Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

F.M.A. 1221 of 2025
With
CAN 1 of 2025
With
F.M.A. 1222 of 2025
With
CAN 1 of 2025

Sethia Oil Industries Ltd. & Anr.
v.
State of West Bengal & Ors.

For the Appellant : Mr. Jaydip Kar, Ld. Sr. Adv.
Mr. Sakya Sen Ld. Sr. Adv.
Mr. Jai Kumar Surana
Mr. Srijib Chakraborty
Mr. Debangshu Dinda

For the State : Mr. Surojit Nath Mitra, Ld. A. G.
Mr. NilanjanBhattacharyya, Sr. Adv.
Ms. Mary Datta,
Mr. Bijitesh Mukherjee

For the respondent no. 3 : Mr. Swapan Banerjee
Mr. Diptendu Narayan Banerjee

Hearing concluded on: 24th September, 2026

Judgment pronounced on: 25th September, 2026

RAJASEKHAR MANTHA, J:

A. THE CHALLENGE

1. The subject appeals are directed against the **judgement and order dated May 6th, 2025**, passed in **W.P. No. 17846 (W) of 2012** (first writ petition) & **W.P. No. 11513 (W) of 2019** (second writ petition) by a Single Bench of this Court.
2. The first writ petition challenged the executive notification of 2002 and 2008 issued under the **West Bengal Agricultural Produce Marketing (Regulation) Act, 1972** (in short 'Act of 1972'). Based on these notifications, the market committee in the Burdwan district directed the petitioner/appellant to obtain license under the 1972 Act and pay market fees on the manufacturing and sale of Rice Bran Oil and De-Oiled Rice Bran manufactured thereat. The said oils fall under the fee bracket of 'Rice Oil'.
3. Subsequently, the West Bengal Legislature introduced Amendment Acts in 2014 and 2017 to the 1972 Act, amending the definition of "agricultural produce." Following the change in the definition of agricultural produce, the Burdwan Market Committee again directed the petitioner to pay market fees. Under the Amendment Act of 2017, 'all vegetable oils' were explicitly included under the schedule. This was an attempt to validate the charging of marketing fees, under the Act of 1972, on the manufacture of rice bran oil and de-oiled rice bran.
4. The petitioner obtained amendment of pleadings and prayers in the first writ petition, challenging the Amendment Acts of 2014 and 2017, and the executive notification issued based on the Amendment Act of 2017. The said executive notification included Rice Bran Oil in the schedule to the

Act of 1972. The Schedule to the Act of 1972 sets out the items of 'agricultural produce' on which market fees is levied.

5. The second writ petition challenged an order dated April 19th, 2016, passed by the first authority and an order dated May 16th, 2019, passed by the appellate forum under the 1972 Act. The appellate forum directed the petitioner to pay a sum of Rs. 1,74,82,400.40/- as market fees, partially modifying the order of the first authority, which levied a higher market fee.
6. By the impugned judgement, it was held that Rice Bran Oil and De-oiled Rice Bran are covered under the definition of 'agricultural produce' under the Act of 1972 and fee bracket of 'Rice Oils' enumerated in the Schedule. The imposition of market fees on the petitioner/appellant, Sethia Oil Industries, was upheld.

B. FACTS OF THE CASE

7. The Act of 1972 seeks to regulate marketing of agricultural products in the State of West Bengal. It empowers State executive to constitute a Market Committee for each district/area where agricultural produce is manufactured and brought for sale. The said Market Committee is empowered to charge fees from the entity bringing agricultural produce into the designated market areas. The agricultural produce(s) are enlisted in the Schedule to the Act of 1972. The said Act was brought into force after obtaining the prior sanction of the Hon'ble President of India in terms of Article 304 of the Constitution of India.
8. The writ petitioner/appellant manufactures and sells Rice Bran Oil and De-Oiled Rice Bran under the name and style of 'Rice Gold' and De-oiled Rice Bran in the district of Burdwan. There is, however, no sale effected

in the said district. The goods are transported to Kolkata and sold here. Admittedly, the Act of 1972 is not applicable to the city of Kolkata.

9. For the first time in 2002 by an executive notification, Rice Bran Oil and Rice Oil were included in the schedule to the Act of 1972. This was done without amending the definition of Agricultural produce under Section 2(1)(a) of the Act.

10. The manufacturing business of the petitioner/appellant was, however, sought to be regulated later in 2008 when by an executive notification, the operation of the Act of 1972 was extended to the district of Burdwan where the petitioner/appellant manufactures 'De-oiled Rice Bran' and 'Rice Bran Oil'. Accordingly, the petitioner/appellant was directed to pay market fee to the market committee of Burdwan district for manufacturing the said oils, in the designated area of Burdwan District from 2008 onwards.

11. On 3rd June 2011, the Burdwan Regulatory Market Committee called upon the appellant to obtain a license under Section 13 of the Act of 1972, within 15 days, for running its processing unit to manufacture Rice Bran Oil and De-oiled Rice Bran. Upon the petitioner protesting against the said notice, it was threatened with penalties under Section 34 of the Act of 1972.

12. By the Amendment Act of the year 2014, the State Legislature amended the definition of "Agricultural Produce", under Section 2 (1) (a) of the Act of 1972. It, inter alia, included the expressions, "whether processed or unprocessed" and "and related and secondary product or by product or combination of two or more, two of such produce" in Section 2 (1)(a) (supra).

13. The Amendment Act of 2014 introduced Section 2(mb) in the Act of 1972 and defined "processing" as follows:-

> Sec. 2(mb) processing" means any one or more of ***a series of treatments relating to powdering, crushing, decorticating, de-husking, parboiling, polishing, ginning, pressing, curing or any other manual, mechanical, chemical or physical treatment*** to which raw agricultural produce or its product is subjected to;
>
> Emphasis applied

14. Section 2(na) was also introduced defining 'Sale' as follows:-

> "sale" means physical transfer of ownership of agricultural produce from one person to another person against a consideration of value, either by cash, or by valuable, or on deferred payment basis:
>
> Provided that any transfer of stock of agriculture produce from one market area to another market area, irrespective of change of ownership falls within the definition of sale;

15. The petitioner/appellant has challenged the legality of the executive notifications of 2002 and 2008 whereby Rice Oil and Rice Bran Oil were included in the schedule to the Act of 1972 without first amending the definition of 'agricultural produce'. The said inclusion by the executive, therefore, has been argued to be suffering the vice of excessive delegation.

16. The petitioner filed the first writ petition **W.P. No. 17846 (W) of 2012** challenging the executive notifications of 2002 and 2008. It was inter-alia contended that-

    a) Rice Bran Oil could not have been included in the Schedule to the Act of 1972 since it was not an agricultural produce in the first place. The original products of either Rice or Rice Bran completely lose their character after the manufacturing process undertaken by the petitioner. The inclusion of Rice Bran oil in the schedule was ultra vires the definition of Agricultural produce in terms of Section 2(1) (a) of the Act of 1972.

b) It was also contended that the executive notifications of 2002 and 2008, are repugnant to the Industries (Development and Regulation) Act 1951, a central legislation. Solvent extractions processes, under which Rice Bran oil is made, are defined as industries under the said Act of 1951, requiring a complicated manufacturing process. Article 254 of the Constitution provides that Central legislation would override a State Legislation.

17. The State legislature thereafter amended the Act of 1972 in the year 2014. It amended the definition of Agricultural produce to the following effect :-

> 2(1)/(a)agricultural produce" means any produce, ***whether processed or unprocessed*** of agriculture, horticulture, apiculture, pisciculture, sericulture, livestock and products of livestock, animal husbandry, fleeces (raw wool) and skins of animals, forest produce and ***any related and secondary product or by-product*** and combination of two or more than two of such produce as specified in the Schedule:
>
> Provided that the State Government may, by notification, include in, or exclude from, any item of agricultural produce in the Schedule;]
>
> Emphasis Applied

18. The appellant obtained amendment of the writ petition and challenged the said definition inter-alia on the ground the same is unconstitutional. It was contended that the amendment Act had the effect of introducing new restrictions on free trade within the State. The assent of President of India in terms of Article 304 (b) of the Constitution was not obtained prior to the introduction of the amendment bill in the State Legislature. Such a prior assent was

necessary since the principal Act of 1972 was passed with the assent of the President of India.

19. By a further amendment to the Act of 1972 enforced on 31st March, 2017, the State Legislature amended the schedule to the Act of 1972 to introduce "Oils". By an executive notification dated 24th July, 2017, the State Executive introduced Rice Bran Oil in the Schedule to the Act of 1972, categorizing the product manufactured by the petitioner as an Agricultural Produce.

