

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1048-1049 OF 2011
(Arising out of S.L.P. (Crl.) Nos. 5064-5065 of 2010)

Agricultural Market Committee A.P. etc. ...Appellants

Versus

M/S M.K. Exports, A.P. etc. etc. ...Respondents

WITH

CRIMINAL APPEAL NOS. 1050-1052 OF 2011
(Arising out of SLP (Crl.) Nos. 5112-5114 of 2010)

CRIMINAL APPEAL NOS. 1053-1054 OF 2011
(Arising out SLP (Crl.) Nos. 5144-5145 of 2010)

CRIMINAL APPEAL NO. 1055 OF 2011
(Arising out of SLP (Crl.) No. 5174 of 2010)

JUDGEMENT

R.M. LODHA, J.

Leave granted.

2. The Agricultural Market Committee, Bhimavaram have preferred these eight appeals, by special leave, against the common judgment dated April 21, 2010 passed by the High Court

1

of Andhra Pradesh whereby the Single Judge of that Court allowed the petitions filed by the private respondents under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') and quashed the criminal proceedings against them for non-payment of market fee assessed under Section 12-B(5) of the A.P. Agricultural (Produce and Livestock) Markets Act, 1966 (for short, 'the Act').

3. For the sake of convenience, we shall notice the facts from one of the appeals, viz., Agricultural Market Committee, A.P. Vs. M/s M.K. Exports, A.P. The respondents - M/s M.K. Exports in that appeal are traders and were given licence by the

appellants for doing business in prawns, a notified commodity under the Act. For the assessment years 1998-99 and 1999-2000, the assessment of market fees was done after giving exemption to a certain turnover on purchases effected outside the notified area of the appellants on the basis of the returns submitted by the respondents under the Act.

4. On May 29, 2002, the appellants issued notices to the respondents to produce books of accounts for the years 1998-99 and 1999-2000 within 7 days of the receipt of the notices to enable them to assess the correct amount of market fees. The notices were issued on the ground that the assessment for that

period was done after giving exemption to certain turnover thereby resulting in under-assessment of market fees. 2

5. The respondents failed to produce the books of accounts. The notices were then issued to the respondents on June 27, 2002 to show cause as to why the exemption given earlier on certain turnover for the assessment years 1998-99 and 1999-2000 be not disallowed; the re-assessment for these two years be not done and the market fees be not collected under Section 12-B(5) of the Act.

6. The respondents challenged the show cause notices dated June 27, 2002 by filing writ petitions before the High Court of Andhra Pradesh. The High Court disposed of the writ petitions on June 14, 2007 and directed the respondents (petitioners therein) to respond to the show cause notices and the appellants were asked to pass appropriate order after considering their replies.

7. The respondents filed their reply and raised certain objections to the re-assessment proceedings initiated under Section 12-B(5) of the Act.

8. The appellants considered the reply submitted by the respondents and vide order dated November 26, 2007 re-determined the turnover for that period and, consequently, re-assessed the market fees. In that order, the appellants also levied

penalty equal to two times the market fees due, in addition to market fees so assessed.

9. The respondents challenged the order dated November 26, 2007 by filing revision applications before the Director of Marketing under Section 12-F of the Act. These revision applications were dismissed on March 26, 2008.

10. Thereafter demand notices were issued by the appellants to the respondents to pay the market fees determined under Section 12-B(5). The respondents did not comply with the demand notices. Notices were then issued to the respondents to show cause as to why criminal proceedings be not initiated against them under Section 23 of the Act. The respondents did not respond to the show cause notices nor made any payment of outstanding market fees. The appellants were then constrained to file criminal complaints against the respondents in the Court of the II Additional Judicial First Class Magistrate, Bhimavaram, West Godavari District, A.P.

11. The respondents questioned the complaints in the petitions under Section 482 of the Code before the High Court of Andhra Pradesh and prayed for quashing the criminal proceedings.

12. The only reason that weighed with the High Court in quashing the criminal proceedings against the respondents was that non-payment of market fees re-assessed under Section 12-B(5) is not punishable under Section 23 of the Act. Whether or not the view of the High Court is right in this regard is a question for determination in these appeals.

