M/S. Gujarat Ambuja Exports Ltd & Anr vs State Of Uttarakhand & Ors on 9 December, 2015

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Bench: Amitava Roy, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 14184-14185 OF 2015
(Arising out of SLP (C) Nos.5013-5014 of 2015)

M/S GUJARAT AMBUJA EXPORTS LTD & ANR. …APPELLANTS

Vs.

STATE OF UTTARAKHAND & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 14186-14187 OF 2015
(Arising out of SLP(C) Nos.5732-5733 of 2015)

CIVIL APPEAL NOS. 14188-14190 OF 2015
(Arising out of SLP(C) Nos.5754-5756 of 2015)

CIVIL APPEAL NOS. 14191-14194 OF 2015
(Arising out of SLP (C) Nos. 6828-6831 of 2015)

CIVIL APPEAL NO. 14195 OF 2015
(Arising out of SLP (C) No. 7414 of 2015)

CIVIL APPEAL NOS. 14196-14198 OF 2015
(Arising out of SLP (C) Nos. 12452-12454 of 2015)

CIVIL APPEAL NOS. 14199-14209 OF 2015
(Arising out of SLP (C) Nos. 12462-12472 of 2015)

CIVIL APPEAL NOS. 14210-14214 OF 2015
(Arising out of SLP (C) Nos. 12455-12459 of 2015)

CIVIL APPEAL NOS. 14215-14216 OF 2015
(Arising out of SLP (C) Nos. 12473-12474 of 2015)

CIVIL APPEAL NOS. 14217-14218 OF 2015
(Arising out of SLP (C) Nos.8721-8722 of 2015)

CIVIL APPEAL NO. 14219 OF 2015
(Arising out of SLP (C) No. 8859 of 2015)

CIVIL APPEAL NO. 14220 OF 2015
(Arising out of SLP (C) No. 15474 of 2015)

CIVIL APPEAL NO. 14221 OF 2015
(Arising out of SLP (C) No. 15479 of 2015)

CIVIL APPEAL NOS. 14222-14234 OF 2015
(Arising out of SLP (C) Nos. 15480-15492 of 2015)

CIVIL APPEAL NOS. 14235-14237 OF 2015
(Arising out of SLP (C) Nos. 7701- 7704 of 2015)

CIVIL APPEAL NO. 14238 OF 2015
(Arising out of SLP (C) No. 15083 of 2015)

CIVIL APPEAL NOS. 14239-14240 OF 2015
(Arising out of SLP (C) Nos. 15471-15472 of 2015)

CIVIL APPEAL NO. 14241 OF 2015
(Arising out of SLP (C) No. 20533 of 2015)

CIVIL APPEAL NO. 14242 OF 2015
(Arising out of SLP (C) No. 22134 of 2015)

CIVIL APPEAL NOS. 14243-14246 OF 2015
(Arising out of SLP (C) Nos. 22130-22133 of 2015)

AND

CIVIL APPEAL NO. 14247 OF 2015
(Arising out of SLP (C) No. 26494 of 2015)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in all the Special Leave Petitions.

The present appeals arise out of the common impugned judgment and order dated 16.12.2014 passed in Special Appeal No. 384 of 2014 and Special Appeal No. 75 of 2013 along with a batch of other Special Appeals by the High Court of Uttarakhand, whereby the High Court dismissed the

challenge to the validity of Section 27(c) (iii) and 27(c) (iv) of the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 and upheld the validity of the same.

