internal sale quota to the growers. Since 1943 in each year the Board with the previous sanction of the Central Government has decided that no internal sale quota should be allowed. Sections 38-A and 38-B were added marketing failure to deliver coffee to the Board an offence to be penalised by fine and confiscation of the quantities not delivered. Power was also conferred on the Coffee Board to seize coffee required to be but not delivered to the Board. Ever since 1943, internal sale quotas have not been allowed and all the coffee grown on estates in the areas to which Section 25(1) of the Act was applicable was required to be compulsorily pooled. The surplus pool referred to in the Act was now in fact the pool of practically all coffee produced in India, it is not necessary to refer to the actual quantities available in the internal pool in different years though a table to that effect was placed before us by the learned Additional Solicitor General Shri G. Ramaswamy. On March 11, 1947 the Coffee Market Expansion (Amendment) Act 4 of 1947 was enacted. The life of the Act was extended without any time limit and inter alia, changes were made in the constitution of the Board providing for representation of labour. On August 1, 1955 the Coffee Market Expansion (Amendment) Act, 1954 was brought into force. The object of the Coffee Act was modified from 'the continuation of the provisions made under the Coffee Market Expansion Ordinance, 1940 for assistance to the coffee industry by regulating the sale of coffee in India and by other means' to "Development under the control of the Union of the coffee industry". It was highlighted before us in the course of the submissions that the pool system of marketing is a unique feature of the coffee industry in India. The principle features, according to the learned Additional Solicitor General of this system are : (a) Compulsory registration of all lands planted with coffee (Section 14 of the Coffee Act). (b) Mandatory delivery of all coffee grown in the registered estates except the quantities permitted by the Board to be retained for domestic consumption and for seed purposes, [see Section 25(1) of the Coffee Act]. Estates situated in remote areas specified in the notification issued by the Central Government under the provision to Section 25(1) of the Coffee Act are exempt from this provision. (c) Seizure by the Board of Coffee wrongly withheld from the pool. Prosecution for failure to deliver and confiscation of quantity not delivered. (d) Delivery to be effected at such times and, at such places as designated by the Board [Section 25(2)]; the extinguishment on delivery of all rights of the growers in respect of the coffee delivered to the Board excepting the right to receive payment under Section 34 of the Act [Section 25(6)]. (e) Sale of coffee in the pool by the Board in the domestic market and for export through auctions and other channels in regulated quantities and at convenient intervals [Section 26(1)]. (f) Payment to growers in such amounts and at such times as decided by the Board (Section 34). The payment to be made on the basis of the value as determined by the price differential scale [Section 24(4)], and in proportion to the value of such coffee to the total realisations in the pool [Section 34(2)]. (g) Sale or contracts to sell coffee by growers in the years in which internal sale quota was not allotted were prohibited by Section 17 of the Act. All contracts for the sale of coffees at variance with the provisions of the Act were declared as void by Section 47 of the Act.

7. Learned Additional Solicitor General sought to urge before us that the framers of the Act made a conscious distinction between (i) mandatory delivery of coffee to the Coffee Board under Section 25(1) and (ii) purchase of coffee by the Coffee Board from the growers exempted from mandatory delivery and from out of the internal sale quota during the years when such quotas were allotted under Section 26(2) and (ii) sale of coffee by the growers in the Indian market whenever internal sale quotas were allotted under Sections 17 and 22. It was highlighted that the Board has no capital of its own and did not have any Reserve Fund. The estates on which coffee is grown are not owned

by the Board. The Board is required to maintain two separate funds one General Fund and the other Pool Fund. Our attention was drawn to the fact that the Pool Fund consists of amounts realised from the sale of coffee marketed by the Board. The accounts of the Pool Fund are required to be maintained separately for each coffee season. The coffee season is from July to June of the following year. The sales realisations, less the costs of storing, curing and marketing the coffee, are to be utilised for marketing payments to growers who had delivered coffee in that seasons, in proportion to the value of the coffee delivered by them. The value is determined with reference to the kind, quality and quantity of coffee delivered by the growers. There are various other features which have to be borne in mind on the maintenance of the separate funds. It may be highlighted, however, that the General Fund consisted principally of the amounts paid to the Board by the Central Fund consisted principally of the amounts paid to the Board by the Central Government from out of appropriations made by the Parliament annually. This fund was to be utilised for meeting the costs of administration, research, measures for the welfare of plantation labour, promotion of coffee consumption and developmental assistance to coffee estates. After the Coffee Act was enacted the production of coffee and the quantities exported and the value of the exports have increased greatly.

8. It may be mentioned that the production of coffee was less than 15,000 tonnes in 1940. The production in the year 1984-85 was about 1,93,000 tonnes. Over 50 per cent of the coffee grown in the country is grown in the State of Karnataka. There are 1,12,153 coffee estates in the country of which 1,04,958 estates are less than 10 acres in size and 3,62,689 persons were employed on the estates in 1982-83. Over 59,000 tonnes of coffee of the value of about Rs. 209 crores was exported in the year 1984-85.

9. The Madras High Court in the case of Indian Coffee Board v. State of Madras [(1954) 5 STC 292 (Mad HC)] held that the Coffee Board was a 'dealer' under the Madras General Sales Tax Act, 1939 and inter alia, held that there was no contract, express or implied, between the coffee grower and the Board and that the object and scheme of the Act were analogous to the statutes in Australia, providing for compulsory acquisition of pool marketing of agricultural produce. So far as the Madras High Court held that the Indian Coffee Board was a dealer we accept the same. The observation that there was no contract was made in the context of agency contract between the Coffee Board and the grower.

10. In or about 1957 Karnataka Sales Tax Act, 1957 was enacted and the Mysore Sales Tax Act, 1948 repealed. 'Sale' is defined in Section 2(t) and 'dealer' in Section 2(k) of the said Act. Growers of agricultural produce are not 'dealers' by reason of the Exception to Section 2(k) of the said Act. This position was no disputed before us. Section 5 of the Act provides for levy of sales tax. Coffee is mentioned at item 43 in Schedule II to the Karnataka Sales Tax Act. Sales tax on coffee is a single point tax payable on the first sale in the State. The basic rate of tax is 10 per cent in Karnataka. The rate in Tamil Nadu, Andhra Pradesh and Kerala is 6 per cent.

