IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 09th DAY OF NOVEMBER 2000

BEFORE

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

WRIT PETITION No.16242/2000 (APMC)

Between:

M/s.Shevire Cashews
3-134, Narimogru,
P.O.NARIMOGRU 574312,
Puttur Taluk, D.K.District,
Rep. by its Partner
Sri.Vishnu Moorthy Rao
Shevire. .. PETITIONER

(By Sri.K.M.Nataraj, Adv.)

And:

Agricultural Produce
Market Committee,
Puttur, Puttur Taluk,
D.K.District,
Rep. by its Secretary. .. RESPONDENT

(By Sri.B.G.Sreedharan, Adv.)

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This Writ Petition is filed Articles 226 and 227 of the Constitution of India, praying to quash the demand notice by the respondent dt.3-10-98 in 3342/98-99 vide Ann.A and declare that the demand notice issued by the respondent dt.16-11-98 and the subsequent notices issued by the respondent dt.19-11-98 and 22-1-99 vide Ann.B, D and E respectively as illegal and without jurisdiction.

This writ petition coming on for preliminary hearing in 'B' Group this day, the Court made the following:-

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ORDER

Heard the petitioner's counsel as well as Sri.B.G.Sreedharan, learned counsel for the Market Committee.

2. By this petition, petitioner has sought quashing of demand notice issued by the respondent on 3-10-1998 - Annexure 'A' to the writ petition. The petitioner has sought further declaration that the demand notice, issued by the respondent, dt.16-11-1998 and the subsequent notices issued by the respondent dt.19-11-1998 and 22-1-1999, marked as Annexure 'B', 'D' and 'E' to the writ petition, are illegal and without jurisdiction. By those notices, the Market Committee had asked the petitioner to pay the market fee with respect to cashew kernel.

3. The learned counsel for the petitioner contends that the petitioner is not liable to pay the market fee as the petitioner is the producer of cashew kernel. The learned counsel contended that the authority wrongly

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assumed that the petitioner is not a producer of cashew kernel. The petitioner is the producer of cashew kernel and he is not the purchaser of cashew kernel. The learned counsel contended that the petitioner is the purchaser of cashew nuts and is the producer of cashew kernel and therefore, there is no liability on him to pay the market fee with respect to sale made by him of cashew kernel. The learned counsel for the petitioner contended that so far as purchase of cashew nut is concerned, on that the petitioner has already paid the market fee.

4. These contentions of the petitioner's counsel have hotly been contested by Sri.B.G.Sreedharan, the learned counsel for the Market Committee. Sri.B.G.Sreedharan contended that the petitioner has sold the cashew kernel to other traders and therefore, his liability under Section 65(2A) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, had been to realise the market fee from the purchasers who had

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purchased cashew kernel from the petitioner and then to deposit the same with the Market Committee.

5. While the petitioner's counsel, in rejoinder, emphatically contended that he is the producer of the cashew kernel and so the Market Committee can realise the market fee directly from the purchasers.

6. So far as Section 65 is concerned, sub-section (2) empowers the Market Committee to assess and levy the market fee with reference to notified agricultural produce purchased in the market area and the rates have been indicated in the Section itself. This section provides that it shall be levied and collected in the manner as may be prescribed by the byelaws. Section 65(2A) provides the instrumentality for the realisation and mode for realisation of market fee levied under Section 65. Clause (i) of Section 65(2A) and clauses (ia) and (iii) provides that where the agricultural produce is sold either by or through the commission agent,

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then the commission agent selling the agricultural produce shall realise the market fee from the purchaser and he shall be liable to pay the same to the Market Committee. Similarly where produce is imported by a person from an area outside and importer ~~who~~ sells the goods ie produce to a purchaser, then Section 65(2A) imposes an obligatory duty on the said seller to realise the market fee from the purchaser who purchases the commodity from him and section says he shall realise and he shall pay the market fee. Similarly clause (iii) of Section 65(2A) provides that if a trader sells the agricultural produce to another trader, then the trader selling the produce shall have to realise the market fee from the trader purchasing the commodity or product from him and the trader selling shall deposit or pay the market fee to the committee. Clause (ii) deals with the purchase of the agricultural produce from a trader by a purchaser and provides in such a case the trader purchasing the produce shall be liable to pay the market fee. That means, from cases covered under clause (ii), the market fee shall be recovered

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by the Market Committee from a purchaser who has purchased the produce from the producer. All other cases not covered under clauses (i), (ii) or (iii) in respect thereof it has been provided that the purchaser shall be liable to pay the market fee to the Market Committee. The contention of the petitioner is that his case is covered by clause (ii) of Section 65(2A) as the petitioner is the producer of cashew kernel and therefore, he being the producer, there was direct liability on the purchaser to pay the market fee directly to the Committee and the Market Committee is directly entitled to realise the market fee from the purchaser and not from the petitioner.

7. The sole question is, whether the petitioner's case comes within the framework of Section 65(2A)(ii) or not or he is a trader. This Court had an occasion to consider this question in writ petition Nos.21722 of 1993 and other connected writ petitions namely Sri.G.GIRIDHAR PRABHU &

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OTHERS v. THE AGRICULTURAL PRODUCE MARKET COMMITTEE. After a detailed consideration, this Court held as under:-

> "In the present case, the petitioners admittedly are purchasers or buyers or importers of cashew nuts <u>from the growers or registered dealers, either inside the market area or outside the market area. They purchase or import it for the purpose of processing or manufacturing and after processing and making it fit for better commercial transaction, they bring out the kernel which has been in existence at the time when the cashew nut was purchased. They bring it out so they would have called themselves as manufacturers, but here they cannot be termed as producers as the basic element either of import or purchase of cashew nut by them is there and thereafter they process or even manufacture. They become and remain traders or importers within the meaning of the Act, as the case may be. They themselves are not the growers of the crop. They utilise the labour, partly manual and partly mechanical, and bring out cashew kernel. But they having entered into the transaction of purchase of agricultural produce i.e., cashew nut either by way of purchase or by way of import, they acquire the character of trader and importer.</u> So when after bringing out the kernel

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in the refined manner by the process etc., the petitioners sell them to a third person i.e., to a purchaser. They can either be termed as an importer who imports and sells to a trader or they being a trader who process it and brings out the kernel and then sells it or they bring it into the condition fit for marketing from the raw-cashew nuts and then they sell it. They having become trader, then they cannot claim to be the producer of the cashew kernel or other things brought out from what they have purchased and that being the position, in my opinion, the petitioners cannot claim to be termed to the position of a producer. They are the traders or importers in the sense the terms "trader" and "importer" have been defined in the Act. Nothing has been pointed out to the contrary. The petitioners being traders or importers, their liability has been to realise the market fee from the purchasers of cashew kernels to whom they sell or they have sold along with price of the kernels sold by them."

8. From this judgment delivered by me in the above writ petitions, the appeals had been preferred namely, Writ Appeals No.9965-9968/1996 and Writ Appeal No.9985/1996. The Division Bench of this

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Court, by its judgment dt.2-4-1998, affirmed this judgment and observed in paragraph No.16 as under:-

> "We agree with the reasoning and the conclusion of the learned Single Judge in this regard. There is no merit in these appeals which are accordingly dismissed with costs."

In view of these two decisions of this Court namely, Single Judge decision and the Division Bench decision, which cover the point, in my opinion, there is no substance in the contention of the present petitioner. The case being covered by the Division Bench decision of this Court, the writ petition has to be dismissed and it is hereby dismissed. Costs made easy.

Sd/-
JUDGE

bss.101100