20. The appellants obtained further amendment of the writ petition and sought to challenge the Amendment Act of 2017 and the Notification dated 24th July, 2017, inter-alia, on the ground that the bill for such amendment was introduced without the previous sanction of the President mandated under Section 304 (b) of the Constitution. The amendment had the effect of interfering with the free movement of trade commerce and inter-course in the State. The amendment was also against public policy and public interest.

21. Post amendments to the writ petition the prayers made in **W.P. 17846 (W) of 2012** stood as follows :-

> a) Declare the impugned notification dated 29.01.2002, which was issued vide No. 429-MW & C/9M-49/2000 unconstitutional being ultra vires the Constitutions of India, and the West Bengal Agricultural Produce and Marketing (Regulation) Act, 1972.
>
> aa) Issue a writ of and/or in the nature of Mandamus declaring the impugned notification issued by the Government of West Bengal, Department of Agriculture vide notification No. 2537-M.W&C/IM-05/99 Pt. 1 dated 22nd August, 2008, unconstitutional being ultra vires the Constitution of India and the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972.
>
> ab) Issue a writ of and/or in the nature of Mandamus declaring the West Bengal Act XXVII of 2014, namely the West Bengal Agricultural Produce Marketing (Regulation) (Amendment) Act, 2014 passed by the West Bengal Legislature and published in the Kolkata Gazette by the Government of West Bengal, Law Department vide notification

No. 86-L dated 21st January, 2015 upon being assented by the Hon'ble Governor of West Bengal, unconstitutional being ultra vires the Constitution of India.

ac) Issue a writ of and/or in the nature of Mandamus declaring the West Bengal Act XVI of 2017 namely the West Bengal Agricultural Produce Marketing (Regulation) (Amendment Act, 2017 passed by the West Bengal legislature and published in theKolkata Gazette by the Government of West Bengal, Law Department vide notification No. 391-L dated 31st March, 2017 upon being assented by the Hon'ble Governor of West Bengal, unconstitutional being ultra virus the Constitution of India. issued by the Government of West Bengal, Department of Agriculture vide notification No. 391-L dated 31st March, 2017, unconstitutional being ultra vires the Constitution of India.

b) Issue a writ of and/or in the nature of mandamus for bearing the respondent authorities from giving any effect and/or further effect to the impugned notification 29.01.2002.

bb) Issue a writ of and/or in the nature of Mandamus restraining the respondent authorities and each of them from giving any effect and/or further effect to the impugned notification bearing No. 2537-M.W.&C/IM-05/99 (Pt. 1) dated 22nd August, 2008.

bc) Issue a writ of and/or in the nature of Mandamus declaring the respondent authorities and each one of them from giving any effect and/or further effect to the provisions of the West Bengal Act XXVII of 2014, namely the West Bengal Agricultural Produce Marketing (Regulation) (Amendment) Act, 2014 passed by the West Bengal Legislature and published in the Kolkata Gazette by the Government of West Bengal, Law Department vide notification No. 86-L dated 21st January, 2015.

bd) Issue a writ of and/or in the nature of Mandamus restraining the respondent authorities and each one of them from giving any effect and/or further effect to the impugned notification bearing no. 877-AM O 9M-46/2011 dated 24th July, 2017.

c) Issue an appropriate direction upon the respondent authorities to permanently restrain themselves from levy and realization of market fees a purchase and sale of rice bran oil, and deoiled rice bran on the strength of the impugned notification.

d) An appropriate direction upon the respondent authorities to transmit all records, papers and documents pertaining to the training of the impugned notification, so that conscionable justice may be administered by quashing the same.

Emphasis Applied

22. The Respondents, however, continued to raise demands on the appellants to pay Market fees after compelling the petitioners to obtain

a license under Section 13 of the Act of 1972. Several writ petitions were filed to challenge the demands of the respondents. In respect of a demand as confirmed by the appellate authority vide orders dated 16th May, 2019 and 20th June, 2019 for a sum of Rs.1,74,82,404/- the appellant filed **W.P. No. 11513 (W) of 2019,** praying for the following reliefs :-

> a) A writ or writs, order or orders in the nature of Mandamus do issue commanding the respondent authorities to forthwith withdraw and/or rescind and/or cancel and/or set aside the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2 and to act according to law;
>
> b) A writ or writs, order or orders in the nature of Mandamus do issue setting aside and/or quashing the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2;
>
> c) A writ or writs, order or orders in the nature of Certiorari, do issue commanding the respondents, their servants, agents and/or assigns to transmit all the records pertaining to the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2, so that conscionable justice may be done to the petitioners by quashing the same;
>
> d) A writ or writs, order or orders in the nature of Prohibition be issued prohibiting the respondents, their servants, agents, and/or assigns to take any steps pursuant to the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2 and acting in furtherance thereof;
>
> e) A writ in the nature of mandamus do issue directing the respondents to forthwith refund the market fee that was deposited by the petitioner under protest for the period from 2012 to 2016 along with interest @18% per annum;
>
> f) An order of stay do issue staying the operation of the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2 till the disposal of this application;
>
> g) An order of injunction do issue restraining the respondents from levying and collecting market fee for manufacture and sale of Rice Bran Oil and Deoiled Rice Bran under The West Bengal Agricultural Produce Marketing Regulation) Rules, 1982 till the disposal of this application;

h) An interim order of injunction do issue directing the respondent authorities not to give effect to the impugned assessment order dated June 30, 2016 issued by respondent no. 6 and the impugned order dated May 16, 2019 issued by the respondent no. 2 further steps thereof, and taking any

i) An interim order of injunction thereby commanding the respondents, their servants, agents and/or assigns to forthwith issue the Certificate in terms of orders dated April 19, 2016 and May 2, 2016 passed by this Hon'ble Court and not to create any obstruction in the smooth running of business of the petitioners, till the disposal of the instant application;

j) An order of stay do issue staying the of the operation letter/notice dated June 20, 2019 issued by the respondent no. 6 and further restraining the respondent no. 6 from taking any steps in terms of the letter/notice dated June 20, 2019, till the disposal of this application;

k) Cost of and incidental expenses relating to this application;

1) Such other or further order or orders as Your Lordships may deem fit and proper.

C. LEGAL ISSUES FOR THE DECISION OF THIS COURT

a) Do the 2014 and 2017 Amendments restrict freedom in movement of trade/commerce? If so, does absence of the prior assent of the Hon'ble President of India thereto render such amendments ultra vires to the Constitution of India?

b) Does the definition of sale, introduced by the Amendment Act of 2014, contrary to the definition of 'sale' under the Sale of Goods Act, 1930?

c) Does the inclusion of Rice Bran Oil and Rice Oil in the schedule to the Act of 1972, first effected by the executive notification of 2002 issued under the Act of 1972 and subsequently by the executive notification of 2017, pursuant to the Amendment Act of 2017, travel beyond the original and amended definition of ‘agricultural produce’ under the Act of 1972?

d) Does the Act of 1972 require market committees to render actual services to charge fees, and whether levying fees alongside SGST constitutes double taxation, invalidating the fee demand.

e) Is the inclusion of Rice Bran Oil and Rice Oil in the Act of 1972 in conflict with the Industries (Development and Regulation) Act, 1951?

D. ANALYSIS OF THIS COURT

ISSUE (a)

I) Article 301 of the Constitution of India guarantees freedom in the movement of goods for trade and commerce.

23. Ld. Sr. Counsel for the appellant has argued that the 2014 and 2017 Amendment Acts violated mandatory constitutional procedure under Article 304 of the Constitution of India because bills relating to trade and commerce require the prior assent of the Hon'ble President of India before its introduction to the Legislature, which was not obtained by the State. He has alternatively argued that even if the 2014 and 2017 Amendment Acts are upheld by this Court, rice bran oil and de-oiled rice bran **cannot** per-se be termed as "agricultural produce", irrespective of the definitions under the Act.

24. The 2014 Amendment Act added 'processed products' to the definition of 'agricultural produce', and the 2017 Amendment Act added 'all vegetable oils' to the schedule of the 1972 Act. Subsequently, **executive notification no. 877-AM O 9M-46/2011 dated July 24, 2017**, explicitly added 'rice bran oil' to the schedule of the 1972 Act, which is

argued to be impermissible because rice bran oil and de-oiled rice bran are manufactured products.

