

SUPREME COURT OF INDIA

State of Punjab

Vs.

Messrs Guranditta Mal Shauti Prakash

C.A.No.14790-14803 of 1996

(S. R. Babu and G. P. Mathur JJ.)

05.05.2004

JUDGMENT

Rajendra Babu, CJI.

1. In this case the question raised for consideration is whether purchase tax can be charged on the element of market fee on the basis that the same does not form part of the turnover.

2. Writ petitions filed by Respondents in the High Court have ended in their favour. Hence these appeals by special leave.

3. Under the Punjab General Sales Tax Act 'turnover' is defined to include "the aggregate of the amounts of sales and purchase and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount and trade discount according to ordinary trade practice, but does not include any sum charged for anything done by the dealer in respect of the goods at the time or or before delivery thereof".

4. Interpreting this provision with reference to the Marketing Regulations, the High Court noticed that the incidence of tax in the present cases is when the turnover exceeds the taxable quantum, the buyer has to pay market fee as the appellants are licensees within the market area; that such market fee is not paid by them to the sellers; that therefore such amount of the market fee cannot be part of the sale consideration; that the appellants were not required to show in their turnover the amount of the market fee as part of the purchase price of such of the agricultural produce purchased by them locally; that such market fee is not to form part of the turnover for assessment or payment of purchase tax.

5. This Court in *Anand Swarup Mahesh Kumar vs. The Commissioner of Sales Tax*¹ had occasion to consider whether additional tax on certain dealers levied on turnover of purchases mentioned in Section 3-D(I) of the *U.P. Krishi Utpadan Mandi Adhiniyam, 1964* collected from purchases by common agent can be included in the turnover of purchases. This Court explained that there are four circumstances in which turnover could be included and they are, (i) if the produce is sold through a commission agent, the commission agent

may realise the market fee from the purchaser and shall be liable to pay the same to the committee; (ii) 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; (iii) if the produce is purchased by a trader from 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 (iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee.

6. The Punjab Act, it is submitted, is different from the Act that was considered by this Court in Anand Swarup Mahesh Kumar case and the High Court had not properly examined the scope of the Agricultural Produce Market Committee Act.

7. Under what circumstances the market fee is to be paid needs to be considered and once it is held that the buyer has an obligation to pay the market fee and it is the duty of the seller to deposit the market fee on behalf of the buyer and, therefore, to realise it from the buyer, it is not the legal obligation of the seller to pay market fee on such a transaction and thus the amount of market fee cannot be treated as part of the sale consideration. It cannot be seriously disputed that this was the position in law in the State of Punjab.

8. If the law was not clear, it is open to the State to amend the law either with reference to the Agricultural Produce Market Committee Act or the Sales Tax Act because this Court in Anand Swarup Mahesh Kumar case has explained under what circumstances the liability to pay market fee becomes part of the turnover. When the finding of the High Court is that on examining the enactment in question, there is no obligation on the part of the seller to pay the market fee since it is the duty of the buyer to pay the same and seller can realise it from the buyer, the conclusion thereof that there was no liability to pay sales tax on the element of market fee is justified.

9. Therefore, we find no merit in these appeals and the same shall stand dismissed.

¹1980 Vol. 46 Sales Tax Cases 477