

M/S ARIHANT UDHYOG

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v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 8277 of 2017)

JUNE 09, 2017

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

*Rajasthan Agricultural Produce Markets Act, 1961– ss.14, 17 – Rajasthan Agriculture Produce Market Rules, 1963 – r.58 – Agriculture Produce Market Fee – Payment of – Whether the appellants who are purchasing the material which is admittedly ‘agriculture produce’ and bringing the same to the market area are liable to pay the market fee on the said produce – Held: The answer would depend upon when and at what stage the title in the goods passes from seller to appellant-buyer – If the entire transaction takes place outside the State and ownership in goods also passes outside the State, then the market fee is not payable – Further, it will depend upon the applicability of s.4 r/w. s.19 of the Sale of Goods Act, 1930 – S.4 deals with the contract of sale whereas as per s.19, property passes from seller to buyer when it is intended to pass and such intention is to be gathered from the contract – In the instant case, the terms and conditions of the contract indicate that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods – Such a responsibility can be only if the ownership remains of the seller – No document produced by the appellant demonstrated the intention that property in goods passed in their favour before these goods were delivered – Therefore, sale was fructified only after the goods were brought to the market area and ownership in the goods passed from the seller to the appellants at the time when the goods were delivered in the market area – Thus, market fee payable by the appellants – Sale of Goods Act, 1930 – s.4 r/w. s.19 and ss. 20, 21.*

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*Rajasthan Agricultural Produce Markets Act, 1961 – Agriculture Produce Market Fee – Plea of appellant that agriculture produce bought by it was not meant for further sale but was further processed at its factory, therefore, the Market Committee had no right to impose any levy and realise the market fee – Held: It is to*

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- A *be first ascertained whether agricultural produce was bought and sold in the market area or not which is a question which needs to be determined in each case – In instant case, no document produced by the appellant demonstrated the intention that property in goods passed in their favour before these goods were delivered – Therefore,*
- B *sale was fructified only after the goods were brought to the market area – Once the goods bought are agriculture produce on which market fee is leviable in terms of the Schedule attached to the Act, then the market fee is payable – If it is thereafter used as raw material for manufacturing purpose, that would be of no consequence.*

Disposing of the appeals, the Court

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**HELD:**

- Whether the appellants herein who are purchasing the material which is admittedly ‘agricultural produce’ and bringing the same to the area known as ‘market area’ and covered by the provisions of the Rajasthan Agricultural Produce Markets Act, 1961 and Rajasthan Agricultural Produce Market Rules, 1963 are liable to pay the market fee on the said produce?

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1. The applicability of Section 17 of the Rajasthan Agricultural Produce Markets Act, 1961 read with Rule 58 of the Rajasthan Agricultural Produce Market Rules, 1963 would depend upon the question as to whether agricultural produce is bought and sold by the licensee in the market area. The answer to the aforesaid issue would depend upon the question as to when and at what stage the title in the goods passes. If the entire transaction takes place outside the State of Rajasthan and the ownership in the goods also passes outside Rajasthan, then the market fee is not payable. The answer to the aforesaid question would depend upon the applicability of Section 4 read with Section 19 of the Sale of Goods Act, 1930, which provisions are to be applied keeping in view the terms and conditions on which the goods are sold. That is the exercise which is done by the High Court by looking into the terms on which the goods were sold to appellant. Insofar as appellant is concerned, this was the only invoice produced before the High Court and is also made Annexure in the present proceedings. On going through the same, there is no fault in the approach of the High Court. [Para 14][169-170]
- H G-H; 170-A-B]

2. In the case of appellant, intention is to be gathered from the terms and conditions of contract, which mentions that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods. Therefore, intention was to retain the title in the goods till its delivery inasmuch as till that time it is the seller who was responsible for the goods. This condition would clearly spell out that if the goods are destroyed or lost in transit, i.e. before their delivery, responsibility will be that of the seller. Such a responsibility can be only if the ownership remains of the seller. No other document was produced by appellant which could demonstrate the intention that property in goods passed in their favour before these goods were delivered. Thus, insofar as judgment of the High Court in appellant's case is concerned, no fault can be found therein. However, it is to be first ascertained whether agricultural produce was bought and sold in the market area or not which is a question which needs to be determined in each case after applying the principles of law. [Paras 21, 22 and 28][172-D-G; 174-C]