25. The nature and extent of freedom guaranteed under Article 301 of the Constitution of India, thus, fall for consideration. Art 301 is set out below:-

> **301. Freedom of trade, commerce and intercourse**
>
> Subject to the other provisions of this Part, trade, commerce and **intercourse *throughout* the territory of India** shall be free.
>
> Emphasis Applied

26. The expression 'intercourse' read with the expression 'throughout the territory of India indicates that Article 301 guarantees *freedom in the movement* of trade and commerce within a State and between States within the Country. Thus, the freedom conferred by Article 301 is that a citizen or an entity can import and export goods from one State to another State within India. The entities would also have freedom to import and export the goods within the territory of a State. In ***State of Madras v. N.K. Nataraja Mudaliar, reported in 1968 SCC OnLine SC 148,*** it was held that Article 301 confers freedom to move goods from one place to another as follows:-

> .... **all restrictions which directly and immediately affect the *movement* of trade are declared by Article 301 to be ineffective.** The extent to which Article 301 operates to make trade and commerce free has been considered by this Court in several cases. In Atiabari Tea Co. Ltd. v. The State of Assam and Others', Gajendragadkar, J., speaking for himself and Wanchoo and Das Gupta, JJ., observed at page 860:
>
> .we think it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed by Article 301, **would be such restrictions as directly and immediately restrict or impede the *free flow or movement of trade.”***
>
> Emphasis applied

27. The 2014 Amendment Act expanded the definition of 'agricultural produce' and included 'processed products'. The 2017 Amendment and notification passed thereunder brought Rice Oil and Rice Bran Oil under the 1972 Act. Consequently, the Burdwan District Market Committee imposed fees on the manufacturing and trade of these oils. The imposition of fees **does not impede** the **physical movement** of the underlying agricultural produce. Thus, the freedom in the movement of goods has remained **un**-impacted. In ***Jindal Stainless Ltd. v. State of Haryana, reported in (2017) 12 SCC 1,*** it was held as follows:

> 112.1. Firstly, ***because taxes whether high or low do not constitute restrictions on the freedom of trade and commerce.*** ……..**That being so the mere fact that a tax casts a heavy burden is no reason for holding that it is a restriction on the freedom of trade and commerce.** Any such excessive tax burden may be open to challenge under Part III of the Constitution but the extent of burden would not by itself justify the levy being struck down as a restriction contrary to Article 301 of the Constitution.
>
> 148. In addition to the reasons stated in the judgment, it appears that there is a more fundamental reason why tax is not liable to be viewed as a restriction on the freedom of trade, commerce and intercourse. On the contrary it seems that a tax, such as the one we are concerned with is predicated on the freedom of trade and commerce. ***This is particularly true of an entry tax. It is an impost levied on transactions which are entered into in the course of that freedom.*** In fact, but for such freedom of trade there would be no transaction and no occasion for the levy of a tax. The levy of a tax is a distinct event from the transaction. Trade and commerce must take place to attract a tax. ***Undoubtedly, a tax may make the transaction less profitable to the extent of the tax. But that is far from being an impediment on the transaction which is part of trade, the freedom which is guaranteed under Article 301. It is not possible to readily conceive of a tax, which in itself, restricts or impedes the freedom of trade. The circumstances are much like the freedom of movement of an individual by a bus and the charge of a bus ticket for such movement. It can hardly be contended that the charge of a bus ticket impedes the freedom of movement.***

Emphasis applied

28. The imposition of a fee on trade of a product may restrict the right to practice any trade or profession without paying anything in cash or kind

back to the State under Article 19(1)(g) of the Constitution of India. Such restrictions are permissible provided they are reasonable. Article 19 encompasses a broad range of rights, whereas Article 301 is confined to the free movement of trade.

29. A clear distinction must be drawn between restriction on free trade as opposed to free movement of goods of trade. The former may include imposing a fee for trading in an area. The latter entails restricting the transport of goods. Restriction on free trade is **not** regulated under Article 301 of the Constitution of India.

30. The original and un-amended Act of1972 and certain subsequent Amendments thereafter were sent for the prior assent of the Hon'ble President of India, which was given. This however, does not obligate it to also seek assent of the President before introducing the Amendment Act of 2014 and 2017 since they do not restrict free movement of trade. Each amendment is a separate cause of action. Amendments that do not actually restrict the movement of goods do not require the State to apply for Presidential Assent.

31. Further, the appellant has not demonstrated any legal prejudice caused to it due to the lack of presidential assent for the 2014 and 2017 amendments. They, therefore, cannot insist on the State to obtain presidential assent more so when such amendments do not restrict free movement of goods in trade and commerce.

i. ***(ii) Under which legislative entry do the Amendment Acts of 2014 and 2017 fall?***

32. The State legislature has powers to enact laws on trade and commerce under Article 245(3) read with Entry No. 26 of the State list under the

seventh schedule of the Constitution of India. The State shares the law-making power on trade and commerce with the Parliament since the subject of trade and commerce is also enlisted under entry no. 33 of the Concurrent List. The scope of entry no. 33 is, however, narrower than the entry no. 26 of the State List. Entry no. 26 of the State List and entry no. 33 of the Concurrent List are set out below for a comparative analysis:-

> List II—State List
>
> 26. Trade and commerce within the State subject to the provisions of entry 33 of List III.
>
> List III - Concurrent List
>
> [33. Trade and commerce in, and the production, supply and distribution of,—
>
> (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
>
> **(b) foodstuffs, including edible oilseeds and oils;**
>
> c) cattle fodder, including oilcakes and other concentrates;
>
> (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.
>
> Emphasis Applied

33. Entry no. 33 of the Concurrent List contains specific areas of trade and commerce. Whereas entry no. 26 of the State list has no such areas. Entry no. 26, thus, contemplates a wider net of legislative issues relating to trade and commerce than entry no. 33. Entry no. 26 in its sweep thus includes the imposition of market fees on trade and commerce of oil.

34. We are conscious that Entry no. 33, inter alia, mentions trade and commerce in oil. The question, therefore, is the nature and scope of legislation contemplated under entry no. 33 in respect of such trade and

commerce. Notably, entry no. 26 is made subject to entry no. 33 of the concurrent list. Thus, another point in issue is the relation between entry no. 26 of the State List and entry no. 33 of the Concurrent List.

35. Entry no. 33 is an item under the Concurrent List. Therefore, in addition to the Parliament, the State Legislature, also has the power to legislate on the subjects listed in entry no. 33. Under Entry no. 26 of the State List, the State Legislature can legislate on trade and commerce, independent of the entry no. 33 of the Concurrent List.

36. The framers of the Constitution, thus, have conferred on the States the power to enact laws on the trade and commerce both under Entry nos. 26 of the State List and 33 of the Concurrent List. The Parliament, however, can legislate on trade and commerce only under entry no. 33 thereof. The framers of the Constitution, therefore, wanted the States to always have a say on the subject of trade and commerce within their territories.

37. The concurrent power of the State and Central legislature to enact laws on trade and Commerce, should, therefore, inform any interpretation that may be given to entry no. 33. Articles 301- 304 of the Constitution of India are specific provisions on the subject of trade and commerce.

38. The scope of freedom under Art 301 and Articles 302-304 provides for the power to legislate on the 'freedom of movement' in trade and commerce. Thus, the subject of trade and commerce in oil under entry no. 33 is limited to the free movement of goods in course of trade and commerce of oil. Legislation under entry no. 33, therefore, is for imposing restrictions on the free movement in trade and commerce.

39. The Amendment Acts of 2014 and 2017 have not imposed any restrictions on the free movement of trade and commerce in oil, held above. The said amendments are thus **not** covered by entry no, 33 of the Concurrent list. They are covered by entry no. 26 of the State list. The prior sanction of the President therefore is not required for bringing about the said amendments to the Act of 1972.

ISSUE (b)

(i) <u>The definition of "sale" introduced by the 2014 Amendment is not contrary to the Sale of Goods Act, 1930?</u>

40. Ld. Sr. Counsel for the appellant has argued that the State Legislature could not have defined 'sale' in the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 given "sale" falls under Entry no. 7 of the Concurrent List and already stands defined under Section 4 and 5 of the Sales of Goods Act, 1930, a Central legislation. He argues that the definition of 'sale' in the 1972 Act is contrary to that defined in the Sales of Goods Act, 1930.

41. The definition of "sale" in the Act of 1972 and that in the Sale of Goods Act, 1930, must be considered in light of Entry no. 7 under the Concurrent List. These definitions and legislative entry are serially set out below:

> **Section 2(na) of the Act of 1972-** "sale" means physical transfer of ownership of ***<u>agricultural produce</u>*** from one person to another person against a consideration of value, either by cash, or by valuable, or on deferred payment basis:
> Provided that any transfer of stock of agriculture produce from one market area to another market area, ***<u>irrespective of change of ownership falls within the definition of sale;</u>***

From the Sales of Goods Act, 1930-

Sec. 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.