11. The question involved in these appeals and the writ petitions is the exigibility of tax on sale if there be any, by growers of the coffee to the Board. Basically, it must depend upon what is sale in the general context as also in the context of the relevant provisions of the Act namely, the Karnataka Sales Tax Act, 1957, as amended from time to time, (hereinafter called 'the Karnataka Act') and the Central Sales Tax Act, 1956, (hereinafter called 'the Central Act'). We must, however, examine these in the context of general law, namely, the Sale of Goods Act, 1930 and the concept of sale in general.

12. The essential object of the contract of sale is the exchange of property for a money price. There must be a transfer of property, or an agreement to transfer it, from one party, the seller, to the other, the buyer, in consideration of a money payment or a promise thereof by the buyer. Lord Denning, M. R., in C. E. B. Draper & Sons Ltd. v. Edward Turner & Sons Ltd. [(1965) 1 QB 424, 432 : (1964) 3 All ER 148], observed as follows :

> I know that often times a contract for sales is spoken of as a sale. But the word 'sale' properly connotes the transfer of the absolute or general property in a thing for a price in money [see Benjamin on Sale, 2nd edn. (1873), p. 1, quoted in Kirkness v. John Hudson & Co., 1955 AC 696, 708, 719]. In this Act of 1926 I think that 'sale' is used in its proper sense to denote the transfer of property in the goods. The sale takes place at the time when the property passes from the seller to the buyer and it takes place at the place where the goods are at that time

Lord Denning was speaking for the English Act of 1926 for the Sale of Goods Act.

13. In the Sales of Goods Act, 1930, (hereinafter called the 'sale of Goods Act') contract of sale of goods is defined under Section 4(1) as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. It also stipulates by sub-section (4) of Section 4 that 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.

14. Benjamin's Sale of Goods (2nd edn.) states that leaving aside the battle of forms, sale is a transfer of property in the goods by one, the seller, to the other, the buyer.

15. Under the Karnataka Sales Tax Act, sale is defined under Section 2(t) as :

> "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade of business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

16. The Central Act defines "sale" as under in Section 2(g) :

> "Sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

17. Coffee Board is a 'dealer' duly registered as such under the Sales Tax Acts of all the States in which it holds auctions/maintains depots/runs coffee houses. The Board is also registered as a 'dealer' under the Central Sales Tax Act. The Board collects and remits sales tax on all the coffee sold by it for domestic consumption to the State in which the sale takes place. Coffee is sold through auctions held in the States of Karnataka, Tamil Nadu and Andhra Pradesh, and also through the Board's own depots located in nine States. Sale is also effected by way of allotments to cooperative societies. The Board directly exports coffee and also sells coffee to registered exporters through separate export auctions. It may be mentioned that over 50 per cent of the coffee is produced in Karnataka and most of the Robusta variety of coffee is produced in kerala. All the coffee produced in these States cannot be sold within the State where the coffee is produced. Coffee meant for export

has also to be stored at convenient places. The Board, therefore, transfers coffee from one State to another. Sales tax is not payable or paid on the transfer of such coffee. In order to appreciate the actual controversy and the point at issue in the instant case, it is vital to appreciate the real nature of the transaction.

18. In 1966 this Court in the case of State of Kerala v. Bhavani Tea Produce Co. [(1966) 2 SCR 92 : AIR 1966 SC 677 : (1966) 59 ITR 254] (an unanimous decision of a Bench of five learned Judges) which arose under the Madras Plantations Agricultural Income Tax Act, 1955, held that when growers delivered coffee under Section 25 of the Act to the Board all their rights therein were extinguished and the coffee vested exclusively in the Board. This Court observed that when growers delivered coffee to the Board, though the grower "does not actually sell" the coffee to the Board, there was a 'sale' by operation of law. This was in connection with Section 25 of the Act. The court, however, did not hold that there was a taxable 'sale' by the grower to the Board in the year in question. The sale, according to this Court in that case took place in earlier years in which the Agricultural Income Tax Act did not operate. All the States in which coffee is grown and all the persons concerned with the coffee industry, it is asserted on behalf of the Additional Solicitor General understood this decision as laying down that the 'sale by operation of law' mentioned therein only meant the 'compulsory acquisition' of the coffee by the Coffee Board.

19. We are, however, bound by the clear ratio of this decision. The Court considered this question : "was there a sale to the Coffee Board ?" at page 99 of the Report and after discussing clearly said the answer must be in the affirmative. It was rightly argued, in our opinion, by Dr Chitale on behalf of the respondents that the question whether there was slaw or not or whether the Coffee Board was a trustee or an agent could not have been determined by this Court, is it was done in this case unless the question was specifically raised and determined. We cannot also by-pass this decision by the argument of the learned Additional Solicitor General that Section 10 of the Act had not been considered or how it was understood by some. This decision in our opinion concludes all the issues in the instant appeal.

20. In 1970 purchase tax was introduced. The Karnataka Sales Tax Act was amended by Karnataka Act 9 of 1970 and Section 6 was substituted. The new Section 6 provided for the levy of purchase tax on every dealer who in the course of his business purchased any taxable goods in circumstances in which no tax under Section 5 was leviable and, inter alia, dispatched these to a place outside the State, at the same rate at which tax would have been leviable on the sale price of such goods under Section 5 of the Karnataka Act. The delivery of coffee by the coffee growers to the Coffee Board not being treated a purchase by the Board, the State did not demand any tax from the Board in respect of such deliveries. Demands were raised for the first time in 1983. Assessments for the years up to 1975 were completed without any demand for purchase tax being raised.