The brief facts of the case required by us to appreciate the rival legal contentions advanced on behalf of the parties are stated here under:

> The State legislature of Uttarakhand enacted the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 (hereinafter referred to as "the Act"), which came into force on 01.11.2011. The preamble of the Act reads as under:
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> "An Act to provide for the effective regulation in marketing of agricultural produce, establishment and development of proper and modern marketing system, promotion of agricultural processing and agricultural export, superintendence and control of markets in the State of Uttarakhand and for the matters connected there with or incidental thereto." Section 27(c)(iii) of the Act, provides for the levy of market fees and development cess, which reads as follows:
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> "any such agricultural produce, which reaches any Market area of the State for sale, storage, processing or transaction from any other State or out of Country for the first time it shall be registered as 'First Arrival' and on such produce, Market fee and Development cess shall be payable" Consequently, the "Mandi Samities" served letters of notice-cum-demand on the appellants herein. The appellants, who claimed to be manufacturers, filed Writ Petitions before the High Court, challenging the demand made by Mandi Samities for payment of "market fee" for the agricultural produce which the appellants brought into the market area. The principal challenge was mounted on the ground that market fee is not liable to be charged on their agricultural produce for the reason that, firstly, there is no sale and purchase of the goods in the market area and, secondly, it cannot be charged under Section 27(c)(iii) for the reason that there is no sale, storage, processing or transaction of this agricultural produce. The High Court rejected the challenge to the legislative competence of the State legislature, holding that:
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> "The pith and substance here would be the market area of Uttarakhand which is admitted and the product which is in question an agricultural produce. These two essential ingredients being met, the challenge to legislative competence does not survive." The High Court held that the main thrust of the argument of the appellants was that a market fee can only be charged if there is a sale and purchase involved in the agricultural produce and even where there is no sale and purchase of the agricultural produce, the "market fee" in that event can only be charged if the goods are bought for specified purposes alone, as provided under Section 27(c)(iii) of the Act, otherwise not. However, the Writ Petitions were allowed to the extent that the demand notices against them were quashed with the observation that the appellants herein brought the agricultural produce into the market area for manufacturing it into a finished product. The main intention of the appellants was not to store the

agricultural produce but to convert it into another product. Thus, the storing of the product was only for incidental purposes and not for the purposes of business.

Subsequently, vide Notification dated 03.01.2013, the State Legislature enacted the Uttarakhand Agricultural Produce Marketing (Development and Regulation) (Amendment) Act, 2012. Section 1(2) of the Amendment Act provides that the said Act shall be deemed to have come into force with effect from 01.11.2011. Amongst other provisions, Section 27(c)(iii) of the Act was amended by the said Amendment. The amended Section 27(c)(iii) reads as under:

"any such agricultural produce, which arrives in any Market area of the State for sale, storage, processing,manufacturing,transaction or other commercial purposes from any other State or out of Country for the first time it shall be registered as "Primary Arrival" and on such produce, Market fee and Development cess shall be payable." (emphasis laid by this Court) Subsequently, the appellants were served another notice through the Office of the 'Krishi Utpadan Mandi Samiti, Kiccha', on the basis of which they were required to ensure that the payment of Mandi fee or development cess be made in the office of the Samiti according to the amended Act, 2012.

Aggrieved, the appellants filed Writ Petitions before the High Court of Uttarakhand challenging the constitutional validity of the Amendment Act, 2012. The High Court in its judgment and order dated 10.07.2014 observed that the earlier bunch of writ petitions were allowed on a limited point that the State Legislature had not included the word "manufacture" in the charging Section, and that by the impugned Amendment therein, the word had been added, albeit retrospectively. Thus, the grounds which were available to the appellants in the earlier petition were no longer available now. The validity of the Act and the notice-cum-demand were upheld.

Aggrieved by the order of the High Court, the appellants filed Special Appeal before Division Bench of the High Court. The Division Bench examined the provisions of the Act and came to the conclusion that the appeals filed by the appellants are devoid of merit. The Court observed as under:

"...Having regard to the provisions contained in the impugned Legislation, there can be no doubt that the Legislature has intended levy of market fee/ cess on agricultural produce brought into the market area for the purpose of manufacturing, inter alia." On the issue of legislative competence, the Division Bench held, inter alia, as under:

"The transaction of bringing the agricultural produce, be it for the purpose of manufacture inter alia, is what attracts the levy of market fee/cess. We would think that this is a separable transaction, which is well within the province of the State Legislature and the powers available to it in Entry 28, read with Entry 66, of List II. Entry 28 of List II provides for "markets".....In the market, may be, what is intended to be regulated is sale and purchase; but, as already noted, the markets are

to be developed and regulated." The order of the High Court dated 10.07.2014, passed by the learned single Judge was upheld. Hence, the present appeals.