Sec. 5. Contract of sale how made.—

(1) A contract of sale is made by ***an offer*** to buy or sell **goods** for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.
(2) **Subject to the provisions of any law for the time being in force**, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Entry 7 of the Concurrent List-
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, ***but not including contracts relating to agricultural land.***

42. Entry 7 of the Concurrent List is a contract-specific entry, covering "all forms of contract". It, however, carefully excludes contracts relating to agricultural land. The word 'sale' defined in connection with an agricultural produce and land, therefore, is ***not*** covered under Entry 7.

43. Section 4 of the Sales of Goods Act, 1930, distinguishes the difference between an agreement to sell and an absolute sale. It, therefore, codifies the general principles relating to contract of sale of goods. Section 5 thereof specifies the procedure by which a contract of sale is executed.

Sub-section (2) of Section 5 leaves scope for other legislation to specify the mode by which a contract of sale or an agreement for the sale of goods may be made. This is evident from the expression used therein 'Subject to the provisions of any law for the time being in force'.

44. Thus, the Sale of Goods Act is not a universal law on the subject of the sale of goods. It has left scope for other legislation to coexist with it. This is evident from the preamble to the Act of 1930, which states 'An Act to define and amend the law relating to the sale of goods'. Another example to bolster this view is in respect of CIF contracts. In such contracts risk and property do not pass to the buyer at the same time as stipulated under the Act of 1930.

45. The Special Committee, appointed by the **Legislative department Resolution, No. 47-1/29-C and G, dated the 28th March, 1929, chaired by B.L. Mitter, filed the report dated 17th July, 1929,** has adverted to the object and purpose of the Sales of Goods Act , 1930, as follows:-

Appendix C.

> (a) The ***present Bill embodies the principles that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract.The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point. The Bill codifies the rules by which that intention may be ascertained, but the operation of these rules will be displaced by any terms of the contract defining the intention or by any attendant circumstances, including the conduct of the parties, rendering it ascertainable.*** In following this principle we have borne in mind that in mercantile matters the certainty of the rule is often of more importance than the substance. If the parties know before-hand what their legal position is, they can provide for their particular wants by express stipulation. Sale, after all, is a consensual contract, and the Bill does not prevent the parties from making any bargain they please. ***Its object is to lay down clear rules for the cases where the parties have either framed no intention or failed to express it.***

> (b) ***<u>The distinction between a sale and an agreement to sell which was not clear in Chapter VII of the Indian Contract Act, has been clearly brought out</u>***. This distinction is very necessary to determine the rights and liabilities of the parties to the contract.
>
> Emphasis Applied

46. In contrast, Section 2(mn) of the Act of 1972 defines "sale" and clarify that ownership of an agricultural produce **does not** undergone a change when an agricultural produce is transferred from one area to other. The proviso to Section 2(mn) of the Act of 1972 states that when any agricultural produce is transferred from one market area to another market area, there may or may not be a change of ownership from one person to other person. This change will, however, not prevent the Market committee to a levy fee on the person who made the physical transfer.
47. The definition of 'sale' provided under the Act of 1972, thus, addresses a specific mischief: a person may transfer the physical possession of agricultural produce from one market area to another market area but cannot escape ownership liability to the market committee of that area for services provided thereat.
48. The definition of 'sale' under the 1972 Act must also be read in light of the explanation no. I added to section 17 of the 1972 Act. It states that all agricultural produce taken out or proposed to be taken out from the concerned market area will be deemed to have been sold in that market area. The Act of 1972, therefore, seeks to incorporate safeguards against fee evasion, preventing a person from taking the plea that he is not liable to pay market fees on the ground that the agricultural produce was not sold within the market area, but rather in some other area.

49. Thus, the definition of "sale" under the Act of 1972 was designed to prevent fee evasion by individuals who choose not to sell within the market area.

50. There is another aspect to this matter. As stated above, the amendments of 2014 and 2017 fall within the scope of Entry no. 26 of the State List. Entry no. 66 of the State List enlists fees to be imposed on any of legislative entries enumerated under the State list. The Amendment Acts of 2014 and 2017, therefore, being legislation under Entry no. 26, can also bring in appropriate amendments to the Act of 1972 for fastening the liability to pay fees in view of entry of no. 66 of the State list.

51. Therefore, the expression "sale" defined in the Act of 1972, viewed alongside legislative Entry 26 read with Entry 66 of State List indicates there was no need for the prior assent of the President of India before defining "sale" by way of the Amendment Act of 2014 in the Act of 1972.Such definition is not contrary to the Sales of Goods Act, 1930.

ISSUE (c)

(i) The original definition of 'agricultural produce'

52. Ld. Sr. counsel for the appellant has argued that 'Rice Bran Oil' and 'De-Oiled Rice Bran' are neither 'manufactured nor processed products. Thus, they do **not** fall within the definition of 'agricultural produce' either under the original definition or amended definition thereof. In this regard, reliance is placed on **Noble Resources And Trading India Private Limited V. Union Of India & Ors, reported in 2025 INSC 684.**

53. Ld. AG has, however, argued that rice bran oil and de-oiled rice bran are produced from paddy. Whether they are processed or manufactured forms of

paddy is immaterial. In this regard, reliance has been placed **Kishan Lal v. State of Rajasthan & Ors., reported in (1990) Supp SCC 742.**

54. Before commencement of the Amendment Act, 2014, the notification of 2002 included 'Rice Bran Oil' and 'Rice Oil in the Schedule to the Act of 1972. Let us, therefore, examine the definition of 'agricultural produce' and its accompanying 'schedule' before the introduction of the Amendment Act of 2014.

55. The definition of 'agricultural produce' at the _commencement_ of the Act of 1972 was as follows:-

> Section 2. (1) In this Act, unless the context otherwise requires,—
> (a) "agricultural produce" ***means any produce of agriculture***, **horticulture, pisciculture, forestry or animal husbandry** or ***any other produce*** specified in the ***Schedule to this Act:***
>
> Provided that the State Government may, by notification in the Official Gazette, include any item of agricultural produce in the Schedule or exclude any such item from it;

56. The original definition of 'agricultural produce', therefore, clearly excluded any product produced from an 'industrial activity'. Products produced by artificial techniques are excluded therefrom. The process, by which a raw agricultural produce is converted into a completely new and distinct product, is not included in the said definition. The definition of 'agricultural produce' contemplates goods, mostly produced by natural and environment friendly techniques.

57. The expression "***any*** other produce specified in the schedule" must therefore be understood in the aforesaid background. The expression "any" does not always mean 'all' and 'every'. In **Vivek Narayan Sharma (Demonetisation Case-5 J.) v. Union of India, reported in (2023) 3 SCC 1,** it was held as follows:-

> 118……..It held that in some contexts, it means "only one of the directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the directors". ***It held that which of***

> ***<u>these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on consideration of the context in which the words appear, and in particular, the scheme and object of the legislation.</u>***
>
> 125. This Court held that the word "any" is of wide amplitude. ***<u>It means "one or some or all".</u>*** Referring to Black's Law Dictionary, the Court observed that the **word "any" has a diversity of meaning and may be employed to indicate "all" or "*<u>every" as well as "some" or "one".</u>*** However, the meaning which is to be given to it would depend upon the context and the subject-matter of the statute.
> 127. ***<u>The Court again reiterated that the word "any" must be read in the context of the statute</u>***. The Court also applied the principles of ***<u>purposive construction to the term "any" to mean "all".</u>***
>
> Emphasis applied

58. The definition of "agricultural produce" must be given a purposive interpretation. '<u>All</u>' and <u>any</u> final product originating from an agricultural raw material **does not** and **cannot,** therefore**,** fall within the definition of "agricultural produce'. The rationale for this purposive interpretation is that the Act of 1972 explicitly specifies the processes and techniques, product produced wherefrom will only be levied and no other.

59. Therefore, while the inclusion of the expression "any other product specified in the Schedule" has broadened the scope of "agricultural produce", such product must nonetheless be produced through one/or several of the techniques expressly specified in the said definition. Thus, a final product that is not derived from these statutorily specified techniques cannot and should not be classified as 'agricultural produce' under the Act of 1972.