3. It was argued by appellant that the agricultural produce bought is not meant for further sale but is processed at the factory of the licensees and, therefore, the Market Committee had no right to impose any levy and realise the market fee, which can be done only on the transactions of purchase and sale and not when the agricultural produce is bought for the purpose of manufacture or further processing. This plea of the appellant is of no consequence. In the impugned judgment the High Court has rightly repelled this argument by observing that once the goods bought are agricultural produce on which market fee is leviable in terms of Schedule attached to the Act, then the market fee is payable. If it is thereafter used as raw material for manufacturing purpose that would be of no consequence.[Paras 25, 27][173-D; 174-A-B]

*Gujarat Ambuja Exports Limited & Anr. v. State of Uttarakhand & Ors. (2016) 3 SCC 601 : [2015] 12 SCR 304; Agricultural Market Committee v. Shalimar Chemical Works Ltd. (1997) 5 SCC 516 :*

- A [1997] 1 Suppl. SCR 164; *Agricultural Produce Market Committee v. Bitor Industries Limited & Anr.* (2014) 3 SCC 732 : [2013] 16 SCR 939 – referred to.

Case Law Reference

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|---|-------------------------|-------------|---------|
|   | [2015] 12 SCR 304       | referred to | Para 10 |
| B | [1997] 1 Suppl. SCR 164 | referred to | Para 11 |
|   | [2013] 16 SCR 939       | referred to | Para 13 |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8277 of 2017.

- C From the Judgment and Order dated 14.05.2012 of the High Court of Rajasthan at Jodhpur in DBCWP No. 7715 of 2010

WITH

- D Civil Appeal Nos. 8293, 8279, 8278, 8280, 8282, 8281, 8283, 8285, 8286, 8284, 8300, 8302, 8299, 8287, 8297, 8296, 8295, 8294, 8288, 8289, 8290, 8298, 8291, 8292, 8304, 8303, 8301, 8305, 8306, 8307 and 8308 of 2017.

- E H. L. Tiku, Sr. Adv., Rishabh Sancheti, Ms. Padma Priya, Dhruv Sharma, T. Mahipal, Pankaj T., Shubhankar Sengupta, Ms. Arti Singh, H. D. Thanvi, Ms. Jakhmala, Rishi Matoliya, Mukul Kumar, M. P. Devanath, Aditya Bhattacharya, Victor Das, Ms. Apeksha Mehta, Anil Dutt, Rameshwar Prasas Goyal, Ashwarya Sinha, Milind Kumar, M/s Equity Lex Associates, Ms. Pragati Neekhara, Ajay Choudhary, Pankaj Kumar Singh, Dr. Vinod Kumar Tewari, K. L. Janjani, Ms. Ruchi Kohli, Anish Maheshwari, Ms. Farha Malik and Sanjeev Agarwal, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. Leave granted.

- G 2. Singular question of law, which is common in all these appeals, that arises for consideration is as to whether the appellants herein who are purchasing the material which is admittedly 'agricultural produce' and bringing the same to the area known as 'market area' and covered by the provisions of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred to as the 'Act') and Rajasthan Agricultural Produce Market Rules, 1963 (for short, the 'Rules') are liable to pay the market fee on the said produce. Admittedly, the legal position is that if
- H the agricultural produce is brought to the market area and sold there,

market fee is payable thereon. The question in these appeals is as to whether the goods were bought and sold at the market place. The appellants maintain that the sale of the agricultural produce took place and was concluded outside the State of Rajasthan and before these goods were brought to the market area, they had already become the owner thereof by virtue of the sale outside the State and, hence, are not liable to pay any market fee. On the other hand, the respondents, including the Agricultural Produce Market Committee (respondent No.3), argue that the sale was fructified only after the goods were brought to the market area and the ownership in the goods passed from the seller to the appellants herein at that time when the goods were delivered in the market area. On this reckoning, the respondents claim that the market fee is payable by the appellants. A B C

3. The appellants had challenged the action of respondent No.3 in demanding the market fee payable under the Rules by filing writ petitions in the High Court. Fifteen such writ petitions were decided by the High Court of Rajasthan vide common judgment dated May 14, 2012 accepting the stand taken by respondent No.3 and it dismissed the writ petitions as bereft of any merit. The writ petitions of other appellants were dismissed by various orders following the said judgment. In view thereof, it would be appropriate to discuss the facts and the reasons given by the High Court for arriving at the said conclusion. D E