We have heard the learned senior counsel for both the parties. On the basis of the factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, we have broadly framed the following points which require our attention and consideration:-

Whether the State Government of Uttarakhand has the legislative competence to enact the impugned provisions?

What Order?

Answer to Point 1 Mr. Dushyant Dave, learned senior counsel appearing on behalf of the appellants contends that the Amendment is ultra vires the Constitution, as the same is not supported by the relevant entry in the Constitution. The learned senior counsel contends that the relevant entry covering the field in the instant case is Entry 28 of List II of the 7th Schedule of the Constitution of India, which reads as under:

"28. Markets and Fairs." The learned senior counsel places reliance on the judgment of a Constitution Bench of this Court in the case of ITC Ltd. v. Agricultural Produce Market Committee[1], wherein it was held, inter alia, as under: "128. If 'industry' does not include 'markets and fairs' it is important to define what markets and fairs connote. 'Market' may strictly be defined as "the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly exposed, at a fixed time and place". A 'fair' has been judicially defined as meaning 'a periodical concourse of buyers and sellers in a place generally for sale and purchase ..... at times or on occasion ordained by custom. The distinction between markets and fairs appears to lie in the periodicity viz. while a market may be a regular or permanent place of business; a fair is an intermittent one. At common law, fairs and markets were also franchises or rights to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given. This included the right to levy a toll or sum payable by the buyer upon sales of articles in a market. The sense in which the words has been used in Entry 28 appears to cover not only such right but the market place itself including the concourse of buyers and sellers' and the regulation of all these." The learned senior counsel contends that this means that under Entry 28, power to legislate includes to legislate on the ancillary powers in the Act. The learned senior counsel further placed reliance on the preamble of the Act which has been quoted in an earlier part of the judgment.

The learned senior counsel contends that the sole object of the Act is to protect the farmer and to see that the agricultural produce is sold either in the market area or market yard. Further, what is contemplated in the Act is the sale of the goods covered

in the State alone and not sale of the goods which takes place outside the State.

On the issue of legislative competence, the learned senior counsel contends that the State exceeded its legislative competence while enacting the aforesaid impugned provisions in the Amendment Act by going beyond the scope of Entry 28 read with Entry 66 of List II of the Seventh Schedule of the Constitution of India. More so, when a law made by the Parliament, namely, the Industries (Development and Regulation) Act, 1951 already occupied the said field. The learned senior counsel places reliance on the following paragraphs of the judgment in the case of ITC Ltd. referred to supra, which reads as under:

"110. The controversy in this case to a large extent turns on the meaning of the words "industry" as used in the three legislative lists. Now the power to legislate in respect of all industries has been given under Entry 24 of List II to the State Legislatures subject to Entries 7 and 52 of List I. Entries 7 and 52 of List I allow Parliament to legislate in respect of particular 'industries' - namely such industries which are declared by Parliament by law to be necessary for the defence or for the prosecution of war (Entry 7) and industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest (Entry 52).

Trade and commerce in, and the production supply and distribution of the products of such controlled industry have been provided for in Entry 33 of the Concurrent List wherein both Parliament and the State Legislatures are competent to legislate. A Constitution Bench of this Court in The Calcutta Gas Company (Prop.) Ltd. v. the state of West Bengal has held that the expression 'industry' in all the three lists must be given the same meaning and that since ordinarily industry is in the field of State Legislation the word must be construed in the context of the other entries in List II in such a manner so that no entry in List II is deprived of its content. In other words, the meaning of the word 'industry' is to be determined with reference to Entry 24 of List II where the power to legislate generally in respect of industries has been provided. Entries 7 and 52 are entries which specify particular industries out of this general pool. The meaning of the word 'industry' in these two entries, therefore, must necessarily be derived from the meaning which may be ascribed to the word in Entry 24 of List II.