<u>(ii) The expression '*any other produce* specified in the *Schedule to this Act'* must also be seen in light of proviso appended to section 2(1)/(a), defining agricultural produce.</u>

60. The proviso to the definition of 'agricultural produce' enables the State Executive to include and exclude an item of 'agricultural produce' in the

schedule of the Act of 1972, in addition to the power of the State legislature to also carry out such a similar amendment. The definition of the 'agricultural produce' under the Act of 1972 is set out below:-

> (a) "agricultural produce" means any produce of agriculture, horticulture, pisciculture, forestry or animal husbandry or ***any other produce specified in the Schedule to this Act:***
>
> Provided that the ***State Government*** may, by notification in the Official Gazette, ***include any item of agricultural produce in the Schedule or exclude any such item from it;***

Emphasis Applied

61. The said expression is employed by the Legislature to entrust itself with the power to *later* delegate to the State executive with the power of including and excluding 'agricultural produce(s)' in the said Schedule. Immediately thereafter, the said proviso containing the concurrent power of the State executive to amend the very same Schedule is placed. The said expression, thus, harmonizes the concurrent power of the State Executive and Legislature to include and exclude agricultural products. This expression actually makes space for enactment of such concurrent powers. The said expression, therefore, aligns the substantive definition of agricultural produce with the said proviso.

62. The word 'any' in the said expression was introduced with a view to enable the Legislature to enact a proviso, conferring State Executive with the power of the inclusion and exclusion of agricultural products. Section 2(1)/(a), however, could not and did not empower the executive to alter the definition of 'agricultural produce'. Every item included in the schedule must, therefore, be consistent with the said definition.

63. The reason for conferment of the said concurrent power is that legislative process takes some good amount of time to enact a law. The scarcity and availability of food are contingent, emergent and urgent issues. A

contingent issue is normally addressed by the executive, since it functions at the ground level. The Act of 1972 deals with the evolving market situation relating to the marketing of agricultural produce.

(iii) <u>The amended definition of 'agricultural produce'</u>

64. The Amendment Act of 1978, the expression 'includes any <u>related</u> products' was included in the definition of 'agriculture produce' as follows:-

> Section 2 (1) (a) agricultural produce means any produce of agriculture, horticulture, pisciculture, forestry, animal husbandry and ***<u>includes any related products specified in the Schedule to the Act.</u>***
>
> Emphasis Applied

65. The word 'relate' is a 'transitive verb'. It connects one object with the other object by establishing a connection between the two. The first object here is a 'produce of agriculture' namely paddy. The verb 'relate' seeks to connect 'paddy' with the final object, derived from paddy i.e. 'Rice Bran Oil' and 'De-oiled Rice Bran'. An important qualification, however, is that the final product must be produced from the statutory techniques/processes specified in the definition of 'agricultural produce'. 'Rice Bran Oil' and 'De-oiled Rice Bran' are **not** produced from the said techniques. The causal connection between an agricultural raw material and a final product will render a final product a produce of agriculture **provided** the latter is produced by the aforesaid statutory techniques and processes.

66. The **notification No. 429-MW & C/9M-49/2000 dated January 29th, 2002**, thus, has travelled beyond the scope of the definition of 'agricultural produce', as it stood before the commencement of the Amendment Act of 2014, by including the 'Rice Bran Oil' and 'Rice Oil' in the schedule to the

Act of 1972. The said notification of 2002 is, thus, quashed on ground of excessive delegation. All market fee imposed based on the said notification of 2002 is declared illegal and is hereby quashed. Under the heading 'DIRECTIONS, we will indicate the relief(s) to which the petitioner /appellant is entitled to upon the quashing of this notification.

67. The **notification No. 2537-M (supra) dated August 22nd, 2008,** extending operation of the Act of 1972 to Burdwan District becomes inconsequential to the petitioner/appellant in view of that 2002 executive notification is quashed above, and thus is not interfered with.

(iv) The effect of the inclusion of 'processed products' in the definition of 'agricultural produce'

68. Ld. AG has argued that Rice Bran Oil and De-Oiled Rice Bran are 'processed products' under the amended definition of "agricultural produce" of the 1972 Act. He points out that any related/secondary product or by product or a combination of two or more such produces have been included in the said definition. The oils in question thus qualify as agricultural produce, which is disputed by Ld. Sr. Counsel for the appellant.

69. The definition of agricultural produce amended by the Amendment Act of 2014 is as follows:-

> (a) "agricultural produce" means any produce, ***whether processed or unprocessed of agriculture***, horticulture, apiculture, pisciculture, sericulture, livestock and products of livestock, animal husbandry, fleeces (raw wool) and skins of animals, forest produce and ***any related and secondary product or by-product and combination of two or more than two of such produce as specified in the Schedule:***
>
> Emphasis applied

70. The amended definition of 'agricultural produce' must be read in light of the word processing under Section 2(mb) of the Act of 1972 set out below:-

> Sec. 2(mb) processing" means any one or more of ***a series of treatments relating to powdering, crushing, decorticating, de-husking, parboiling, polishing. Ginning, pressing, curing or any other manual, mechanical, chemical or physical treatment*** to which raw agricultural produce or its product is subjected to;
>
> Emphasis applied

71. The first part of the definition of 'processing' specifies the techniques of processing namely powdering, crushing, decorticating, de-husking, parboiling, polishing, ginning, pressing, and curing. These methods do not involve any manufacturing or industrial activity. Therefore, the very definition of processing, read with the inclusion of 'processed products' in the definition of 'agricultural produce' clearly establishes that manufacturing and industrial activity has been consciously set aside from the purview of the Act of 1972.

72. Further, the expression "manual, mechanical, chemical, or physical treatment" clearly excludes any complicated industrial and manufacturing activity applied to raw agricultural produce. Therefore, by necessary implication, the definition of 'processing' under the Act of 1972 has excluded the products produced from manufacturing and industrial activity.

73. The West Bengal legislature contemplated situations where a raw agricultural product may not initially be a marketable commodity. Specific processing techniques may be required to make these products marketable and saleable. Therefore, the expression 'processed products' has been included in the definition of agricultural produce. The expression "any related product of agriculture" cannot include an item

which would travel beyond the agricultural techniques specified thereunder.

74. The inclusion of the 'processed products' in the definition of 'agricultural produce' reaffirms that the Act of 1972 does not seek to levy a product that has lost the characteristics of an agricultural produce since a processed agricultural product is a mere *variation* of a raw agricultural produce.

75. Ld. AG has argued that the process by which the said oils are produced is completely immaterial. In this regard, reference may be made to the decision **in Park Leather Industry (P) Ltd. v. State of U.P., reported in (2001) 3 SCC 135**, wherein it was held as follows:-

> 20. ***A perusal of Section 2(a) of the said Act makes it clear that an agricultural product would be a product which is specified in the Schedule or one which is admixture of two or more items and would also include any such item in a processed form***. **In our view it makes no difference, for the purposes of the said Act, that the item concerned is a different commodity from the one which is included in the Schedule. It is possible that by virtue of an admixture of two or more items or *by virtue of processing a different commodity* or item may come into existence.** Even though a different commodity may come into existence, it would still be an "agricultural produce". This is best illustrated by sugarcane which is in Schedule A Item VIII at Serial No. 14. From sugarcane, "rab" and "gur" are manufactured. They are already different commodities or items. Yet they are all included. The specific inclusion of items like "gur, rab, shakkar, khandsari and jaggery" is to make it clear that merely because it becomes a different item or commodity it is not excluded.

76. In **Park Leather Industry (supra),** it was held that a 'processed agricultural product' retains the character of its raw agricultural produce. In the present case, Rice Bran Oil and De-oiled Rice Bran are manufactured (but not processed) from agricultural produce. A manufactured product loses all characteristics of its raw material. In **CTT v. Kumar Paints and Mill Stores, reported in 2023 SCC OnLine SC 263,** it was held as follows:-

> 8. This court specifically noticed in Union of India v. Delhi Cloth and General Mills [1963] Suppl. 1 SCR 586 that "manufacture" meant bringing into existence a "new" substance ***and did not mean merely to bring about some change in the substance.*** In Mahalaxmi Stores, it was held ***that processing or variation/finishing of goods would not per se amount to manufacture unless it resulted in the emergence of a new commercial commodity….***.The court held that manufacture must be understood in common parlance and means production of articles for use from raw or prepared materials by giving them forms, qualities or combination. Importantly however, it was held that if the change made in the article resulted in a "new" and "different" article, it would amount to "manufacturing". The tipping point, or the determinative test, therefore is that the result of the process (amounting to "manufacture") must be the emergence of a commercially recognizable new commodity, ***and not mere variation of an existing one.***
>
> Emphasis applied

77. In ***Commissioner of Central Excise, Hyderabad-I Vs Xerox India Ltd. and Others, reported in 2026 SCC OnLine SC 1496,*** it was held as follows:-

> 14. From these decisions, the inner and outer limits of what amounts to "manufacture" under Section 2(f) of the CE Act emerge. **At the inner limit, a process that leaves the commodity commercially the same article is not manufacture however much labour, skill, or expense may have been bestowed upon it, and an addition to value will not, by itself, convert such a process into manufacture.** At the outer limit, ***a process need not be elaborate, nor need any chemical alteration in the constituent material, to be manufacture, if what emerges is an article which the market recognises as different in name, character, and use from that which went in.***
>
> Emphasis Applied

78. In the case of ***Xerox India Limited*** (**Supra**), the Court distinguished "manufacturing from processing' under the Central Excise Act. To determine whether a product is processed or manufactured, the Court devised two primary tests.