21. This Court on or about April 15, 1980 in the case of consolidated Coffee Ltd. v. Coffee Board, Bangalore [(1980) 3 SCR 625 : (1980) 3 SCC 358 : 1980 SCC (Tax) 279 : AIR 1980 SC 1468] held that sale of coffee at export auctions were sales which preceded the actual export and thus exempt from sales tax under Section 5(3) of the Central Sales Tax Act. The court also directed the State Governments to refund the amounts collected as sales tax on such sales and set a time limit for effecting such refunds. The Karnataka Government, as a consequence, become liable to refund to the Coffee Board about Rs. 7 crores which amounts in turn was to be refunded by the Board to the exporters. In 1981 the Commissioner of Sales Tax, Karnataka informed the Board by a letter that the mandatory delivery of coffee to the Board by the grower would be regarded as 'sale' and that the Board should pay purchase tax as the coffee growers, being agriculturists are not 'dealers'. It is the

case of the Coffee Board that no such claim had been made at any time in the past in any of the States in India. The Commissioner issued a show cause notice proposing to reopen the assessment for the year 1974-75. In June 1982 preassessment notice was sent by the authorities proposing to assess the Board to purchase tax for the assessment year 1975-76 and a sum of Rs. 3.5 crores was demanded as purchase tax on the coffee transferred from Karnataka to outside the State either as stock transfers or as exports directly to buyers abroad.

22. In August 1982 the Coffee Board along with two coffee growers filed writ petitions being Writ Petition Nos. 15536 to 15540 of 1982 in the High Court of Karnataka praying for a declaration that the mandatory delivery of coffee under Section 25(1) of the Act was not sale and that Section 2(t) of the Karnataka Sales Tax Act required to be struck down if the same encompassed compulsory acquisition also. The show cause notice and the pre-assessment notice were also challenged and prayers were made for quashing the same. The High Court granted interim stay. In the meantime on or about February 3, 1983 Constitution (Forty-Sixth Amendment) Act, 1983 came into force and the definition of "Tax on sale or purchase of goods" was added by insertion of clause (29-A) in Article 366. This definition is prospective in operation. Subsequent to February 3, 1983 the Karnataka Sales Tax Act was amended by Act 10 of 1983, Act 23 of 1983 and Act 8 of 1984. The definition of 'sale' in Section 2(t), however, was not amended. That definition was amended with effect from August 1, 1985 by the Karnataka Act 27 of 1985. After hearing the State Government, the High Court made absolute the stay of further proceedings pursuant to the show cause notice of the Commissioner proposing to reopen the assessment for the year 1974-75. The court modified the stay order regarding the per-assessment notice and permitted the completion of assessment reserving liberty to the Coffee Board to move the High Court after the assessment was completed. On May 31, 1983 assessment order was made for the year 1975-76. On June 17, 1983 demand for Rs. 3.5 crores as arrears of tax for the assessment year 1975-76 was issued to the Coffee Board. On July 2, 1983, the High Court stayed the assessment demand for purchase tax for the assessment year 1975-76. On or about June 18, 1983 the assessment order was issued for the year 1976-77. The Board was assessed on a taxable turnover of Rs. 92.99 crores and Rs. 10.18 crores was assessed as tax. Of this sum, Rs. 8.06 crores is the demand on account of purchase tax. Thereafter notice demanding payment of Rs. 8.06 crores as arrears of tax for the assessment year 1976-77 was issued. The Coffee Board filed a writ petition in August 1983 being Writ Petition No. 13981 of 1983 challenging the assessment and the demand for the purchase tax for the assessment year 1976-77. Rule was issued and the assessment as also demand for purchase tax was stayed. In the meantime, notice of demand for Rs. 8.08 crores as arrears of tax for the assessment year 1977-78 was issued. In September 1983 Writ Petition No. 17071 of 1983 was filed by the Coffee Board for the assessment year 1977-78. Rule was issued. Assessment and demand for purchase tax was stayed. Similarly, Writ Petition No. 17072 of 1983 was filed by the Coffee Board regarding assessment year 1978-79. Rule was issued. Assessment and demand for purchase tax was stayed. In the meantime in October 1983, there was another Writ Petition No. 19285 of 1983 filed challenging the demand for the purchase tax for the year 1979-80. Rule was issued. Assessment and demand was stayed. Writ Petition No. 19118 of 1983 was filed challenging the demand of purchase tax for the year 1980-81. Rule was issued. Assessment and demand for purchase tax was stayed.

23. All these writ petitions in January 1984 were referred to the Division Bench for hearing and disposal. It may be mentioned here that in or about May 1984 the Coffee Board started for the first time to collect contingency deposits to cover purchase tax liability, if any, fort the period February 3, 1983 onwards subsequent to the Forty-Sixth Amendment to a limited extent. This was by a circular. It is stated that the Board withheld about Rs. 6.8 crores from the pool payment to growers for the season 1982-83 for meeting in part the liability, if any, for the purchase tax for the period

subsequent to February 3, 1983. The court however, in 1985 directed the appellant-Coffee Board to remit to the State Government Rs. 6.8 crores. The High Court also directed the Board to remit to the State Government Rs. 1.5 crores collected by the board as contingency deposits between May and December 1984. The State Government undertook to return these monies with interest, in the event of the writ petitions being allowed. By the judgment delivered on August 16, 1985, the High Court dismissed the Writ petitions by a common judgment and various sums of money for the various years became payable as purchase tax. The said judgment is reported in Indian Law Reports, Karnataka, Vol. 36 at page 1365. These appeals challenge the said decision.

24. In view of the decision of the High Court several questions were canvassed in these appeals. The questions were : (i) Was there transfer of coffee to the Board from the coffee growers or acquisition ? (ii) Was there any element of sale involved ? (iii) Was the Coffee Board trustee or agent for the coffee growers for sale to the export market, and (iv) if it is sale, is it is the course of export of the goods to the territory outside India ? The first and the basic question that requires to be considered in these appeals is whether the acquisition of coffee by the Board is compulsory acquisition or is it purchase or sale ? As mentioned all the questions were answered by this court in Bhavani Tea Produce Co. case [(1966) 2 SCR 92 : AIR 1966 SC 677 : (1966) 59 ITR 254] against the appellant. We were, however, invited to compare the transaction in question with transactions in Peanut Board v. Rockhampton Harbour Board [(1932-33) 48 CLR 266]. Was there any mutuality ? In this connection it is necessary to analyse and compare the decision of this Court in Vishnu Agencies (Pvt.) Ltd. v. CTO [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] and to what extent the principles enunciated in the said decision affect the position. In order to address ourselves to the problem posed before this Court, we must bear in mind the history and the provisions of the Coffee Market Expansion Act, 1942, under which the Board was constituted, which we have already noted.

