

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

**WRIT PETITION Nos.31279, 33067, 33069, 33071, 33074, 33077,
33078, 33079 & 33080 of 2023 AND 736, 738, 740, 745, 747, 757,
758, 760, 761, 763, 764 & 766 of 2024**

COMMON ORDER:-

Since the subject matter involved in all these Writ Petitions is one and the same, this Court deems it appropriate to dispose of all these cases by way of this common order.

2. For the sake of convenience, this Court reiterates the facts in W.P.No.31279 of 2023.

3. W.P.No.31279 of 2023 is filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue a writ, order or direction one more particularly in the nature of Writ of Mandamus declaring the action of Respondents more particularly the 4th Respondent herein in issuing proceedings bearing Rc.No.794/2023, Dt 10.10.2023, rejecting the Representation Dt 12.09.2023 of the Petitioner herein to stop Levying Cess on Sale of Basmati Rice purchased from other States despite the same having been paid in the state of origin as being illegal, arbitrary, without jurisdiction violative of Principles of Natural Justice and in violation of Articles 14 19(1)(g) and 21 of the Constitution of India and contrary to the provisions of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act 1966 and the Andhra Pradesh (Agricultural Produce and Live Stock) Market Rules, 1969 and Consequently direct the 4th Respondent herein to stop the levy of cess towards the sale of Basmati Rice purchased from other states and to pass such other order or orders...”

4. Heard learned counsel for the petitioners and learned counsel for the respondents.

5. The sum and substance of the case of the petitioners in all these writ petitions is that the petitioners are paying agricultural market committee tax in the State of Punjab and for the very same stock they are not liable to pay cess in the State of Andhra Pradesh, which amounts to double taxation. The learned counsel for the petitioners also contended that Basumathi Rice is not notified as commodity in Schedule-II in Sl.No.2 under Section 3 of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act 1966 (for short 'the Act') and the Andhra Pradesh (Agricultural Produce and Live Stock) Market Rules, 1969 (for short 'the Rules'). The market fee should be paid on the commodities under Section 12(1) of the Act, if it is notified under the Schedule-II, Basmathi rice does not come under raw and boiled rice. Hence, prayed to set aside the impugned proceedings.

6. For the contention raised by the learned counsel for the petitioner, it is relevant and imperative to extract Schedule-II which reads as follows:

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|---|---|
| 1. Paddy | 18. Horse Gram |
| 2. Rice both raw and boiled
[Subs. by G.O.Ms.No.641.
F&A. (Agri-VI) dt. 7.11.1978.] | 19. Masur Dal |
| 3. Wheat | 20. Lakh (long) |
| 4. Glumed Wheat | 21. Field Bean |
| 5. Maize | 22. Cowpea |
| 6. Jowar | 23. Moth |
| 7. Cumbu | 24. Peans(Batana) |
| 8. Ragi | 25. Cotton Kapas, Lint and Cotton Waste |
| 9. Italian Millet | 26. Sunnhemp or Bombay hemp |
| 10. Sanwa Millet | 27. Deccan hemp (Mesta or Bimili Jute) |
| 11. Common Millet | 28. Agave |
| 12. Kodo Millet | 29. Coconut Fibre |
| 13. Samal | 30. Groundnut pods and Kernels |
| | 31. Castor |
| | 32. Gingelly |

14. Bengal Gram
15. Red Gram
16. Green Gram
17. Black Gram

33. Nigar Seed

7. The learned counsel for the petitioners also relied on the judgment of the Hon'ble Apex Court in ***V.K.Ashokan v. Assistant Excise Commissioner and others***¹ for the proposition that a statutory authority must exercise its jurisdiction within the four corners of the statute. Any action taken which is not within the domain of the said authority would be illegal and without jurisdiction. And also relied on ***Union of India and another v. Ashok Kumar Aggarwal***², for the proposition that it is a settled law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. Further relied on ***Commissioner of Income Tax III v. Calcutta Knitwears, Ludhiana***³ the Hon'ble Supreme Court in paragraph No.21 held that [the principle in favour of strict literal approach] simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

