

PETITIONER:
KRISHI UTPADAN MANDI SAMITI, HALDWANI ETC.ETC.

Vs.

RESPONDENT:
M/S. INDIAN WOOD PRODUCTS LTD. AND ANOTHER

DATE OF JUDGMENT: 23/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S. (J)

CITATION:
1996 AIR 1251 1996 SCC (3) 321
JT 1996 (4) 8 1996 SCALE (2) 694

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Heard counsel for both the parties.
Leave granted.

The only question in this batch of appeals is where the transaction of sale of specified agricultural produce is between a trader and a trader, whether the purchasing trader is liable to pay the market fee in cases where the selling trader does not collect it from him. This question has to be answered with reference to the language of Section 17(iii)(b) which reads as under:

"17. Powers of the Committee.-- A Committee shall, for the purposes of this Act, have the power to-
(iii) levy and collect:

(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 realized in the following manner-

(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;

(2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the same to the Committee;

(3) 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

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee;

[Provisos omitted as unnecessary]"

A reading of the aforesaid provisions shows that the liability to pay the market fee is placed primarily upon the purchaser. Sub-clauses (i) and (4) expressly say so. So does sub-clause (2). [Sub-clause (2) is also consistent with the general policy underlying such enactments that the producer of specified agricultural produce is not to be made liable to pay the fee.] Now, coming to sub-clause (3), with which we are directly concerned herein, it says that "trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the committee". On the basis of the language of this sub-clause, it is contended by the purchasing dealers (who are respondents in these appeals) that the levy in such a case is upon the selling trader and that it is for him to pay the market fee. It is submitted that such selling trader may collect the fee from the purchaser or he may not. Whether the selling trader collects it from the purchaser or not, it is he who is liable to pay the market fee since the levy is upon him, it is submitted. We are unable to agree with the submission. A reading of the several sub-clauses shows, as mentioned hereinbefore, that the liability to pay the market fee is always upon the purchaser. It is no different in sub-clause (3). If the ultimate liability was not upon the purchaser, there was no meaning in the Legislature saying that the selling producer may realise the fee from the purchaser and make it over to the Committee. The use of the word "shall" in the said use means that where the selling trader realises the fee from the purchasing trader, he is bound to make it over to the Committee. But where the selling trader does not realise it from the purchaser, he is under no obligation to pay the market fee to the Committee. In such a case, the liability to pay the market fee is upon the purchasing trader. This interpretation, in our opinion, accords with the scheme of clause (b) of Section 17(iii) of the Act.

Dr.Sankar Ghosh, learned counsel for the respondents, contended that prior to the amendment of Section 17(iii)(b) by Uttar Pradesh Act 7 of 1973 [with effect from June 12, 1973], clause (b) was clear and specific in the sense that it expressly made the purchaser liable to pay the market fee. Learned counsel says that by amendment the said concept was modified, and in certain cases, i.e., in the situation provided for by sub-clause (3) of the amended clause (b), the levy was shifted to the selling trader. The unamended clause (b) read as under:

"(b) market fees, which shall be payable by purchasers on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one and a half per centum of the price of the agricultural produce so sold as the State Government may specify by notification in the gazette."

While it is true that unamended clause (b) expressly placed

the levy upon the purchaser, it is not possible to agree with Dr.Sankar Ghosh that the basic concept that ultimate liability to pay is that of the purchaser was given up in the amended clauses (b). The said concept has only been elucidated with reference to specific situations.

In this connection, the learned counsel for the appellant has brought to our notice the decision of this Court in Upaj Mandi Samiti & Ors. v. Orient Paper & Industries Limited (1994 (7) J.T. 414) rendered with reference to the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1973. The relevant provision in the Madhya Pradesh Act is in Section 19(2), which read as under:

"The market fees shall be payable by the buyer in the notified agricultural produce and shall not be deducted from the price payable to the seller.

Provided that where the buyer of a notified agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area;

Provided further that in case of a commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller.

Provided further also that no fees shall be levied upto 31st March 1990 on such agricultural produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market yard or sub-market yard by an agriculturist to a Cooperative Society of which he is a member."

This Court held, construing the above provision, that the primary liability to pay the fee is placed upon the buyer and that the second proviso to sub-section (2) of Section 19 does not detract from the said Rule. It was held that the said proviso merely enables the seller to collect the fee from the buyer and pass it on to the Committee. It is true that there is a certain distinction in the language used in the Madhya Pradesh Act and Uttar Pradesh Act but as explained above, the central concept is same under both the enactments. Be that as it may, on the language of the Uttar Pradesh Act, we have come to the conclusion mentioned hereinbefore.

For the above reasons, we set aside the judgment of the High Court and hold that where the selling trader does not collect the fee from the purchasing trader, the liability to pay the market fee remains to be that of the purchaser and he cannot refuse to pay the said fee. Of course, where the selling trader collects the fee from the purchaser-trader, he is under an obligation to make over the fee to the Market Committee.

It is brought to our notice by Sri Garg, learned counsel for some of the respondents herein, that certain individual factual questions were raised by the respondents in the writ petition. But these factual questions could not have been gone into in the writ petition. The proper course for the concerned respondents is to raise the said questions

in accordance with the procedure prescribed by law, i.e., by following the remedies provided under the Act.

The appeals are accordingly allowed with the above observations.

No costs.

JUDIS