25. The control of marketing of farm produce for the economic benefit of the producers and to bring about collective marketing of the produce is a recognised feature of governments of several countries, particularly, United States of America. Britain and Australia. The object was to prevent unhealthy competition between the producers to secure the best price for the produce in the local market, to conserve for local consumption as much produce as was needed and to make available the surplus for export outside the States and also to foreign markets. The method usually adopted to achieve the object is to establish a marketing board with power to control the price, to obtain possession of the produce and to pool it with a view to collective marketing. The legislation in this behalf is compendiously described as "pooling legislation" and is based on the fundamental idea that the collectivist economy is superior to individualistic economy. There are therefore, different marketing boards for different kinds of produce, such as sugar, dairy produce, wheat, lime fruit, apples, pears and so on. The Indian Coffee Market Explanation Act was modeled some what on the lines which obtained in other countries and was intended to control the development of the coffee industry and to regulate the export and sale of coffee. If, however, the transaction amounts to sale or purchase under the relevant Act then that is the end of the matter.

26. All parties drew our attention to the decision in the case of Vishnu Agencies Pvt. Ltd. [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] There the court was concerned with the Cement Control Order and the transactions taking place under the provisions of that control order. The Cement Control Order was promulgated under the West Bengal Cement Control Act, 1948 which prohibited storage for sale and by a seller and purchase by a consumer of cement except in accordance with the conditions specified in licence issued by a designated officer. It also provided that no person should sell cement at a higher price than the notified price and no

person to whom a written order had been issued shall refuse to sell cement, "at a price not exceeding the notified price". Any contravention of the order became punishable with imprisonment or fine or both. Under the A. P. Procurement (Levy and Restriction on Sale) Order, 1967, (Civil Appeals Nos. 2488 to 2497 of 1972) every miller carrying on rice milling operation was required to sell to the agent or an officer duly authorised by the government, minimum quantities of rice fixed by the government at the notified price, and no miller or other person who gets his paddy milled in any rice mill can move or otherwise dispose of the rice recovered by milling at such rice mill except in accordance with the directions of the Collector. Breach of these provisions became punishable. It was held dismissing the appeals that sale of cement in the former case by the allottees to the permit-holder and the transactions between the growers and procuring agents as well as those between the rice millers on the one hand and the wholesalers or retailers on the other, in the letter case, were sales exigible to sales tax in the respective States. It was observed by Beg, C. J. that the transactions in those cases were sales and were exigible to tax on the ratio of Indian Steel and Wire Products Ltd. [Indian Steel Wire Products Ltd. v. State of Madras, 1 SCR 479 : AIR 1968 SC 478 : 21 STC 138], Andhra Sugars Ltd. [Andhra Sugars Ltd. v. State of A. P. AIR 1968 SC 599 : 21 STC 212] and Karam Chand Thapar [State of Rajasthan v. Karam Chand Thappar & Bros. Ltd., AIR 1969 SC 343 : (1969) 23 STC 210]. In cases lie New India Sugar Mills [New India Sugar Mills Ltd. v. CST, 1963 Supp 2 SCR 459 : AIR 1963 SC 1207 : (1963) 14 STC 316], the substance of the concept of a sale itself disappeared because the transaction was nothing more than the execution of an order. The Chief Justice emphasised that deprivation of property for a compensation called price did not amount to a sale when all that was done was to carry out an order so that the transaction was substantially a compulsory acquisition. On the other hand, a merely regulatory law, even if it circumscribed the area of free choice, did not take away the basic character or core of sale from the transaction. Such a law which governs a class obliges a seller to deal only with parties holding licences who may buy particular or allotted quantities of goods at specified prices, but an essential element of choice was still left to the parties between whom agreements took place. The agreement, despite considerable compulsive elements regulating or restricting the area of his choice, might still retain the basic character of a transaction of sale. In the former type of cases, the binding character of a transaction arose from the order directed to particular parties asking them to deliver specified goods and not from a general order or law applicable to a class. In the latter type of cases, the legal tie which binds the parties to perform their obligations remains contractual. The regulatory law merely adds other obligations, such as the one to enter into such a tie between the parties. Although the regulatory law might specify the terms, such as price, the regulation is subsidiary to the essential character of the transaction which is consensual and contractual. The parties to the contract must agree upon the same thing in the same sense. Agreement on mutuality of consideration, ordinarily arising from an offer and acceptance, imports to it enforceability in courts of law. Mere regulation or restriction of the field of choice does not take away the contractual or essentially consensual binding core or character of the transaction. Analysing the Act, it was observed that according to the definition of "sale" in the two Acts the transactions between the appellants in that case and the allottees or nominees, as the case may be, were patently sales because in one case the property in the cement and in the other property in the paddy and rice was transferred for cash consideration by the appellants. When the essential goods are in short supply, various types of orders are issued under the Essential Commodities Act, 1955 with a view to making the goods available to the consumer at a fair price. Such orders sometimes provide that a person in need of an essential commodity like cement, cotton, coal or iron and steel must apply to the prescribed authority for a permit for obtaining the commodity. Those wanting to engage in the business of supplying the commodity are also required to possess a dealer's licence. The permit holder can obtain the supply of goods, to the extent of the quantity specified in the permit and from the named dealer only and at a controlled

price. The dealer who is asked to supply the stated quantity to the particular permit-holder has no option but to supply the stated quantity of goods at the controlled price. Then the decisions in State of Madras v. Gannon Dunkerley & Co. Ltd. [1959 SCR 379 : AIR 1958 SC 560 : (1958) 9 STC 353] and New India Sugar Mills v. CST [New India Sugar Mills Ltd. v. CST, 1963 Supp 2 SCR 459 : AIR 1963 SC 1207 : (1963) 14 STC 316], were discussed and the correctness of the view taken in the former case was doubted and the majority opinion in the latter case was overruled.