¹ (2009) 14 SCC 85

² (2013) 16 SCC 147

³ (2014) 6 SCC 444

8. The learned counsel for the petitioners further voiced that the respondents cannot impose tax without notifying the same in the Schedule. The petitioners already paid the tax while purchasing the stock at Punjab and if the State of Andhra Pradesh imposes tax on the very same stock, it amounts to double taxation. Therefore prayed to set aside the impugned proceedings issued by the 4th respondent, which reads as follows:

“....Under Section 12(1) and 1-A of the Act and Rules and also as per instructions of the Special Commissioner and Director of Agricultural Marketing, Government of Andhra Pradesh, Guntur issued in the reference 2nd cited, the market fees has to be paid by the traders on the importing of the Basumathi Rice from other States on purchase/sale if any effected in the notified area of Agricultural Market Committee...”

9. The learned counsel for the respondents would contend that the petitioners are using the premises within the notified area of the agricultural market committee of the respondents. In that view of the matter, the petitioners are not entitled for exemption from payment of market fee and to that extent he relied on the judgment passed in ***APMC Yashwanthapura v. M/s.Selva Foods***⁴, the Hon’ble Apex Court held in the following manner:

“...It is not a case where the respondent is denying sale of the imported agricultural produce within the market area of the appellant after processing. In that view of the matter it is not entitled for exemption from payment of market fees. At the same time we make it clear that if one merely imports notified agricultural produce from outside the State for the purpose of cleaning and processing without selling the

⁴ Civil Appeal No.7706 of 2021 dated 14.12.2021

processed produce within the market area is not liable to pay market fee. As much as in this case without disputing the factum of sale within the market area post the import, the respondent has defended the proceedings only on the ground that once the agricultural produce is processed it will not attract market fee as such the same cannot be accepted. It is the sale within the market area that attracts levy of market fee, and not the first purchase that was outside the market area. Notably the goods sold are also notified agricultural produce specified in the Schedule...”

10. Further contended that respondents are not collecting any tax from the petitioners and they are only collecting fee for providing services to the petitioners. Under Section 12 of the Act the respondents are entitled to levy fee against the petitioners’ trade/business. Further contended that judgments relied by the learned counsel for the petitioners are not applicable to the present facts of the case, those judgments are with regard to the taxation and the respondents are not collecting any tax from the petitioners and they are collecting only fee for the services provided to the trade conducting by the petitioner.

11. The learned counsel for the respondents further relied on ***Sreenivasa General Traders and others v. State of Andhra Pradesh***⁵, wherein the Hon’ble Apex Court held as follows:

“...the distinction between a tax and a fee. In fact that a tax is levied as part of a common burden while a fee is for payment of specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected

⁵ (1983) 4 SCC 353

and the service intended to be rendered. In determining whether a levy is a fee or a tax, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of on consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered is one of general character and not of Mathematical exactitude. All that is necessary is that there should be a reasonable "relationship" between levy of the fee and the service rendered..."

12. The learned counsel for the respondents filed the Schedule, as notified in the Agricultural Produce Market Act, for the State of Punjab and Haryana, which is extracted below:

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|---|--|
| 1. Wheat (kanak) | 16. Ground nut (shelled, unshelled and rosted) |
| 2. Barley(Jau) | 17. Cotton (Ginned and Unigineed) |
| 3. Maize(Makki) | 18. Cluster Bean (Guara) |
| 4. Great Millet (Jowar) | 19. Dry and Green Fodder (suka and sabaz chara) |
| 5. Spiked Millet (Bajra) | 20. Potato (Alu) |
| 6. Paddy and [Rice (Dhan) and 2**] | 21. Sweet PPotato (shakarkandi) |
| 7. Gram and Kabli gram (Chana Kale and Safaid) | 22. Onion dry and green (pizza Khushak and Hara) |
| 8. Green Gram (Moong) whole and split. | 23. Arum (arvi) |
| 9. Black Gram (Mash) whole and split. | 24. Cauli flower(Phul Gobi) |
| 10. Phaseclus aconitifolius (Moth) whole and split. | 25. Cabbage (Band Gobi) |
| 11. Lentil (Masur) whole and split. | 26. Carrot (Gajjar) |
| 12. Indian Colza (sarson) | 27. Radish (Muli) |
| 13. Indian Rale (Torla) | 28. Turnip (Salgam) |
| 14. Rocher (Tara Mira) | 29. Tomato (Tomator) |
| 15. Cotton seed (Banaula) | |

13. The learned counsel further argued that in the above no distinction/demarcation was made about the Basmathi Rice, raw rice and boiled rice and as per the schedule the petitioners are paying the cess or fee to the Government for several years and argued that the petitioners cannot agitate that the Basmathi was not notified in the Schedule, unless it is specifically exempted or exception from the schedule, hence the petitioners cannot said that they need not pay the market fee in the State of Andhra Pradesh.