4. Before the High Court, lead case was that of Arihant Udyog, which is the position herein as well. Arihant Udyog is a small-scale industry registered as such with the Government of Rajasthan. According to Arihant Udyog, since it is purchasing the agricultural produce from outside the State for industrial purpose, it is not liable to pay any market fee. It is, however, a licensee under the Act, obtained by it under Section 14 thereof. Likewise, all other appellants are also licensees. F

5. Some relevant provisions of the Act, Rules and the Administrative Circulars require a mention at this stage, which read as follows: G

**“Section 14 of the Act**

**Power of market committee to issue Licence.** – (1) Where a market is established under the provisions of this Act, the market committee may issue and renew Licence, in accordance with the H

A rules and bye-laws, to traders, brokers, weighmen, measurers, processors, surveyors, warehousemen or other persons to operate in the market on payment of the prescribed fees.

(2) The market committee may also grant Licence, - (a) for direct purchase from the agriculturists for the following purposes, namely:-

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(i) to processor for processing;

(ii) to exporters for export of agricultural produce;

(iii) for trade of agricultural produce of particular specification; and

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(iv) for grading, packing and transacting in other way by value addition of agricultural produce:

“Provided that no sale or purchase shall be permitted under this clause within the market proper except for the purposes specified in sub clause(i) and (iv).”

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### **Section 17 of the Act**

**Power to collect market fees.** – The market committee shall collect market fees from the Licences in the prescribed manner on agricultural produce bought or sold by them in the market area at such rate as may be specified by the State Government, by notification in the official gazette, subject to a maximum of Rs 2/- per hundred rupees worth of agricultural produce.

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[Provided also that Mandi Fee leviable on the sale or purchase of Mustard Seed shall be Rs. 1/- on one hundred rupees.]

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[Provided also that Mandi Fee leviable on the sale or purchase of Oil Seeds shall be Rs. 1/- on one hundred rupees.]

### **Rule 58 of the Rules**

#### **Market area Cess –**

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(1) A market area committee shall collect cess on agricultural produce bought and sold in the market area at such rate as may be specified by the Government by way of notification:

Provided that no cess shall be levied on any such notified agricultural produce on which cess has been levied in any market

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area if the seller or the purchaser of such notified produce files a declaration in Form XI, in the prescribed manner, that no notified agricultural produce, cess has already been levied in any other market area of the State. A

Explanation – (a) For the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a [Market area] if it has been weighed or measured or surveyed by a licensed weighman, measurer or surveyor in the Market area for the purpose of sale, notwithstanding the fact the property in the agricultural produce has by reason of such sale, passed to a person in place outside the market area. B

(b) Further for the Purpose of this rule, all notified agricultural produce taken out or proposed to be taken out of the market area shall, unless the contrary is proved, be presumed to be bought and sold within such market area. C

(2) The cess levied as per sub-rule (1) shall not be levied more than once on agricultural produce bought or sold in the market area. D

(3) The market area committee shall also levy and collect licence fee from traders, brokers, weighman, measurer, surveyors, warehousemen and other persons operating in the market area as provided in the bye-laws. E

(4) Deleted<sup>1</sup>

<sup>1</sup> Sub-Rule (4) of Rule 58, before deletion, read as under:

“(4) No cess shall be levied on agricultural produce brought from outside the market into the market for use therein by the industrial concerns situated in the market or for export and in respect of which a declaration has been made and a certificate has been obtained in Form—V: F

Provided that if such agricultural produce brought into the market for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect cess on such agricultural produce from the person bringing the produce into the market at such rates as may be specified in the bye-laws: G

Provided further that if the industrial concerns that brought the agricultural produce from outside the market into the market for the purpose of use by them, and who do not make any declaration and do not obtain a certificate in Form-V as prescribed above, shall be deemed to be responsible for the contravention of this rule, and shall, on conviction be punished under Sub-section (3) of Section 36 of the Act with a fine which may extend to Rupees two hundred.” H