79. **The Inner Limit Test**: This test examines whether a raw agricultural product undergoing a process retains the same commodity identity that it had before undergoing the said process. If it retains its core identity after such a process, it is **not** considered a "manufactured" product. Applying this test to the oils in question, paddy is converted into a

completely different commercial commodity namely, Rice Bran Oil and De-Oiled Rice Bran.

80. **The Outer Limit Test:** This test focuses on the marketplace and potential buyers. If market players do not relate the final product back to the raw agricultural product (e.g., consumers do not associate rice bran oil or de-oiled rice bran with paddy), the item cannot be viewed as a mere processed product. A product to qualify as a processed one, must remind the market of its original raw material.

81. Rice Bran Oil and De-Oiled Rice Bran are made from the outer layers of paddy, which undergo several technical processes to yield these final forms. They are distinct manufactured products recognized separately in the market, hence are not covered under the definition of agricultural produce.

82. The decision of a single bench of this Court ***in Amit Trade Centre Private Ltd. v. State of W.B. reported in 2014 SCC Online Cal 17856*** is held incorrect in view of the discussions hereinabove.

83. Rice Bran oil and de-Oiled Rice Bran, thus, are not processed agricultural products within the definition of agricultural produce as it stands after the Amendment Act of 2014 and as on date.

(v) The legislature never intended to include rice bran oil and de-oiled rice bran in the definition of "agricultural produce."

84. Significantly, the Amendment Act of 2017 did **not** include the Rice oil and Rice Bran Oil. It included 'vegetable oils' in the schedule to the Act of 1972. A subsequent executive notification issued pursuant the Amendment Act of 2017 included the omnibus expression "Oils".

Therefore, the legislature did never intend to include any product derived from the process of manufacturing and industrial techniques.

85. A clear distinction is, thus, seen in the actions of the State Legislature and State Executive regarding the inclusion of rice bran oil and rice oil. While the State legislature included 'processed products' and vegetable oils, it never included rice bran oil and rice oil. Their inclusion in the schedule of the 1972 Act originated entirely from the State Executive vide its notifications in 2002 and 2017. By introducing and levying fees on the manufactured products like rice bran oil and de-oiled rice bran, the State Executive has exceeded and violated the original, intended scope of the State Legislature to exclude manufactured products from the definition of 'agricultural produce' under the parent act of 1972.

(vi) The difference between 'manufacture and 'production'

86. The difference between 'manufacture' and 'production' has been explained in the decision in **Noble Resources decision (supra)**, wherein it was held as follows:

> 46.......This Court explained that the word ***'production' has a wider connotation than the word 'manufacture';*** while every manufacture can be characterized as production, every production need not amount to manufacture and thereafter endorsed the meaning ascribed by this Court to the expression 'manufacture' in Pio Food Packers (supra).
> 49. In Jai Bhagwan Oil and Flour Mills Vs. Union of India, this Court held that the true test to ascertain **whether a process is a manufacturing process producing a new and distinct article is, whether the article produced is regarded in the trade, by those who deal in it, as a marketable product *distinct in identity* from the commodity/raw material involved in the manufacture.**
>
> Emphasis Applied

87. The scope of the expression 'production' is wider than that of 'manufacture'. The definition of 'agricultural produce' has, however, been restricted by specifying the aforesaid techniques in the said definition. Undoubtedly, the said techniques are **not** capable of producing a

manufactured product. A manufactured product, thus, has been carefully excluded from the definition of 'agricultural produce'.

88. A manufactured product emerges as a distinct and different commodity from its raw product. The test is that the regular players in the market would be reminded of 'paddy' when they consider buying 'Rice Bran Oil' and 'De-oiled Rice Bran'. In this regard, the difference between 'rice husk' and 'paddy' alluded to in **Noble Resources decision (Supra),** may be referred to as follows:-

> 48........What was produced by the cultivator was paddy which alone could be considered as an agricultural product. The husk was the result of a process of dehusking which was not agriculture. ***High Court answered the question in favour of the assessee holding that operation of dehusking paddy is not an industrial or manufacturing operation as commonly understood.*** It is essentially an agricultural operation. ***Both rice and husk remain in their natural form as a result of dehusking and are covered by the term 'agricultural product'***. It was in that context this Court observed that the term 'agricultural product' or 'product of agriculture' is required to be construed liberally so as to include not merely the primary product as it actually grows ***but also a product which undergoes a simple operation so as to make it more saleable or more usable. The rice and the husk though separated remain as they were produced and hence continue to be 'agricultural product' or 'product of agriculture'***
>
> Emphasis applied

89. De-husking of paddy involves removing the outer layer of the paddy/rice grain to make it edible. The said process of removal is not an *industrial activity* but an agricultural activity. It is not converted to oils. De-husked rice, thus, retains the attributes of paddy.

90. In the present case, the de-husked rice is polished to remove the bran from the rice. The bran then undergoes a solvent extraction process, inter alia, to produce Crude Rice bran oil. This is further refined by the appellant to produce, inter alia, Refined Rice bran oil, which is actually sold in the market.

91. The process by which Rice Bran Oil and De-oiled Rice Bran are finally produced from paddy is, thus, not an agricultural activity but

manufacturing and industrial. The said oils lose all the characteristics of paddy. The paddy, which is a grain, is converted to liquid. It marks the conversion of a solid substance to a liquid substance. The process by which paddy is converted to such oils are set out below:-

- Paddy is produced from agriculture.
- The farmer sells the Paddy to the rice mill.
- The workers in the rice mill convert paddy into husk, rice and bran.
- The Bran is sold to the solvent extraction plant. The said plant extracts oil from bran and produces crude rice bran oil and De-Oil Rice Bran.
- The said Crude rice bran oil is sold to refineries, namely the petitioner/appellant company.
- The petitioner refines crude bran oil. It produces several saleable products namely (a) gums (b) spent earth (c) wax (d) fatty acid, and (e) refined rice bran oil.

92. The appellant-petitioner is an oil refinery. It does not receive the original form of paddy. It receives paddy when it is converted to crude bran oil. Much of the characteristic of paddy are already lost in the crude bran oil when the latter is received by the appellant. The attributes of paddy, thus, get completely eradicated in Rice Oil and Rice Bran Oil.

93. When Rice Bran Oil and De-oiled Rice Bran are produced, they may not lose its logical and consequential causal connection with paddy. They however, are not perceived by the Market as oils, derived from paddy. The market does not recognize them as produce of paddy since they lose all its characteristics of paddy.

(vii) <u>The extent of liberal interpretation that may be given to the definition of agricultural produce</u>

94. Ld. Advocate General would argue that the fact that legislature has kept the definition of 'agricultural produce' inclusive finds support in the decision of **Noble Resources decision (supra).** It was held that the definition of 'agricultural produce' needs to be construed 'liberally' at para 48 which is as follows:-

> 48………Both rice and husk remain in their natural form as a result of dehusking and are covered by the term 'agricultural product'. It was in that context this Court observed that ***<u>the term 'agricultural product' or 'product of agriculture' is required to be construed liberally so as to include not merely the primary product as it actually grows but also a product which undergoes a simple operation so as to make it more saleable or more usable.</u>*** The rice and the husk though separated remain as they were produced and hence continue to be 'agricultural product' or 'product of agriculture'.

Emphasis Applied

95. In **Nobel Resources decision (supra),** it was held that a product undergoing a 'simple' operation to make an agricultural product more saleable or more usable would also be considered an agricultural product. The emphasis must be given on the expression 'simple operation'. The liberal interpretation of an agricultural produce would be given to this extent only.