14. The learned counsel for the respondents further submits that petitioners have paid the tax in the State of Punjab and though it is not specified or notified as Basmathi rice in Schedule-II and also contended that rice includes Basumathi rice unless there is a specific bar, the petitioners cannot agitate that Basumathi rice is exempted from payment of cess and also contends that petitioners are using the premises for processing and trading of Basumathi rice. The petitioners are paying the fee from the past several years, now they cannot raise such contention. Therefore, prayed to dismiss these writ petitions with costs.

15. What is the difference between boiled rice and raw rice? Steam rice is also called boiled rice which means already steamed. Parboiled (Partly cooked) rice, also known as converted rice, is partially precooked rice.

16. 'Rice' means every variety of dehusked polished, raw and par-boiled rice and includes rice equivalent of paddy held in stock. Basmati rice can be anything either raw or boiled rice. Unless the basmati rice is specifically exempted, it shall be construed as either raw or boiled rice.

17. On the plain language of sub-section(1) of Section.12 of the Act, the market fee is leviable on both purchase by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or

by a trader to a trader because there is service rendered by a market committee at each of the stages.

18. In ***Novopan India Ltd.***⁶ held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of the Court in ***Hansraj Gordhandas v. CCE and Customs***⁷ held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption.

19. ***M/s. Motipur Jamindary Co. Ltd. v. State of Bihar***⁸, and ***State of West Bengal v. Washi Ahmed***⁹, that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance.

“...12. Levy of fees by the market committee: (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area (at such rate, not exceeding (two rupees) as may be specified in the bye-laws) for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold,

⁶ 1994 Supp (3) SCC 606

⁷ [AIR 1970 SC 755 : (1969) 2 SCR 253]

⁸ AIR 1962 S.C. 660

⁹ (1977) 3 S.C.R. 149 (AIR 1977 S. C. 1638)

whether for cash or deferred payment or other valuable consideration.

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

Explanation II:—In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be discharged.

In our considered view inclusion of the item 'ghee' as a notified commodity is well within the purview of the statute. There is no arbitrariness or illegality as such in the decision of the State. If one has to conduct trade in 'ghee' he has to necessarily obtain a licence from the market committee under Section 7(1) of the Act and has to pay the required market fee to the market committee concerned..."

20. Rice means every variety, raw and par-boiled rice. Basmathi rice is a raw or par-boiled rice and the petitioners have not established specifically the exemption provision, in case of doubt and the ambiguity the benefit goes to the State and the words used for importing cess or tax it should be understood in the common parlance, the basmathi rice includes raw and par-boiled rice.

21. The judgments relied by the learned counsel for the petitioners relates to imposing double taxation and the said judgments are not applicable to the facts in these cases and it trite that levy of tax is for the purposes of general revenue which when collected forms part of the public revenue of the State, that a fee is generally defined to be a charge for a special service rendered to individuals by some Governmental agency. The respondents herein have levied fee for

service rendered to the petitioners. Hence, the judgments cited by the learned counsel for the petitioners is not applicable.

22. As rightly contested by the learned counsel for the respondents, respondents are not collecting any tax, they are only collecting cess from the petitioners for providing services. Merely not specified/mentioned as Basumathi rice in the schedule is not a ground to allow these writ petitions. The petitioners are paying the fee from the past several years and for the first time they come up with a plea Basumathi rice was not specified in Schedule-II. As the petitioners are not able to establish the exemption provision, in the absence the benefit must go to the State and in the common parlance it has to understand the rice both raw and boiled includes Basumathi rice. Therefore, this Court found no reasons to allow these writ petitions.

23. Accordingly, these Writ Petitions are dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHARA RAO

Date: 09.09.2024

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