A        6. As per Section 14 of the Act, a trader is required to obtain a  
licence and is under lawful obligation to make good the market fee.  
Insofar as levy of market fee is concerned, power is given to the Market  
Committee in this behalf to prescribe the market fee on agricultural  
produce, bought and sold by the licensee in the market area. Rule 58 is  
B        the Rule under which this market fee is prescribed. Initially, when the  
Rules were framed in the year 1963, Rule 58 contained sub-rule (4) as  
well, which empowered the Market Committee to exempt payment of  
market fee in respect of certain market produce. Circular dated March  
07, 1992 was issued under sub-rule (4) of Rule 58 of the Rules whereby  
agricultural produce was exempted from market fee if the product was  
C        purchased outside the State of Rajasthan. However, amendment to  
Rule was carried out by the State Government vide Notification dated  
April 27, 2005 vide which sub-rule (4) of Rule 58 was deleted. Effect  
thereof was that Circular dated March 07, 1992 issued under sub-rule  
(4) of Rule 58 was rendered otiose. Consequently, in terms of Section  
D        17 of the Act, all the agricultural produce, bought and sold in the market  
area, became liable for payment of market fee. Vires of Notification  
dated April 27, 2005, vide which sub-rule (4) of Rule 58 was deleted,  
were challenged by certain traders by filing writ petitions in the High  
Court of Rajasthan. The High Court, however, repelled that challenge  
thereby holding that deletion of sub-rule (4) of Rule 58 of the Rules was  
E        a valid exercise of power.

7. The instant matters were argued before the High Court having  
regard to the aforesaid statutory framework as per which market fee is  
payable on agricultural produce bought and sold by the licensees in the  
market area on the rates stipulated in Rule 58 of the Rules. It is in this  
F        context the question raised was as to whether the appellants had bought  
the agricultural produce within the market area. In all these cases the  
seller of the goods is situated outside the State of Rajasthan. Those  
goods, after purchase, are brought in the market area and delivery thereof  
is taken there. In case the title in goods in question had passed on to the  
buyers (appellants herein) outside the State of Rajasthan and only delivery  
G        was taken within the market area, market fee will not be payable as the  
ingredient of buying and selling the goods in the market area would not  
be established in such a contingency. On the contrary, if the title in the  
goods passed in favour of the licensees/ appellants while taking the  
delivery of the goods in the market area, market fee would become  
H        payable.



8. Insofar as Arihant Udhog is concerned, it had filed the copy of an invoice, through which the goods were delivered, as Annexure-I to the writ petition. As per this invoice, the seller is one Jawahar Exim Ltd. of Jalgaon in Maharashtra, which is admittedly outside the State of Rajasthan. As per this invoice 'Toor Whole' (an agricultural produce) was sold by the said seller to the appellant which was loaded in a truck. Truck number is mentioned in the invoice, so also weight of the goods, rate at which the goods are sold and total amount of the invoice. This invoice is dated March 22, 2006. It contains the following three terms and conditions:

- "1. Goods once sold & delivered will not be taken back.
2. Responsibility of the seller ceases as soon as the goods are delivered.
3. Interest @ 24% per annum is payable on all payments received after 10 days."

9. Condition No.2 prescribes that responsibility of the seller would cease as soon as goods are delivered. It would mean that till the goods are delivered, the seller would remain responsible. Admittedly, the goods were to be delivered only at Jodhpur (i.e. within the market area), which is so stipulated in the invoice. On the basis of the aforesaid conditions, the High Court held that as per the provisions of Sale of Goods Act, 1930 the ownership in the goods stood transferred to the appellant only on the delivery of the goods, which delivery took place within the market area at Jodhpur and, therefore, the transaction of buying and selling was completed at Jodhpur. On this analogy, the High Court came to the conclusion that the market fee is payable.

10. It was argued by Mr. Rishabh Sancheti, learned counsel appearing for Arihant Udhog, that the appellant's case stands covered by a recent pronouncement of this Court in the case of *Gujarat Ambuja Exports Limited & Anr. v. State of Uttarakhand & Ors.*<sup>2</sup> wherein the court held that if the agricultural produce is brought into the market for the purpose of manufacture or further processing, but not for the purpose of sale, then the market fee is not payable inasmuch as the State Legislature does not have competence to enact a provision for levying

<sup>2</sup> (2016) 3 SCC 601

A the market fee on agricultural produce which is not brought for the purpose of sale. Paragraph 36 of the said judgment was quoted by the learned counsel in support of this submission, which reads as under:

B “36. A perusal of the abovementioned judgments makes it clear that List I Entry 52 governs the process of manufacture and production. Therefore, in the instant case, the State Legislature did not have the competence to enact the impugned provisions which sought to levy market fee and development cess even on those agricultural produce which were not being brought into the market for the purpose of sale, but for the purpose of manufacture or further processing. Since the State Legislature was not competent to enact the impugned provision of Section 27(c)(iii) of the Act, the same is liable to be struck down as the same was enacted by the State Legislature without having the legislative competence to do so.”