126. To sum up: the word 'Industry' for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji to the process of manufacture or production only. Subsequent decisions including those of other Constitution Benches have re-affirmed that Tika Ramji's case authoritatively defined the word 'industry' - to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'." The learned senior counsel further placed reliance on the judgment of this Court in the case of State of Orissa v. M.A. Tulloch & Co.[2] to elaborate on the concept of repugnancy, as under:

".....Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience of each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne the on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed compression of provisions of the two statutes but by the mere existence of the two pieces of legislation....." The learned senior counsel further placed reliance on the case of The Hingir-Rampur Coal Co. Ltd. v. The State of Orissa[3], the relevant portion of which is quoted as under:

".....Before we deal with this question it is necessary to consider the difference between the concept of tax and that of a fee. The neat and terse definition of tax which has been given by Latham, C.J., in Matthews v. Chicory Marketing Board (1938) 60 C.L.R. 263 is often cited as a classic on this subject. "A tax", said Latham, C.J., "is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered". In bringing out the essential features of a tax this definition also assists in distinguishing a tax from a fee. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co- relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of leaving

a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinizes the schemes of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretense of a fee and not a fee in reality. In other words, whether or not a particular cess lived by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case. The distinction between a tax and a fee is, however, important, and it is recognised by the Constitution. Several Entries in the Three Lists empower the appropriate Legislatures to levy taxes; but apart from the power to levy taxes thus conferred each List specifically refers to the power to levy fees in respect of any of the matters covered in the said List excluding of course the fees taken in any Court." The learned senior counsel contends that legislative competence is a prerequisite for the valid imposition of a fee.

Mr. Ashok K. Pariza, the learned senior counsel appearing on behalf of some of the appellants contends that Amendment Act of 2012 is not constitutionally valid as the State Legislature is not empowered to legislate on the activities of manufacture. He contends that post manufacture, the product ceases to be an agricultural produce. Thus, the law in operation is the Industrial Development Regulation Act, 1951.

On the other hand, Mr. Avtaar Singh Rawat, the learned Additional Advocate General appearing on behalf of the State of Uttarakhand referring to the scheme of the Act contends that the object of the Act is to evolve efficient marketing systems. The relevant entry in play in the instant case is Entry 28 of List II.

Mr. Harin P. Rawal, the learned senior counsel appearing on behalf of the Mandi Samities further contends that the State Legislature of Uttarakhand had the competence to enact the impugned provisions. He contends that Entry 28 of List II of the Seventh Schedule to the Constitution of India, which deals with "Markets and Fairs" exclusively vests power in the State Legislature to make any provisions regulating the operation of, or for the growth and development of Markets and Fairs. Entry 66 of List II further confers upon the State Government the power to levy "fees in respect of any of the matters in this List". The impugned Legislation herein has been enacted in exercise of the powers conferred on the State Legislature, and therefore the levy of market fee and development cess in pursuance thereof squarely falls within the legislative competence of the State Legislature.

The learned senior counsel further contends that the fact that agricultural produce as raw material is used by an Industry covered by Entry 52 of List I does not deprive the State Legislature of the power to levy market fee or cess in respect of the transaction, which is well within the province of the State Legislature. Bringing of the agricultural produce into the market area for manufacture attracts the levy of market fee/cess, which the State Legislature is competent to impose. The learned senior counsel placed reliance on the case of Tika Ramji v. State of U.P.[4], wherein the scope of the term

'Industry' for the purpose of Entry 52 of List I was defined in the following terms:

> "Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III." The learned senior counsel further contends that the reliance placed upon the preamble of the Act by the appellants is misplaced as it is a settled principle of law that when the provisions of a statute are clear and unambiguous, the preamble must necessarily fade into insignificance. The preamble may be used as a key to open the mind of the Legislature in case of ambiguity in the provisions of the Statute. The learned senior counsel places reliance on the decision of this Court in the case of Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P.[5], wherein at para 87 it was held, inter alia, as under:
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> ".....at the very outset, it will have to be held that the Preamble cannot control the scope of the applicability of the Act. If the provision contained in the main Act are clear and without any ambiguity and the purpose of the Legislation can be thereby duly understood without any effort, there is no necessity to even look into the Preamble for that purpose." The learned senior counsel further contends that the developmental cess sought to be levied in the instant case is fee, the power to levy which has been conferred upon the State Legislature under Entry 66 read with Entry 28 of List II. It is further contended that the Constitution does not prohibit levy of fee on either sale of agricultural produce or even without a sale, bringing in any agricultural produce in the market area, be it for processing or manufacturing. The learned senior counsel places reliance on the decision of this Court in the case of Vijayalakshmi Rice Mill v. Commercial Tax Officers, Palokal[6], wherein a distinction was sought to be drawn between 'Cess' and 'Fees' in the following terms:
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> "...Hence ordinarily a cess is also a tax, but is a special kind of a tax. Generally tax raises revenue which can be used generally for any purpose by the State. For instance, the Income Tax or Excise Tax or Sales Tax are taxes which generate revenue which can be utilized by the Union or State Governments for any purpose, e.g. for payment of salary to the members of the armed forces or civil servants, police, etc. or for development programmes, etc. However, cess is a tax which generates revenue which is utilized for a specific purpose. For instance, health cess raises revenue which is utilized for health purposes e.g. building hospitals, giving medicines to the poor etc. Similarly, education cess raises revenue which is used for building schools or other educational purposes..... It is well settled that the basic difference between a tax and

a fee is that a tax is a compulsory exaction of money by the State or a public authority for public purposes, and is not a payment for some specific services rendered. On the other hand, a fee is generally defined to be a charge for a special service rendered by some governmental agency……" The learned senior counsel further contends that quid pro quo is not an essential requirement for levying fee and cess. In this connection, reliance is placed upon the case of Delhi Race Club Ltd. v. Union of India[7], wherein it was held as under:

"The same principle was reiterated in Secunderabad Hyderabad Hotels Owners' Association case (supra) where the existence of two types of fee and the distinction between them has been highlighted as follows: "9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fee can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive." The learned senior counsel contends that the fee which is sought to be levied in the instant case is for the development of the market area and therefore even if the appellants are not benefitted directly by the same, the very imposition of fee cannot be rendered nugatory. He further submits that what needs to be examined in the instant case is the point of incidence of the cess. The point of incidence is firstly the agricultural produce being brought into the Market Area and secondly, the purchase or sale of any agricultural produce. He submits that the impugned provisions are constitutionally valid and thus, are not liable to be struck down.

After hearing the learned senior counsel for both the parties, we are unable to agree with the contentions advanced by Mr. Avtaar Singh, learned Additional Advocate General, and Mr. Harin P. Rawal, learned senior counsel appearing on behalf of the respondents.

A perusal of the Preamble of the Act shows that the Act has been enacted to regulate the marketing of agricultural produce, and for the effective superintendence and control of the markets in the State of Uttarakhand. At this stage, it is imperative to examine the role of the preamble as an aid of statutory interpretation.

A Constitution Bench of this Court in Kavalappara Kottarathil and Kochunni alias Moopil Nayar v. States of Madras and Kerala[8] held as under:

“The preamble of a statute is "a key to the understanding of it" and it is well established that "it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt"

More recently, another Constitution Bench of this Court has dealt with the same in the case of Union of India v. Elphinstone Spinning & Weaving Co. Ltd.[9], wherein it was held, inter alia, as under:

“.....When the question arises as to the meaning of a certain provision in a Statute it is not only legitimate but proper to read that provision in its context. The context means; the statute as a whole, the previous state of law, other statutes in para materia, the general scope of the statute and the mischief that it was intended to remedy. An Act consists of a long title which precedes the preamble and the said long title is a part of an Act itself and is admissible as an aid to its construction. It has been held in several cases that a long title along with preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act whereas the preamble being only an abbreviation for purposes of reference is not a useful aid to construction. The preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provisions to decide whether they are clear or ambiguous but the preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a Section of the Act as are other relevant enacting words to be found elsewhere in the Act. The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions. It is therefore said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it.” (emphasis laid by this Court) From a perusal of the abovementioned case law, it becomes clear that the preamble cannot control the enacting part. The preamble read with the provisions of a statute, however, makes the legislative scheme clear and can be used to determine the true meaning of the enacting provision and whether given the other provisions of the Act, the enacting provision can be given effect to without defeating the scheme of the entire Act.