13. Section 7 of the Act is a regulatory provision. It provides that in a notified area, the trading in a notified agricultural produce, livestock and products of livestock shall be done only after obtaining the licence from the concerned market committee and in accordance with the conditions of such licence. Sub-

section (5) thereof provides that a person to whom a licence is granted shall comply with the provisions of the Act, the rules and the bye-laws made thereunder and the conditions specified in the licence.

14. The provision in relation to levy of fees by the market committee is made in Section 12 of the Act. Section 12 reads as under:-

"Section 12 - Levy of fees by the market Committee -(1) The market committee shall levy fees on any notified agricultural produce, live stock or products of live stock 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, live stock or products of live

5

stock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, 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 disregarded".

15. Sections 12-A to 12-G were inserted in the Act by Act 4 of 1987. Section 12-A reads as under:-

"12-A. Every trader in the notified area, who is liable to pay fees under Section 12, shall submit such return or returns relating to his turnover in such manner, within such period and to such authority, as may be specified by the market committee in its bye-laws.

Explanation: For the purposes of Sections 12-A to 12-G (both inclusive) the terms, -

- (i) "market fees" shall mean the fees levied under sub section (1) of Section 12;
- (ii) "turnover" shall mean the aggregate amount for which the notified agricultural produce, livestock or products of livestock, are purchased or sold, whether for cash or deferred payment or other valuable consideration".

16. The entire machinery for assessment of market fees is provided in Section 12-B. The said Section is as follows:-

"12-B. Assessment of market fees: (1) If the assessing authority is satisfied that any return submitted under Section 12-A is correct and

complete, it shall assess the amount of market fees payable by the trader on the basis thereof; but if the return appears to it to be incorrect or

6

incomplete, it shall, after giving the trader an opportunity of providing the correctness and completeness of the returns submitted by him and after making such inquiry as it considers necessary, assess to the best of its judgment the amount of market fees due from the trader. An assessment under this section shall however, be made only within a period of three years from the expiry of the year to which the assessment relates.

(2) Where the return submitted by a trader includes the turnover or any of the particulars thereof which would not have been disclosed but for an inspection of accounts, registers or other documents of the trader made by an officer authorized under this Act before the submission of such returns, the Assessing authority may, after giving an opportunity to the trader for making a representation in this behalf, treat such return to be an incorrect or incomplete return within the meaning of sub-section (1) and proceed to take action on that basis.

(3) While making an assessment to the best of Judgment under sub-section (1) the assessing authority may also direct the trader to pay, in addition to the market fees assessed a penalty equal to two times the market fees due on the turnover that was not disclosed by the trader in his return.

(4) Where any trader liable to pay market fees under this Act,-

- (i) fails to submit return before the date specified in that behalf; or
- (ii) produce the accounts, registers and other documents after inspection; or
- (iii) submits a return subsequent to the date of inspection;

the assessing authority may, at any time within a period of three years from the expiry of the year to which the assessment relates, after issuing a notice to the trader, and after making such inquiry

7

as it considers necessary, assess to the best of its judgment, the amount of market fees due from the trader, on his turnover for that year and may direct him to pay in addition to the market fees so assessed, a penalty equal to two times the market fees due.

(5) Where for any reason, the whole or any part of the turnover of the trader has escaped assessment to market fees or has been under assessed or assessed at a rate lower than the correct rate, the assessing authority may, at any time within a period of three years from the date on which any order of assessment was served on the trader,

- (a) determine to the best of its judgement the turnover that has escaped assessment and assess the turnover so determined;
- (b) assess the correct amount of market fees payable on the turnover that has been under assessed;
- (c) assess at the correct rate the turnover that has been assessed at a lower rate, after issuing a notice to the trader and after making such inquiry as it considers necessary. The assessing authority, in addition to the market fees so assessed, also direct the trader to pay a penalty equal to two times the market fees".

17. It would be, thus, seen that Section 12-A is self-contained. If assessing authority is satisfied that return submitted under Section 12-A is correct and complete, it shall assess the market fees payable by the trader on the basis thereof. Sub-section (5) of Section 12-B, however, provides for reassessment, inter alia, where the whole or any part of the turnover of the trader has escaped assessment to market fees or has been under-assessed or assessed at a rate lower than the correct rate.