D 11. It was also argued that the High Court noted the contention that the appellant is a small-scale industry and that it had purchased legumes from outside the State of Rajasthan and by processing it in its premises by different scientific ways it prepares various *dals*. Thus, the legumes which are purchased are not meant for further sale but for processing by the appellant in its factory. The learned counsel stressed that the appellant is purchasing produce from outside the State for industrial purpose and the High Court, presumably, proceeded on the basis as if the appellants were ‘trading’ in agricultural goods, which was factually not true. Learned counsel also argued that even the provisions of Section 17 would not apply as they are applicable only when the agricultural produce is ‘bought and sold’ in the market area. He emphasised that both the conditions of buying as well as selling in the market area have to be satisfied, as is clear from the word ‘and’. Learned counsel also relied upon the following observations from the judgment of this Court in *Agricultural Market Committee v. Shalimar Chemical Works Ltd.*<sup>3</sup>:

G “38. Section 20 indicates that in case of unconditional contract of sale in respect of specified goods in a deliverable state, the property in the goods passes to the buyer at such time as the parties intend it to be transferred. Section 19(3) provides that Sections 20 to 24 contain the rules for ascertaining the intention of the parties as to

H <sup>3</sup> (1997) 5 SCC 516

the time at which the property in the goods shall be treated to have passed to the buyer. Both Sections 19 and 20 apply to the sale of “specific” or “ascertained” goods. A

39. Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of “specific goods” in a “deliverable state”, the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased. B C

40. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, “Unless a different intention appears” occurring in Section 19(3). In *Hoe Kim Seing v. Maung Ba Chit* [AIR 1935 PC 182 : 62 IA 242 : 39 CWN 1217] it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case. D E F

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42. In the instant case, the goods which were the subject-matter of sale were ascertained goods. They were also in a deliverable state. On the order being placed by the respondent, the seller in the State of Kerala, loaded the goods on the lorry and despatched the same to Hyderabad. It is at this stage that the conduct of the parties becomes extremely relevant. It was one of the terms of the contract between the parties that the seller would not be liable G

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A for any future loss of goods and that the goods were being  
despatched at the risk of the respondent. The respondent had  
also obtained insurance of the goods and had paid the policy  
premium. He, therefore, intended the goods to be treated as his  
own so that if there was any loss of goods in-transit, he could  
validly claim the insurance money. The weighment of the goods  
B at Hyderabad or the collection of documents from the bank or  
payment of price through the bank at Hyderabad were immaterial,  
inasmuch as the property in the goods had already passed at Kerala  
and it was not dependent upon the payment of price or the delivery  
of goods to the respondent.”

C 12. Mr. H.L. Tiku, learned senior counsel appearing for M/s.  
Deepak Enterprises, also emphasised that the appellant was purchasing  
the agricultural produce (sugar/paddy) from outside the State of Rajasthan  
which is brought to its factory in Rajasthan for processing the same into  
*mishri*, *patasa*, *makhana*, *burra*, etc. from sugar and rice from the  
D paddy, which goods are not ‘agricultural produce’ as per Schedule-I of  
the Act. It was, thus, argued that the appellant was not dealing with sale  
and purchase of any agricultural produce in market area. His further  
submission was that purchase of agricultural produce was outside the  
State of Rajasthan which was transported to Rajasthan at the appellant’s  
risk and cost, as per the provisions of the invoice. The goods are  
E ascertained and in deliverable state. The invoices itself mention the  
terms and conditions that the goods are being sold at the risk of the  
appellants, in clear terms and in some of the cases the appellant has  
even obtained the insurance of goods in its name. After the goods were  
entrusted to the carrier, the sellers from outside the State of Rajasthan  
F had absolutely no liability with regard to any future losses. When goods  
have been delivered to a common carrier to be sent to the appellants, the  
carrier becomes the agent of the appellant and such a delivery amounts  
to delivery to the purchaser under Section 23(2) of the Sale of Goods  
Act, 1930. There was, thus, complete sale outside the market area the  
moment the goods leave the factory of the seller. As such, as soon as  
G the goods leave the factory of the seller (outside the State of Rajasthan),  
the ownership in the goods passes on to the appellant. In such a situation,  
the place of delivery within the market area of agricultural produce is  
not a relevant factor. The appellant relied upon the terms and conditions  
of the invoices and also in some of the cases insurance is taken by the