96. In the present case, paddy is given a completely different dimension and process while converting it to Rice Oil/Rice Bran Oil. Such oils are not derived from a simple and non-artificial operation. It takes quite a heavy deployment of industrial and machinery techniques to produce and extract oil from the paddy. Therefore, paragraph 48 of **Nobel Resources (supra)** does not support the case of the State.

(viii) <u>Decisions on the definition of agricultural produce</u>

97. Learned Senior Counsel for the appellant/petitioner has relied on paragraph number 52 of the **Noble Resources decision (supra)** to point

out though de-gummed soybean oil is derived from an agricultural produce i.e. soybean, the said oil loses all characteristics of soybean during the manufacturing process. It is pointed out that the Court in **Noble Resources decision (supra)** held that soybean oil is not an agricultural produce. Similarly, Rice Oil and Rice Bran Oil lose all characteristics of paddy. Hence, the said oils are not agricultural produce. This argument of analogy directly applies to this case for the reasons discussed below.

98. In **Noble Resources decision** (supra) the Court applied the definition of agricultural produce from the 'dictionary' since the policy in question taxing agricultural produce did not define it. This is evident from paragraph nos. 52 to 56 of **Noble Resources decision (supra).** The Court applied the ordinary meaning of agricultural produce, which rules out any manufacturing activity, to examine whether soybean oil is agricultural produce.

99. In the present case, the definition of agricultural produce retains the dictionary and commonly understood meaning of agricultural produce, clearly excluding manufactured products like 'Rice Oil' and 'Rice Bran Oil' therefrom.

100. In ***Sangam Milk Producer Co. Ltd. v. Agricultural Market Committee, reported in (2024) 19 SCC 556***, it was held that the final product need *not* be directly derived from and be the immediate effect of the raw product. In ***Sangam (supra)*** the Court examined whether ghee was a product of livestock namely the Cow. It was argued that cows do not directly produce ghee. Two or three simple activities like boiling, curding and churning and re-boiling butter is undertaken to convert milk

into ghee. This can be done at home. The said activities do not involve complicated manufacturing and industrial activities unlike production of Rice Oil and Rice Bran oil. The said decision, therefore, does not apply to his case.

101.Thus, tested from the perspective of the Act of 1972, the question should be whether Rice Bran Oil or Rice Oil has been directly produced from paddy by the techniques namely agriculture, pisciculture, forestry, horticulture and animal husbandry specified in the definition of 'agricultural produce' under the Act of 1972.The source of the Rice Oil and Rice Bran Oil being an agricultural produce namely, paddy is immaterial given the statute has specified the techniques, from which an agricultural produce should be produced.

102. Ld. AG has relied on **Champaklal H. Thakkar and Ors. v. State of Gujarat and Anr., reported in (1980) 4 SCC 329,** and argued that Vanaspati is held as an oil and agricultural produce so also rice bran oil and de-oiled rice bran should equally be held as such.

103. In **Champaklal decision (supra**), the Court examined whether Vanaspati is ghee or oil. In the present case, we are, however, examining whether the rice bran oil and de-oiled rice bran are a product of agriculture. In **paragraph 11** thereof, it was held that ***Vanaspati oil is <u>different</u> from soybean oil***. Therefore, the decision in **Noble Resources (supra)** having held that soybean oil is **not** an agricultural produce would apply to the rice bran oil and de-oiled rice bran.

104. In paragraph 12 of **Champaklal decision (supra),** it was held that Vanaspati oil retains its basic ingredient i.e. vegetable fat. Vanaspati is subjected to certain additions, which do not remove the characteristics of

oil. Para nos. 11 and 12 of **Champaklal decision (supra),** are set out below:-

> 11. Vanaspati, in our opinion, is essentially an oil ***although it is a different kind of oil than that oil*** (be it rapeseed oil, cottonseed oil, groundnut oil, ***soya bean oil or any other oil***) which forms its basic ingredient. ……***In other words, although certain additions have been made to and operations carried out on oil, it will still be classified as oil unless its essential characteristics have undergone a change so that it would be a misnomer to call it oil as understood in ordinary parlance***. ….
>
> 12………… ***Now the various processes, namely, neutralization, bleaching, deodorisation, hardening and hydrogenation to which oil is subjected for being converted into vanaspati leave its basic characteristics untouched l.e. it remains a cooking medium with vegetable fat as its main ingredient. Neutralisation, bleaching and deodorisation are merely refining processes so that the colour, the odour and foreign substances are removed from it before it is hydrogenated and hardened and even the two processes last-mentioned allow the oil to retain those characteristics***. Even ghee, for that matter, is nothing but a form of oil although it is obtained from animal fat, being a drivative from milk. It may be of use to mention that in Persian language ghee is known as "raughanzard" i.e. yellow oil, and it does not need an expert to point out that the viscosity of ghee depends upon the, weather because with

Emphasis Applied

105. Therefore, the ruling in **Champaklal (supra)** negates the State's case. If a final product retains the essential characteristics of the raw material from which it was made, it qualifies as an agricultural product. In this case, however, de-oiled rice bran and rice bran oil do not retain the characteristics of paddy.

106. Ld. AG has next relied on the decision in **Kishan Lal v. State of Rajasthan & Ors., reported in (1990) Supp SCC 742,** and argued that when sugar is produced in a mill or factory, it does not cease to be an agricultural produce. De-oiled rice bran and rice bran oil are produced in a factory. Thus, the place of production will not exclude the said oils from being categorized as 'agricultural produce'

107. In the **Kishan Lal decision (supra),** the Court held that a product can be produced either by an indigenous or local method or by a sophisticated, scientific, and mechanical method. The production of

sugar in mills or factories occurs through a sophisticated, scientific, and mechanical process. The said modernized process does not change the character of the sugar. In paragraph 5 of **Kishan Lal decision (supra)**, it was held as follows:

> 5......***The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither excludes any item produced in mill or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks expanse of the expression "or otherwise as specified in the Schedule"***. **Nor switch over from Indigenous method of producing anything to scientific or mechanical method *changes its character*.** ....***No distinction was made on method of production, namely, by modern plant and machinery***.
>
> Emphasis Applied

108. Therefore, the decision in **Kishan Lal (supra)** has held that the place, where a product is produced, remains irrelevant **provided** the nature and character of the raw product is evident in the final product. In the present case, de-oiled rice bran and rice bran oil lose every semblance of paddy.

109. Learned AG has lastly relied on the decision in **Britannia Industries Ltd. v. Bombay Agricultural Produce Marketing Committee, Bombay and Another, reported in 2006 SCC OnLine Bom 588**. The Division Bench of the Bombay High Court was examining the argument noted in paragraph number 4 thereof as to whether sugar is the **processed** form of sugarcane, and therefore, an agricultural produce. In paragraph 8, the Court answered that sugar is a produce of agriculture in its processed form. Sugar was, thus, not an outcome of an industrial activity.

110. Next, the Division Bench in **Britannia Industries Ltd (supra)** considered the specific issue, which is also relevant in the present case, that the definition of "agricultural produce" in the Maharashtra

Agricultural Produce Marketing (Regulation) Act of 1964 **does not** include the word "manufacture". Does this absence takes out sugar from the definition of "agricultural produce", since sugar was argued to be a manufactured product.

111. In paragraph 7 thereof, it was held that the absence of the word "manufacture' **by itself** would not take sugar out therefrom. The Court noted that sugar was originally included in the Maharashtra Act of 1964, was subsequently excluded, and thereafter was again included in the Act of 1964. The Bombay Legislature thus intended to impose market fee on sugar.

112. In the present case, rice bran oil and de-oiled rice bran were, however, subsequently introduced by the state executive in the 1972 Act. The State legislature did not include them at all at any point in time. Second, all vegetable oils have been scheduled as agricultural produce from the inception of 1972 West Bengal Act. The state executive realized that the item vegetable oils, though broad, are not capable of including rice bran oil and de-oiled rice bran. Thus, the State executive issued separate notifications to include the same. The present facts are thus distinct from the Britannia Case.

113. The decision of the Bombay High Court has been affirmed by the Hon'ble Supreme Court in **Britannia Industries Ltd. v. Bombay Agricultural Produce Marketing Committee, reported in (2010) 11 SCC 623,** and upon placing reliance on **Champaklal H. Thakkar (decision supra**), discussed above, it was held that Sugar and Vanaspati retain original character of their raw material. Therefore, they were held

agricultural produce. Such is not the case in so far as Rice bran oil is concerned.