27. It was submitted by the learned Additional Solicitor General that these cases, namely, Bhavani Tea Estate [(1966) 2 SCR 92 : AIR 1966 SC 677 : (1966) 59 ITR 254] and Vishnu Agencies would have no application within the set up of the Coffee Act because the provisions of the statute expressly provide that there could be no sale or contract of sale, yet the High Court had for purposes of sales tax assumed (notwithstanding the statutory prohibition) that the transaction contemplated by the statute in the present case, the mandatory delivery, would be a sale. It was submitted that where a stature prohibited a registered owner from selling or contracting to sell coffee from any registered estate, there could be no implication of any purchase on the part of the Coffee Board of the coffee delivered pursuant to the mandatory provisions of Section 25(1) of the Act. It was urged that Section 17 of the Coffee Act read with Sections 25 and 47 enacts what since 1944 is a total prohibition against the sale of coffee by growers and corresponding purchase of coffee from grower. In view of Section 17 read with Section 25, purchase by the Coffee Board of coffee delivered under Section 25(1) was also impliedly prohibited. It is in view of this express prohibited of sale and corresponding implied prohibition of purchase that the Act provided the only method of disposal of coffee, viz., by the delivery of all coffee to the Coffee Board with no rights attached on such delivery, save and except the statutory right under Section 34. It was also argued that the legislature has made a conscious difference between acquisition of coffee by compulsory delivery by the growers under Section 25(1) of the Act and purchase of coffee by the Board under Section 26(2) and, as such, compulsory delivery of coffee under Section 25(1) cannot constitute a sale transaction as known to law between the growers and the Coffee Board. We are, however, unable to accept the submissions of the learned Additional Solicitor General. All the four essential elements of sale - (1) parties competent to contract, (2) mutual consent - though minimal, by growing coffee under the conditions imposed by the Act, (3) transfer of property in the goods and (4) payment of price though deferred, - are present in the transaction in question. As regards the provisions under Section 26(2) empowering the Coffee Board to purchase additional coffee not delivered for inclusion in the surplus pool, it is only a supplementary provision enabling the Coffee Board to have a second avenue of purchase, the first avenue being the right to purchase coffee under the compulsory delivery system formulated under Section 25(1) of the Act. The scheme of the Act is to provide for a single channel for sale of coffee grown in the registered estates. Hence, the Act directs the entire coffee produced except the quantity allotted for internal sale quota, if any, to be sold to the Coffee Board through the modality of compulsory delivery and imposes a corresponding obligation on the Coffee Board to compulsorily purchase the coffee delivered to the pool, except :

> (1) Where the coffee delivered is found to be unfit for human consumption; and
>
> (2) where the coffee estate is situated in a far off and remote place or the coffee grown in an estate is so negligible as to make the sale or coffee through compulsory delivery an arduous task and an uneconomical provision.

28. Since all persons including the Coffee Board are prohibited from purchasing/selling coffee in law, there could be no sale or purchase to attract the imposition of sales/purchase tax it was urged. Even if there was compulsion there would be a sale as was the position in Vishnu Agencies [(1978)

2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449]. This Court therein approved the minority opinion of Hidayatullah, J. in New India Sugar Mills v. CST [New India Sugar Mills Ltd. v. CST, 1963 Supp 2 SCR 459 : AIR 1963 SC 1207 : (1963) 14 STC 316]. In the nature of the transactions contemplated under the Act mutual assent either express or implied is not totally absent in this case in the transactions under the Act. Coffee growers have volition or option, though minimal or nominal to enter into the coffee growing trade. Coffee growing was not compulsory. If anyone decides to grow coffee or continue to grow coffee, he must transact in terms of the regulation imposed for the benefit of the coffee growing industry. Section 25 of the Act provides the Board with the right to reject coffee if it is not up to the standard. Value to be paid as contemplated by the Act is the price of the coffee. Fixation of price is regulation but is a matter of dealing between the parties. There is no time fixed for delivery of coffee either to the Board or the curer. These indicate consensuality which is not totally absent in the transaction.

29. It was urged that regard having been to the sovereign nature of the power exercised by the Coffee Board and the scheme of the Coffee Act, the ratio of Vishnu Agencies [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] will not apply to the acquisition of coffee under Section 25(1) by the Coffee Act. It is in this connection appropriate to refer to the question of compulsory acquisition and this naturally leads to the problem of exercising eminent domain by the State. It is trite knowledge that eminent domain is an essential attribute of sovereignty of every state and authorises are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation. Nichols on Eminent Domain (1950 edn.) a classic authority on the subject, defines 'eminent domain' as 'the power of the sovereign to take property for public use without the owner's consent'; see para 1.11 page 2 of Vol. 1 which elaborates the same in these words :

> .... This definition expresses the meaning of the power in its irreducible terms :
>
> (a) Power to take,
>
> (b) Without the owner's consent,
>
> (c) For the public use.

All else that may be found in the numerous definitions which have received judicial recognition is merely by way of limitation or qualification of the power. As a matter of pure logic it might be argued that inclusion of the term 'for the public use' is also by way of limitation. In this connection, however, it should be pointed out that from the very beginning of the exercise of the power the concept of the 'public use' has been so inextricably related to a proper exercise of the power that such element must be considered as essential in any statement of its meaning. The 'public use' element is set forth in some definitions as the 'general welfare', the 'welfare of the public', the 'public good', the 'public benefit' or 'public utility or necessity'.