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appellant and premium thereagainst was also paid by the appellant. A

13. Learned counsel for the State, on the other hand, referred to the invoice produced by Arihant Udhyog and submitted that construing the terms thereof, the High Court has rightly held that the goods are bought and sold in Jodhpur in the market area. On that basis, he submitted that since there is a purchase and sale of goods in the market area, conditions stipulated in Section 17 of the Act as well as Rule 58 of the Rules stand satisfied and the Market Committee was justified in demanding the market fee. He referred to the judgment in the case of *Agricultural Produce Market Committee v. Biotor Industries Limited & Anr.*<sup>4</sup> and particularly paragraph 21 thereof which, according to him, squarely covers the instant case, and the same is reproduced below: B C

“21. On the basis of the said material facts the learned Single Judge arrived at the conclusion that the respondent Company placed order for purchase of castor seeds from its suppliers from outside the market area but no payment was immediately made for the same. On the demand of the respondent Company, the quantity of castor seeds so requisitioned by it was transported by the supplier which was received by it within the market area. It is an undisputed fact that the consignment so received was weighed by the Company within the market area. Thereafter, on finding out the exact weight of castor seeds received by it, the payment at the agreed rate was made by the Company to the supplier. Therefore, the learned Single Judge came to the conclusion on the basis of appreciation of the aforesaid facts and held that the sale was not effected till the consignment was received by the respondent Company and the same was weighed within the market area.” D E F

14. From the aforesaid arguments it becomes clear that applicability of Section 17 of the Act read with Rule 58 of the Rules would depend upon the question as to whether agricultural produce is bought and sold by the licensee in the market area. It is also the common case of the parties that the answer to the aforesaid issue would depend upon the question as to when and at what stage the title in the goods passes. If the entire transaction takes place outside the State of Rajasthan and the ownership in the goods also passes outside Rajasthan, then the market G

<sup>4</sup> (2014) 3 SCC 732

- A fee is not payable. It is also the common case of the parties that answer to the aforesaid question would depend upon the applicability of Section 4 read with Section 19 of the Sale of Goods Act, 1930, which provisions are to be applied keeping in view the terms and conditions on which the goods are sold. That is the exercise which is done by the High Court by looking into the terms on which the goods were sold by Jawahar Exim Ltd. to Arihant Udyog. Insofar as Arihant Udyog is concerned, this was the only invoice produced before the High Court and is also made Annexure P-3 in the present proceedings. On going through the same, we do not find any fault in the approach of the High Court.

15. Section 4 of the Sale of Goods Act deals with the contract of sale and defines 'sale' as well as 'agreement to sell'. It reads as under:

**"4. Sale and agreement to sell**

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

The very distinction between the sale and agreement to sell enumerated in the aforesaid provision points out that a sale takes place when the property in goods is transferred from the seller to the buyer. If transfer of property in the case is to take place at a future time or subject to conditions that are stipulated in the contract of sale of goods, then the contract is merely an agreement to sell. Section 19 is contained in Chapter-III of the Sale of Goods Act, title whereof is "Effects of the Contract (Transfer of Property as between Seller and Buyer)". As per this provision, property passes from seller to buyer when it is intended to pass and such an intention is to be gathered from contract for the sale

when it pertains to sale of specific or ascertained goods. To understand fully the implication of this provision, we reproduce hereunder the provisions of Section 19: A

**“19. Property passes when intended to pass**

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. B

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. C

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.”

16. Sub-section (3) of Section 19 is another significant provision which mentions that rules contained in Sections 20 to 24 are the rules for ascertaining the intention of the parties, unless a different intention appears in the contract for the sale of specific or ascertained goods. It means, if such an intention as to when the parties to the contract intend the property in goods to be transferred cannot be gathered from the contract, rules contained in Sections 20 to 24 would be applied. D E

17. Section 20 deals with a situation where specific goods are in a deliverable state. In that case property in goods passes to the buyer when the contract is made, even when time of payment of the price or the time of delivery of the goods or both is postponed. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable {See – *Shalimar Chemical Works Ltd.*}. F

18. However, Section 21 is exception to Section 20 which states that where there is a contract for sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such a thing is done and the buyer has notice thereof. Likewise, Section 22 carves out another exception and mentions that even when the specific goods are in a deliverable state but the seller is bound to weigh, measure, test or do G H

- A some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such Act or thing is done and the buyer has notice thereof.