In order to fully understand the scheme of the Act, we need to direct our attention to certain provisions.

Section 2(i) defines “Agricultural Produce” as:

“"Agricultural Produce" means all produce and commodities, whether processed or unprocessed, of agriculture, horticulture, floriculture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, forest produce, as are specified in the Schedule or declared by the State Government, by notification, from time to time and includes admixture of two or more of such products, processed in form and further

includes Gur, Rab, Shakkar, Khandsari and Jaggery" Section 2(ii) defines an 'Agriculturist' or 'Producer' as:

""Agriculturist" or "Producer" means a person, who, by his own labour or by the labour of any member of his family or by the labour of hired labour or otherwise, is engaged in the production and growth of agricultural produce, but it does not include any market functionary like a trader, broker (dalal), commission agent (arhatiya) or who is otherwise ordinarily engaged in the business of storage of agricultural produce;" Section 2(vi) defines a "Buyer" as:

"Buyer" (Purchaser) means a person, group of person, firm or company or co-operative society or Government agency, corporation, trader, commission agent or arhatiya, who, himself or on behalf of any other person or agent, buys or agrees to buy agricultural produce in the Market Area, as notified under this Act;

Section 2(xlvi) defines "Second Arrival" as ""Second Arrival" means such agricultural produce, which has been brought to any Market Area after the first transaction or sale from any other Market Area;" Section 4 of the Act pertains to the declaration of an area as Market Area which reads as under:

"Where the State Government is of opinion that it is necessary or expedient in public interest to regulate the sale and purchase of agricultural produces in any area and for that purpose to declare that area as a market area, it may, by notification in official gazette and in such other manner, which may be prescribed, declare such area as a Market Area under this Act, with effect from such date, as may be notified." A combined reading of all the above mentioned provisions and the preamble makes it amply clear that the Act has been enacted with a view to regulate the buying and selling of the agricultural produce within the area notified as Market Area under Section 4 of the Act.

At the cost of repetition, we extract the impugned provision, i.e. Section 27 (c) (iii):

"any such agricultural produce, which arrives in any Market area of the State for sale, storage, processing, manufacturing, transaction or other commercial purposes from any other State or out of Country for the first time, it shall be registered as "Primary Arrival" and on such produce, Market fee and Development cess shall be payable." Section 27 (c)(iv) reads as:

"any agricultural produce which is brought to any Market area within the State after the transaction of sale from any other Market area of the State after paying Market fee and Development cess for the purpose of sale, storage, processing, manufacturing, transaction or other commercial purposes, it shall be called as "Secondary Arrival" and on such produce, no Market fee and Development cess shall be leviable." Before we examine the legislative competence of the State Legislature to enact the impugned

provisions, we direct our attention to the decision of a Constitution Bench of this Court, rendered in the case of M.C.V.S. Arunachala Nadar & Ors. v. State of Madras[10], wherein the object of the market legislations in general was assessed:

".....Marketing legislation is now a well-settled feature of all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce....." The primary object, thus, of any market legislation is to ensure that the producer of the agricultural produce gets a fair return. It is also essentially meant to govern the "buyer-seller" relationship.

In this context, an examination of Section 27(c)(iii) would show that it is against the scheme of the Act, as it seeks to levy market fee and development cess even on those units which merely bring agricultural produce from outside the State into the market area for carrying out manufacturing, in that there is no sale or purchase of the product within the market area per se.