It must be admitted, despite the logical accuracy of the foregoing definition and despite the fact that the payment of compensation is not an essential element of the meaning of eminent domain, that it is an essential element of the valid exercise of such power. Courts have defined eminent domain so as to include this universal limitation as an essential constituent of its meaning. It is much too late in the historical development of this principle to find fault with such judicial utterances. The relationship between the individual's right to compensation and the sovereign's power to condemn is

discussed in Thayer's Cases on Constitutional Law. 'But while obligation (to make compensation) is thus well established and clear let it be particularly noticed upon what ground it stands, viz., upon the natural rights of the individual. On the other hand, the right of the State to take springs from a different source, viz., a necessity of government. These two, therefore, have not the same origin; they do not come, for instance, from any implied contract between the State and the individual, that the former shall have the property, if it will make compensation; the right is no mere right of pre-emption, and it has no condition of compensation annexed to it, either precedent or subsequent. But, there is a right to take, and attach to it as an incident, an obligation to make compensation; this latter, morally speaking, follows the other, indeed like a shadow, but it is yet distinct from it, and flows from another source.

30. It is concluded thus :

> Accordingly, it is now generally considered that the power of eminent domain is not a property right, or an exercise by the state of an ultimate ownership in the soil, but that it is based upon the sovereignty of the state. As the sovereign power of the State is broad enough to cover the enactment of any law affecting persons or property within its jurisdiction which is not prohibited by some clause of the Constitution of the United States, and as the taking of property within the jurisdiction of a state for the public use upon payment of compensation is not prohibited by the Constitution of the United States, it necessarily follows that it is within the sovereign power of a state, and it needs no additional justification.

31. Cooley in his treatise on the Constitutional Limitations Chapter XV expressed the same view at page 524 of the book in these words :

> More accurately, it is the rightful authority which must rest in every sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common and to appropriate and control individual property for the public benefit, as the public safety, convenience or necessity may demand.

32. In Chiranjit Lal Chowdhuri v. Union of India [1950 SCR 859 : AIR 1951 SC 41] Mukherjea, J. as the learned Chief Justice then was, while examining the scope and ambit of Article 31 of the Constitution observed as follows : (SCR p. 901-02)

It is a right inherent in every sovereign to take and appropriate property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, and offspring of political necessity, and it is supposed to be based upon an implied reservation by government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner.

33. This Court in the State of Karnataka v. Ranganatha Reddy [(1978) 1 SCR 641 : (1977) 4 SCC 471 : AIR 1978 SC 215] held that the power of acquisition could be exercised both in respect of immovable and movable properties.

34. While conceding the power of acquisition of coffee in exercise of eminent domain, the scheme contemplated under the Act was not an exercise of eminent domain power. The Act was to regulate the development of coffee industry in the country. The object was not to acquire coffee grown and vest the same in the Board. The Board is only an instrument to implement the Act.

35. The High Court in its judgment has rightly observed that the Board has been chosen as the instrumentality for the administration of the Act. The role of the Board of this type has been noted in three Australian decisions which must be taken note of. It is appropriate at this stage to refer to the decision of the Australian High Court, in Peanut Board v. Rockhampton Harbour Board [(1932-33) 48 CLR 266]. The question posed before the High Court was in relation to Section 92 of the Constitution Act of Commonwealth of Australia and the decision is instructive, though not in point. Rich, J. observed at pages 275 to 277 of the report as follows :

> It therefore remains only to consider whether the operative instruments affecting to deal with peanuts do or do not interfere with the freedom of inter-State trade. This should done be done weighing compulsory acquisition as a matter perhaps characterizing the enactments, but not of necessity determining their effect. The feature which at once challenges attention is that these instruments provide a means of marketing. They are concerned with establishing a compulsory pool through which growers producing pennants for sale must dispose of their product for distribution and receive their reward. The pith and substance of the enactments is the establishment of collective sale and distribution of the proceeds of the total crop and the concomitant abolition of the grower's freedom to dispose of his product voluntarily in the course of trade and commerce, whether foreign, inter-State or inter-State. Section 15 of the Act of 1926 provides that "all the commodity" shall be delivered by the growers to the marketing board, and that "all the commodity" to delivered shall be deemed to have been delivered to the board for sale by the board, "who shall account to the growers thereof for the proceeds thereof after making all lawful deductions therefrom for expenses and outgoing and deductions of all kinds in consequence of such delivery and sale or otherwise under these Acts" [Section 15(1), (2), as modified by the order in Council]. Sub-section (3) of Section 15 penalizes the sale or delivery of any of the "commodity" to, or the purchase or the receipt of any of the "commodity" from, any person except the board. These provisions operate even although the Governor in Council does not resort to compulsory acquisition. It was said by Mr Mitchell that the provisions authorizing the borrowing of money constituted the chief purpose of the compulsory acquisition. If this means that the control of the marketing of peanuts is a subordinate or consequential purpose of the instruments, I cannot agree. The ability to borrow upon the whole crop may afford an advantage, if not an incentive, in the concentration of the "commodity" in the hands of one marketing authority. But the weight attached to supposed advantages arising from the policy adopted in these enactments is not material. What is material is whether the scope and object of the enactments as gathered from their contents are to deal with trade and commerce including inter-State trade and commerce. In examining this question one cannot fail to observe that compulsory acquisition is resorted to as a measure towards ensuring that the whole crop grown in Queensland is available for collective marketing by the central authority. The case is not one in which a State seeks to acquire the total production of something it requires for itself and its citizens. It is interposing in the course of trade in the "commodity" as organization established for the purpose of carrying out one of the functions of trade. In my opinion the enactment controls directly the commercial dealing in peanuts by the grower and aims at, and would, apart from Section 92 accomplish, the complete destruction of his freedom of commercial disposition of his product. Part of this freedom is guaranteed by Section 92. Accordingly the Primary Producer's

> Organisation and Marketing Act. 1926-1930 and the Order in Council thereunder are ineffectual to prevent the grower of peanuts from disposing of them in inter-State trade and commerce and the appellant Board had no title to the peanuts the subject matter of this action.