- B 19. Section 23 deals with sale of uncertain goods and appropriation, with which we are not concerned here. Likewise, Section 24 deals with a situation where goods are sent on approval or 'on sale or return' basis, which is also not relevant for our purposes.

- C 20. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.

- D 21. In the case of Arihant Udhyog, intention is to be gathered from the terms and conditions, which have already been noted above. It mentions that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods. Therefore, intention was to retain the title in the goods till its delivery inasmuch as till that time it is the seller who was responsible for the goods. This condition would clearly spell out that if the goods are destroyed or lost in transit, i.e. before their delivery, responsibility will be that of the seller. Such a responsibility can be only if the ownership remains of the seller. No other document was produced by Arihant Udhyog which could demonstrate the intention that property in goods passed in their favour before these goods were delivered.

- F 22. Thus, insofar as judgment of the High Court in Arihant Udhyog is concerned, no fault can be found therein. The appeal filed by Arihant Udhyog is, accordingly, dismissed.

- G 23. Having said so, we find that the High Court has passed impugned common judgment deciding as many as fifteen writ petitions. Other writ petitions are also dismissed taking into consideration the terms and conditions of the contract of sale between Arihant Udhyog and its seller. This is clearly a wrong approach. In each case the High Court was supposed to go into the contract for sale between the licensees and their sellers and in view of the terms and conditions contained in each of
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the case, the High Court was supposed to decide as to whether in their cases also ownership in goods transferred only in the market area within the State of Rajasthan. A

24. Insofar as the case of M/s. Deepak Enterprises is concerned, the same is decided by the High Court by separate judgment dated July 27, 2012. However, the High Court has simply followed the earlier judgment dated May 14, 2012 in Aриhant Udhyog without going into the invoices of M/s. Deepak Enterprises. Therefore, the appeal has to be allowed and the impugned judgment will have to be set aside on this ground itself by remitting the case back to the High Court to decide the same on the basis of the terms and conditions contained in the invoice which would decide what was the intendment between the appellant and the seller who sold the goods. Ordered accordingly. B C

25. One more aspect, however, needs to be dealt with by us. It was argued before us that the agricultural produce bought is not meant for further sale but is processed at the factory of the licensees and, therefore, the Market Committee had no right to impose any levy and realise the market fee, which can be done only on the transactions of purchase and sale and not when the agricultural produce is bought for the purpose of manufacture or further processing. In support of this, judgment of this Court in *Biator Industries Limited & Anr.* was pressed into service. D E

26. We have gone through the said judgment and find that no such principle, as sought to be advanced by the appellants, is laid down therein. That was a case where the respondent had purchased castor seeds from suppliers outside the market area but weighment and payment whereof was made at the mill site within the market area. The Court concluded that the respondent company had become owner of the goods only once the exact weight of the castor seeds was ascertained and purchase voucher was obtained and, therefore, the sale had taken place within the market area and the respondent was liable to pay market fee thereon. To that extent, the aforesaid judgment is against the appellants. However, there was one more issue involved in the said case. The respondent industry was using the castor seeds for manufacturing of oil therefrom. In this manufacturing, de-oiled seed cake emerged as a by-product. The Market Committee wanted to levy market fee on this by-product also, which was held to be impermissible. The Court also held that the item mentioned in Schedule to the Act was 'oil cake' which is F G H

A different and distinct from 'de-oiled cake'.

27. This plea of the appellant, therefore, is of no consequence. In the impugned judgment the High Court has rightly repelled this argument by observing that once the goods bought are agricultural produce on which market fee is leviable in terms of Schedule attached to the Act, then the market fee is payable. If it is used as raw material for manufacturing purpose thereafter would be of no consequence.

28. However, as mentioned above, it is to be first ascertained whether agricultural produce was bought and sold in the market area or not is the question which needs to be determined in each case after applying the principles of law as enumerated above. The High Court would be required to ascertain this on the basis of terms and conditions of sale in each case and that would determine the fate of each of the writ petitions filed by the appellants. This exercise is not done and after dealing with the case of Arihant Udhyog, other writ petitions are also dismissed. Thus, except Arihant Udhyog, where we have upheld the judgment of the High Court, orders of the High Court in other cases are set aside and writ petitions are remanded back to the High Court to decide them in the light of the law stated by us in this judgment.

29. The consequence is that the appeal of Arihant Udhyog is dismissed and other appeals are allowed in the manner mentioned above.

E No costs.