18. Section 12-C(1) provides that market fees assessed under the Act and the penalty levied shall be paid by the trader in such manner and within such time as may be specified in the notice. Sub-section (5) thereof provides that the penalty payable under the Act shall be without prejudice to the institution of any proceedings for an offence under the Act.

19. The provision for penalty and prosecution is contained in Section 23. To the extent it is relevant, it reads as under:-

"23. Penalties:- (I) Whoever contravenes the provisions of Section 7 or fails to pay the fees levied under sub-section (1) of Section 12 shall, on conviction be punished with imprisonment for a term, which shall not be less than six months but which may extend to one year and with fine, which may extend to five thousand rupees, and in the case of a continuing contravention with further fine which may extend to five hundred rupees for every day during which the contravention is continued after conviction thereof;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

- 2. xxx xxx xxx xxx xxx
- 3. xxx xxx xxx xxx xxx
- 4. xxx xxx xxx xxx xxx
- 5. xxx xxx xxx xxx xxx"

9

20. Section 23 of the Act, thus, provides for penalty to be imposed against a person who contravenes the provisions of Section 7 or who fails to pay fees levied under sub-section (1) of Section 12.

21. The fee is levied by the market committee on sale or purchase of any notified agricultural produce or livestock or products of livestock in the notified market area by virtue of Section 12(1) of the Act. For a levy of fee, it is necessary that amount of market fees payable by the trader is assessed by the assessing authority. The procedure for assessment is provided in Section 12-B. The assessment of market fees is done under sub-section (1). Sub-section (5) of that Section, however, provides that if, for any reason, the whole or any part of the turnover of the trader has escaped assessment to market fees or has been under assessed or assessed at a rate lower than the correct rate, the assessing authority may, at any time within a period of three years from the date on which the assessment order was served on the trader, inter alia, assess the correct amount of market fees payable on the turnover that has been under-assessed after issuing notice to the trader and after making such inquiry as it may consider necessary. The assessing authority, under Section 12-B(5) may also direct the trader to pay penalty,

1

equal to two times the market fees, in addition to the market fees so assessed. As per the Scheme of the Act, it is the assessment of market fee under Section 12-B(1) or re-assessment under Section 12-B(5) which ultimately results in levy of fee under Section 12(1). We find the reasoning of the High Court strange when it says that further assessment of market fees made under

Section 12-B(5) is not covered under Section 12(1). The High Court overlooked the explanation appended to Section 12-A which clearly provides that for the purposes of Sections 12-A to 12-G, 'market fees' shall mean fees levied under sub-section (1) of Section 12. Section 12-B and the explanation appended to Section 12-A taken together would leave no manner of doubt that assessment of market fees - whether it is done under Section 12-B(1) or 12-B(5) - is covered by the expression 'levy fees' in Section 12(1). In other words, whether assessment of market fees payable by a trader is made under Section 12-B(1) or Section 12-B(5), the market fees so assessed means the fees levied under sub-section (1) of Section 12. The provisions being clear, non payment of the market fees assessed in the original proceedings under Section 12-B(1) or in the proceedings for re-assessment under Section 12-B(5) would mean default in payment of fee levied under sub-section (1) of Section 12 of the Act.

1

22. The learned Single Judge of the High Court relied upon an earlier decision of that Court in the case of B. Youdhister Vs. The Secretary, Agricultural Market Committee, Jogipet & Anrl. wherein it was held that since there was no penal provision for the violations of Sections 12-A, 12-B and 12-C, the violators cannot be prosecuted. The view taken in the case of B. Youdhister¹, in our opinion, is not correct view and does not lay down the correct law.

23. The High Court, thus, was clearly in error in quashing the criminal proceedings against the respondents.

24. In the result, appeals are allowed and the judgment of the High Court dated April 21, 2010 is set aside.

..... J.
(R.M. Lodha)

.....J.
(Surinder Singh Nijjar)

NEW DELHI
APRIL 29, 2011

1
(1991) Cri.L.J. 277

1

1