

CASE NO.:
Appeal (civil) 14817 of 1996

PETITIONER:
State of Punjab and Ors.

RESPONDENT:
Chhabra Rice Mills and Ors.

DATE OF JUDGMENT: 17/11/2005

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

The only question raised for consideration in this appeal 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. Writ Petition filed by the respondent was allowed by the High Court and this appeal has been filed by special leave.

Under the Punjab General Sales Tax Act, 1948 (in short the "Act") "turnover" is defined in Section 2(i) to include:

"the aggregate of the amounts of sales and purchases 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 including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof'.

Interpreting this provision with reference to the Marketing Regulations, under Punjab Agricultural Produce Markets Act, 1961 (in short "Markets Act") 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 writ petitioner 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 writ petitioners 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.

This Court in *Anand Swarup Mahesh Kumar v. CST*, [1980] 4 SCC 451 had occasion to consider whether additional tax on certain dealers levied on turnover of purchases mentioned in Section 3-D(1) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (in short "U.P. Act") collected from purchases by commission agent can be included in the turnover of purchases. This Court explained that there are four circumstances in which turnover could be include 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.

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. Similar is the position in the present case as per law prevailing.

The above position was examined by this Court in *State of Punjab and Ors. v. Guranditta Mal Shauti Prakash and Ors.*, [2004] 5 SCC 791 and relying on the decision in *Anand Swarup's case* (supra), it was held that there was no obligation on the part of the seller to pay market fee since it is the duty of the buyer to pay the same and the seller can realise it from the buyer. The inevitable conclusion, therefore, is that there was no liability to pay sales tax on the element of market fee.

Above being the position, the appeal fails and is dismissed but without any order as to costs.