Further, it is important to examine the legislative competence of the State Legislature to enact the particular provision. The two relevant entries in play here are Entry 52 of List I and Entry 28 of List II.

Entry 28 of List II pertains to Markets and Fairs, while Entry 52 of List I pertains to Industry. In the case of The Belsund Sugar Co. Ltd v. State of Bihar[11], it was held, inter alia, as under:

".....It becomes at once clear that if location of markets and fairs simpliciter and the management and maintenance thereof are only contemplated by the Market Act, then they would fall squarely within the topic of legislative power envisaged by Entry 28 of List II. However, the Market Act, as well will presently show, deal with supply and distribution of goods as well as trade and commerce therein as it seeks to regulate the sale and purchase of agricultural produce to be carried on in the specified markets under the Act. To that extent the provisions of Entry 33 of List III override the legislative powers of the State Legislature in connection with legislations dealing with trade and commerce in, and the production, supply and distribution of goods. Once we turn to Entry 33 of the Concurrent List, we find that on the topic of trade and commerce in, and the production, supply and distribution of, goods enumerated therein at Sub- clause (b), we find listed items of foodstuffs, including edible oilseeds and oils." The scope of the term 'Industry' for the purpose of Entry 52 of List I was examined at length by Ruma Pal, J. in her concurring opinion in the constitution bench decision of ITC Ltd. referred to supra, wherein it was held as under:

"126. To sum up: the word 'Industry' for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji to the process of manufacture or production only.

> Subsequent decisions including those of other Constitution Benches have re-affirmed that Tika Ramji's case authoritatively defined the word 'industry'-to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'.

127. Applying the negative test as evolved in Tika Ramji in this case it would follow that the word 'industry' in Entry 24 of List II and consequently Entry 52 of List I does not and cannot be read to include Entries 28 and 66 of List II which have been expressly marked out as fields within the State's exclusive legislative powers. As noted earlier Entry 28 deals with markets and fairs and Entry 66 with the right to levy fees in respect of, in the present context, markets and fairs. Entry 52 of List I does not override Entry 28 in List II no has Entry 28 in List II been made subject to Entry 52 unlike Entry 24 of List II. This Court in Belsund Sugar (supra) has also accepted the argument that Entry 28 of List II operated in its own and cannot be affected by any legislation pertaining to industry as found in Entry 52 of List I.

128. If 'industry' does not include 'markets and fairs' it is important to define what markets and fairs connote. 'Market' may strictly be defined as "the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly exposed, at a fixed time and place". .....At common law, fairs and markets were also franchises or rights to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given. This included the right to levy a toll or sum payable by the buyer upon sales of articles in a market. The sense in which the words has been used in Entry 28 appears to cover not only such right but the market place itself including the concourse of buyers and sellers' and the regulation of all these." (emphasis laid by this Court) A perusal of the abovementioned judgments makes it clear that Entry 52 of List I 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.

In view of the findings and reasons recorded in Point No.1 supra, the impugned common judgment and order upholding the validity of the amendment to Section 27(c)(iii) of the Act is set aside. Section 27(c)(iii) of the Act is struck down. The consequential action of issuing notice of demand and any other orders passed against the appellants are hereby quashed. However, Section 27(c)(iv) is hereby upheld. This Court makes it very clear that the purchaser must prove that the agricultural produce is brought from other State which is an interstate sale, and is in accordance with the provisions of the Sale of Goods Act, 1930.

These Civil Appeals are allowed in the above terms. No costs.

.....J.
[V.GOPALA GOWDA]

.....J.
[AMITAVA ROY]

New Delhi, December 9, 2015

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[1] (2002) 9 SCC 232
[2] AIR 1964 SC 1284
[3] AIR 1961 SC 459
[4] AIR 1956 SC 676
[5] (2013) 15 SCC 677
[6] (2006) 6 SCC 763
[7] (2012) 8 SCC 680
[8] AIR 1960 SC 1080
[9] (2001) 4 SCC 139
[10] AIR 1959 SC 300
[11] (1999) 9 SCC 620