36. In Milk Board (New South Wales) v. Metropolitan Cream Pty. Ltd. [(1939-40) 62 CLR 116], Chief Justice Latham at page 131 of the report observed as follows :

> It is true that the decision in the Peanut Board case [(1932-33) 48 CLR 266] was approved in James v. Commonwealth [(1936) 55 CLR 1, 52], but it is important to consider carefully the precise words in which this approval was expressed. They were as follows : "The producers of the peanuts, it was held, were prevented by the Act from engaging in inter-State and other trade in the commodity. The Act embodied, so the majority of the court held, a compulsory marketing scheme, entirely restrictive of any freedom of action on the part of the producers; it involved a compulsory regulation and control of all trade, domestic, inter-State and foreign; on the basis of that view, the principles laid down by this board were applied by the Court".

37. Justice McTiernan observed at page 158 of the report as follows :

> It is clear that the Milk Act does not profess to expropriate in order to hinder or burden the passing of milk, and the other products which the word 'milk' is expressed to include, from other States; and there is no ground for the contention that any such burden or hindrance is imposed under the disguise of expropriation. The Act replaces an individualist economy by a collectivist one for the distribution of milk within the area containing the most densely populated part of the State; and all that can be presumed is that the substitution was deemed by the legislature to be an expedient one for reasons only of health, hygiene, efficiency and the economic benefit of farmers in the milk-producing districts. I agree, therefore, that the operation of Section 26 is not inconsistent with Section 92 of the Constitution.

38. The aforesaid observations are most apposite. In the light aforesaid along with the provisions of Section 17 and Section 25 of the Act, it cannot be said in the Act, there is any compulsory acquisition.

39. We accept the submission of the learned Additional Solicitor General that it is not necessary that every member of the public should benefit from property that is compulsorily acquired. But in essence the scheme envisaged is sale - and not compulsory acquisition.

40. It has also to be borne in mind that the terms 'sale' and 'purchase' have been used in some of the provisions and that is indicative that no compulsory acquisition was intended.

41. Section 34 of the Act reads as follows :

> 34(1) The Board shall at such at such times as it thinks fit make to registered owners who have delivered coffee for inclusion in the surplus pool such payments out of the pool fund as it may think proper.
>
> (2) The sum of all payments made under sub-section (1) to any one registered owner

shall bear to the sum of the payments made to all registered owners the same proportion as the value of the coffee delivered by him out of the year's crop to the surplus pool bears to the value of all coffee delivered to the surplus pool out of that year's crop.

42. The High Court has referred to the provisions of Section 34(2) of the Act and observed that the said provisions ensure periodical payments of price to the growers. The rules provide for advancing loans to the growers. Without a shadow of doubt these elements indicate, according to the High Court, that in the compulsory sale of coffee, there was an element of consensuality. We are in agreement that there is consensuality in the scheme of the section. The High Court has referred to Section 25(2) of the Coffee Act and observed that the power conferred by Section 25(2) of the Coffee Act must be read subject to the very requirement of that and all other provisions of the Act. When a grower sells coffee that has become totally unfit for human consumption for one or the other valid reason, such a grower cannot compel the Board to purchase such coffee on the ground that it was coffee and thus endanger public safety and also pay its value or price. In the very nature of things, these things cannot be foreseen or enumerated exhaustively. The High Court was of the view that if a grower delivered coffee to the Board, the Coffee Act extinguished his title and absolutely vested the same in the Board, however, preserving his right for payment of its value or its price in accordance with the provisions of that Act. According to the High Court the amount paid by the Board to the grower under the Act is the value or price of coffee in conformity with the detailed accounting done thereto under the Coffee Act. The High Court was right. The High Court went on to observe that the amount paid to the grower was neither compensation nor dividend. The payment of price to the grower is an important element to determine the consensuality in the sale and the sale itself is under Section 4(1) of the Sale of Goods Act. Therefore, the High Court was of the view that neither Section 25(2) read with Section 17 nor the provisions for payment of compensation indicate that coffee becomes the property of the Coffee Board not by consent but by the operation of law.

43. The levy of duties of excise and customs under Sections 11 and 12 of the Coffee Act are inconsistent with the concept of compulsory acquisition. Section 13(4) of the Coffee Act clearly fixes the liability for payment of duty of excise on the registered owner of the estate producing coffee. The Board is required to deduct the amount of duty payable by such owner from the payment to the grower under Section 34 of the Act. The duty payable by the grower is a first charge on such Pool payment becoming due to the grower from the Board. Section 11 of the Act provides for levy of duty of customs on coffee exported out of India. This duty is payable to the customs authorities at the time of actual export. The levy and collection of this duty is not unrelated to the delivery of the coffee by the growers to the Board or the pool payments made by the Board to the growers. The duty of excise as also the duty of customs are duties levied by Parliament in exercise of its powers of taxation. It is not a levy imposed by the Board. It is a fact that the revenue realised from the levy of these duties from part of the Consolidated Fund of India and can be utilised for any purpose. It may be utilised for the purpose of the Coffee Act only if Parliament by appropriation made by law in this regard so provides. The true principle or basis in Vishnu Agencies case [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] applies to this case. Offer and acceptance need not always be in an elementary form, nor does the law of contract or of sale of goods require that consent to a contract must be express. Offer and acceptance can be spelt out from the conduct of the parties which cover not only their acts but commissions as well. The limitations imposed by the Control Order on the normal right of the dealers and consumers to supply and obtain goods, the obligations imposed on the parties and the penalties prescribed by the order do not militate against the position that eventually, the parties must be deemed to have completed the transaction under an agreement by which one party binds itself to supply the stated quantity of

goods to the other at a price not higher than the notified price and the other party consents to accept the goods on the terms and conditions mentioned in the permit or the order of allotment issued in its favour by the concerned authority.

