

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3969 OF 2001

ASSAM STATE AGRICULTURAL MKT.BOARD & ANR

Appellant (s)

VERSUS

ASSAM ROLLER & FLOUR MILLS ASSC.& ORS.

Respondent(s)

(With office report)

Date: 8/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant(s)

Mr. R.F.Nariman, Sr. Adv.

Mr. K.Gulati, adv.

Mr. S.Sikia, adv.

Mr. A. Chaudhary, adv.

Ms. P.S.Baghel, Adv.

Mr. R.N.Karanjawala, adv.

Mrs Manik Karanjawala, Adv.

For Respondent(s) Mr. Mukul rohtagi, Sr. Adv.

Mr. E.C. Agrawala, Adv.

Mr. D.K.Mishra, Sr. Adv.

Ms. L.M.Bht, adv.

Mr. Naveen R. Nath , Adv

Ms. Anitha Shenoy, adv.

Ms. Hetu Arora, adv.

Mr. J.R.Luwang, adv.

Ms. Krishna Sarma, adv.

Mr. V.K.Sidatharan, Adv, for
M/S Corporate Law Group

UPON hearing counsel the Court made the following

O R D E R

The appeal is disposed of.

(Suman Wadhwa)
Court Master

(Madhu Saxena)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3969 OF 2001

Assam State Agricultural Mkt.
Board & Anr.

.. Appellant

vs.

Assam Roller & Flour Mills Assc.
& Ors.

.. Respondents

O R D E R

Four questions had been referred to the Full Bench of the High Court for its decision with regard to the respondents challenge to Rule 21(7) of the Assam Agricultural Produce Market (General) Rules 1975 as framed under Assam Agricultural Produce Market Act 1972. The questions are:

- 1) Whether the Rule 21(7) of the Rule is ultravires.
- 2) Whether the Board has the power to collect levy and cess on the consignment of notified agricultural produce brought into the declared market area in the State of Assam in terms of Section 21 of the Act.
- 3) Whether the collection of cess of the notified agricultural produce at various gates like

Srirampur, Jagiroad is permissible when no sale or purchase take place at such places.

- 4) Whether the cess realised already, shall be refunded to the appellants/writ petitioners' Firm."

Issue No.1 is academic in view of the amendment of Sec.21 of the Act w.e.f. 11.1.2001 and the repeal of the Rule. Issue No.4 was decided against the respondents and no appeal has been preferred by the respondents from such determination. As far as the

-2-

questions Nos.2 and 3 are concerned, according to the respondents the issue cannot be raised by the appellant since its appeal before the High Court was limited to issue No.1.

It is also submitted that the special leave petition filed by the appellant was restricted to such decision on that limited issue.

In our opinion as far as the third issue is concerned, the question is essentially one of fact. Since the assessments in question subsequent to the amendment in 2001 would involve different set of facts and examination thereof. In any event no refund having been allowed, it will serve no purpose in our reopening of the assessment of fact by the Full Bench for the earlier period. The only issue which therefore remains for our determination is issue No.2.

We have scrutinised the grounds taken in the special leave petition. We are of the opinion that the respondents' contention is correct. In that view of the matter, this appeal is disposed of without any further orders. Any amount which may have been collected by the

appellant pending disposal of this appeal will be subject
to the outcome of the writ petition challenging the
amendment to section 21 of the Act now pending in the High
Court.

.....J.
(RUMA PAL)

.....J.
(Dr. AR. LAKSHMANAN)

New Delhi;
December 8, 2005.