44. A contract whether express or implied between the parties for the transfer of the property in the goods for a price paid or promised is an essential requirement for a 'sale'. In the absence of a contract whether express or implied, it is true, there cannot be any sale in the eyes of law. However, as we see the position and the scheme of the Act, in he instant case, there was contract as contemplated between the growers and the Coffee Board. This Court applied in Vishnu Agencies case [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] the consensual test laid down in the earlier decision of this Court in the State of Madras v. Gannon Dunkerley [1959 SCR 379 : AIR 1958 SC 560 : (1958) 9 STC 353] in this regard. In law there cannot be a sale whether or not compulsory, in the absence of a contract express or implied. The position of the Coffee Board so far as sale is concerned is explained by the Madras High Court very lucidly in Indian Coffee Board, Batlagundu v. State of Madras [(1954) 5 STC 292 (Mad HC)], where The High Court expressed the view that the Indian Coffee Board which derived its existence from the Coffee Market Expansion Act is a dealer within the meaning of Section 2(b) of the Madras General Sales Tax Act, 1939, and is therefore, liable to sales tax on its turnover. The High Court held that the Board was not a constituted representative of the producer and it did not hold the goods on behalf of the producer. After the goods enter the pool after delivery, they become the absolute property of the Board and the producer, a registered owner, has no right or claim to the goods except to a share in the sale proceeds after the goods are sold in accordance with the provisions of the Act.

45. It was said by the learned Additional Solicitor General that the cultivation of coffee in India was over a century old and numerous plantations existed long prior to the enactment of the Coffee Act. There was no act of volition on the part of the growers in taking to coffee cultivation and subjecting themselves to the provisions of the Act by taking up such cultivation. The cultivation of coffee can be carried on only in certain types of soil and in high elevations. The land suited for coffee cultivation cannot be used for growing other crops on a similar scale. Coffee is a perennial crop. The growers have no choice in growing coffee one year and then changing to a different crop in the following year. Coffee plants have a life ranging from 30 to 70 years, the average life of the plant being 40 years. Coffee estates require constant attention an expenses have to be incurred for manuring, cultural operations, application of pesticides, etc. at regular intervals. Removal of old and diseased plants and replanting them with superior disease-resistant varieties is also necessary and is done each year. The coffee grower has thus no choice at all in continuing to be a coffee cultivator, it was argued. The cultivation of coffee is not in any way comparable to the cultivation of sugarcane, the cultivation of which can be discontinued at will. Such practical difficulties, however, do not in essence make any difference.

46. Because coffee is grown on the estate, the owner of the land can be presumed to have consented to surrender his produce to the Board it was submitted. But the surrender is thus clearly an act of volition. The planting of the seeds of a coffee plant by a grower can be regarded as his act of volition in respect of the surrender to the Board of the coffee yielded by the plant.

47. The coffee growers being agriculturists are not dealers and therefore are not liable to pay any sales tax or purchase tax, it was submitted. The demand for purchase tax is in effect a demand on the growers who were exempt from such levy, as the monies required for paying the tax if the same is lawful has necessarily to come out of the monies otherwise payable to the growers. The object of the pool marketing system is not to deprive the growers of a fair compensation for their produce by

making them suffer a tax which they would not otherwise be required to suffer. An analysis of the different provisions of the Coffee Act makes it clear that there was no sale to attract exigibility to duty, it was submitted. We are unable to accept these submissions. Section 6 of the Karnataka Sales Tax Act, 1957 meets the situation created by such circumstances. This was examined by this Court in State of Tamil Nadu v. M. K. Kandaswami [(1976) 1 SCR 38 : (1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871] which examined Section 7-A of Tamil Nadu General Sales Tax Act. 1959 - which was in pari materia with Section 6 of the Karnataka Sales Tax Act. In that view of the matter Section 6 of the Karnataka Act would be attracted.

48. The alternative submission of the appellant was that the Coffee Board was a trustee or agent of the growers. We are unable to accept this submission either. There is no trust created in the scheme of the Act in the Coffee Board : it is a statutory obligation imposed on the Coffee Board and does not make it a trustee in any event. It is also not possible to accept the submission that the Central Sales Tax Act will not be applicable to any sale by the Coffee Board because it was an export sale by the Coffee Board. In Consolidated Coffee Ltd. v. Coffee Board, Bangalore [(1980) 3 SCR 625 : (1980) 3 SCC 358 : 1980 SCC (Tax) 279 : AIR 1980 SC 1468], it has been held that there must be a prior agreement at the time when the transaction of sale takes place. No such prior agreement existed in this case.

49. In New India Sugar Mills Ltd. v. CST [New India Sugar Mills Ltd. v. CST, 1963 Supp 2 SCR 459 : AIR 1963 SC 1207 : (1963) 14 STC 316], Hidayatullah, J. as the Chief Justice then was, observed that so long as the parties trade under controls at fixed price and accept these as any other law of the realm because they must be deemed to have contracted at a fixed price both sides having or deemed to have agreed to such price, consent under the law of contract need not be expressed, it can be implied. This is the position under the scheme of the Coffee Act. It has to be emphasised like the Vishnu Agencies case [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449] a person for all practical purposes is free to become or not to become a grower of coffee. So it is also covered by the ration of Vishnu Agencies Pvt. Ltd. [(1978) 2 SCR 433 : (1978) 1 SCC 520 : 1978 SCC (Tax) 31 : AIR 1978 SC 449]

50. In the aforesaid view of the matter, we are of the opinion that the imposition of tax in the manner done by the sales tax authorities which has been upheld by the High Court is correct and the High Court was right.

51. The appeals fail and are dismissed. There, will, however, be no order as to costs.

52. Civil Writ Petition No. 358 of 1986 under Article 32 of the Constitution of India is dismissed. Re writ Petition No. 36 of 1986, we are of the opinion that we cannot go into in the contentions in this petition. The rights and obligations of the parties, inter se between the petitioners and the Coffee Board may be agitated in appropriate proceedings. Re Writ Petition No. 37 of 1986. This writ petition is dismissed without prejudice to the rights of the petitioners to agitate the question of liability of the petitioner, vis-a-vis Coffee Board in respect of the sales tax due and payable on the transactions between the parties in appropriate proceedings. Re Civil Writ Petition No. 39 of 1986. There will be no order in this petition. But it is made clear that this is without prejudice to the right of the parties taking appropriate proceedings if necessary for determination of the liabilities inter se between the petitioners and the Coffee Board for the amount of sales tax payable.

53. Parties in these writ petitions will pay and bear their own costs. Interim orders, if any, are all vacated.

54. C. M. P. No. 2447 of 1986 is allowed.

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