114. In view of the aforesaid discussions, Rice bran oil and de-oiled rice bran are not agricultural produce. All the market fees imposed on the appellant/petitioner, Sethia Oil Industries, are declared illegal. We shall indicate in the directions hereinafter the reliefs to be granted to the appellant/petitioner.

ISSUE (d)

(i) Levy of market fees

115. In view of the fact that rice bran oil and de-oiled rice bran do not fall within the definition of "agricultural produce," the appellant is not liable to pay any market fees to the petitioners/respondents from the date of the judgment. Consequently, we need not decide the question of whether a market fee can only be imposed when the payer has received services from the market committee.

116. However, we are of the view that it is a question of substantial importance whether market committees across the states, designated as such under the Act of 1972, are at all entitled to charge fees when they have not provided any services, as argued. This is a question with wider ramifications.

117. Therefore, we propose to interpret the law relating to the payment of market fees under the Act of 1972. For abundant caution, we clarify that this question is decided with reference to the law only, and not the facts of the case. This may provide clarity to the market committee and the stakeholders regarding the position of law flowing from the Act of 1972.

118. Ld. Senior Counsel for the appellant has argued that fees can be charged when the market committee under the Act of 1972 has provided any services to payer. It is argued that a fee is not equivalent to tax. Fees are paid when services are received.

119. In ***Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial & Investment Corpn.*, reported in (2021) 20 SC,** it was held that the difference between tax and fees has been substantially erased as follows:-

> **61.** ***The distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence***. At one time, it was possible for courts to assume that there is a distinction between a tax and a fee :***a tax being in the nature of a compulsory exaction while a fee is for a service rendered.*** **This differentiation, based on the element of a quid pro quo in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point** ***where it lacks any practical or constitutional significance***. **For one thing, the payment of a charge or a fee may not be truly voluntary and the charge may be imposed simply on a class to whom the service is made available**. For another, **the service may not be provided directly to a person as distinguished from a general service which is provided to the members of a group or class of which** that person is a part. ***Moreover, as the law has progressed, it has come to be recognised that there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realised by the State.*** The distinction that while a tax is a compulsory exaction, a fee constitutes a voluntary payment for services rendered does not hold good. As in the case of a tax, so also in the case of a fee, the exaction may not be truly of a voluntary nature. **Similarly, the element of a service may not be totally absent in a given case in the context of a provision which imposes a tax.**
>
> **66.** In view of this consistent line of authority, ***it emerges that the practical and even constitutional, distinction between a tax and fee has been weathered down***. As in the case of a tax, a fee may also involve a compulsory exaction. ***A fee may involve an element of compulsion and its proceeds may form a part of the Consolidated Fund***. ***Similarly, the element of a quid pro quo is not necessarily absent in the case of every tax.***
>
> Emphasis applied

120. The reason for obliteration of the difference between tax and fees is that in some cases, money collected on account of tax is actually preceded by

a service provided to the tax payer. For fees, the authority may have made the services available to a payer. The latter, however, may not avail of the same. Revenue collected from fees and tax both are deposited in Consolidated Fund of India or the State. The same is channelized towards the expenditure of the State. The strict and definite application of the payer receiving a service when he pays a fee has been recognised to be flexible and fluid in ***Jalkal Vibhag (supra).***

121. Section 17 of the Act of 1972 provides for payment of the market fees when the agricultural produce is brought in the market area. The original Section 17 is set out below:-

> **Section 17. Power to levy fees-*<u>The market committee shall levy and collect market fees on the agricultural produce brought in the market area,</u>*** at such rates not exceedingly rupee one per Rs. 100.00 worth of agricultural produce as may be determined by the market committee.

122. The amended section 17 is set out below:-

> "17. (1) Notwithstanding anything contained in the Bengal Finance (Sales Tax) Act, 1941 or any other law relating to taxation of agricultural produce in force, ***the market committee shall levy fees on any agricultural produce in force***, the market committee shall levy fees on any agricultural produce sold in the market area, at a rate which shall not be more than two rupees per one hundred rupees of the amount for which the agricultural produce is sold, whether for cash or for deferred payment or for other valuable consideration, irrespective of the fact that the buyer of the produce is the Central Government or the State Government or an agent [or undertaking] of either of them or a corporation constituted under any law for the time being in force:
>
> Provided that no fee shall be levied in the same market area, more than once, in relation to the same agricultural produce irrespective of the number of transactions.
>
> Explanation I.-For the purpose of this sub-section all agricultural produce taken out, or proposed to be taken out, of a market area **shall, unless the contrary is proved. be presumed to have been sold within such area.**
>
> Explanation III.-For the purpose of this sub-section, all agricultural produce **stored in the cold storages within the**

> **market area** shall, unless the contrary is proved, **be presumed to have been stored for the purpose of sale.**

123. The un-amended section 17 contemplates payment of fees to the market committee when the agricultural produce is brought within the territorial jurisdiction of the Market Committee. The receipt of any service from the market committee is thus irrelevant to the payment of market fees.

124. The amended section 17 has further broadened the scope of market fees. The amended section 17 has employed the expression-'*the market committee shall levy fees on any agricultural produce in force'.* Thus, when a product is specified in the schedule of the Act of 1972, the production and manufacturing of that product in the market area will be subject to a market fee irrespective whether he avails the services of the market committee.

125. Explanation 1 to the amended section 17 creates a deeming fiction. It states that when an agricultural product is taken out of the territorial limits of a market committee, it shall be presumed that said agricultural product was, in fact, sold in the said market area. The said product therefore will be subject to the payment of market fees.

126. Explanation 2 to the amended Section 17 has also created a deeming fiction. It states that when an agricultural product is stored in the jurisdiction of the market area and committee, but is not actually sold in the area, it shall be presumed that the said agricultural product was stored in that area with a view to sell the said product in that area. Consequently, the said product will be subject to market fees.

127. The Legislature of the state of West Bengal has thus sought to impose a market fee on every agricultural product specified in the schedule under the Act of 1972. It is imposed when the said agricultural product enters the designated market area. The actual sale of the said agricultural product is completely irrelevant for payment of market fees.

128. Section 12 of the Act of 1972 delineates the duties of market committee. Some significant duties entrusted on the market committee are as follows:-

a) Establish facilities in the market area for transparent and better marketing of agricultural produce thereat;

b) Grant or renew licenses in favour of traders, commission agents, brokers, weighmen, measurers, warehousemen, and surveyors.

c) Manage and control the principal market yard, sub-market yard, or yards where agricultural produce are brought for selling and buying;

d) To ensure that proper measurement devices are available for measuring the quantity of the agricultural produce.

e) To collate statistics and information regarding the health of the market yard and disseminate it to the public at large.

f) To act as a dispute resolution forum between the buyers and the sellers of agricultural produce.

g) To promote grading and standardization of agricultural produce.

h) To control and regulate admission of persons to the principal market yard or sub-market yards or yards.

i) To prosecute persons who trade in the designated area without a valid license.

129. A market committee, therefore, is the market regulator, who ensures transparent selling and buying of agricultural produce in the designated area is carried out in accordance with the rule of law of trade and commerce. Therefore, the duty of the market committee is not to provide services at the door step of an entity without the latter asking for. An entity in problem, complaining violation of the Act of 1972, can approach the market committee for resolution and redressal of disputes. These in fact, are the services provided to an entity. Therefore, the 1972 Act can legitimately levy market fees on agricultural produce brought within the market area.

(ii) <u>Double Taxation</u>

130. Ld. Senior Counsel has argued that imposing market fees on the appellant suffers from the vice of double taxation, given that the appellant has already paid GST. This issue requires for specific facts regarding what kind of further taxes are paid by the appellant.

131. In the present case, since we have held that the appellant will not be called upon to pay the market fee as Rice bran oil and de-oiled rice bran are not agricultural produce. This issue is not pronounced upon in these proceedings. The question of double taxation cannot be decided in the context of the limited facts of the case.

ISSUE (e)

I. <u>i. The Industries (Development and Regulation) Act, 1951 carries a distinct regulatory purpose from the State Act of 1972 (supra)</u>

132. Ld. senior counsel for the appellant has argued that the manufacturing of De-Oiled Rice Bran and Rice Bran Oil falls under and is governed by the definition of a "scheduled industry" under Section 3(i) of the Industries (Development and Regulation) Act, 1951 (Central Act of 1951). Entry no. 28 of Schedule 1(one) to the Act of 1951 includes vegetable oils. These oils are extracted through the solvent extraction process, aligning with the provisions of the Act of 1951, excluding the applicability of 1972 State Act.

133. The Act of 1951 regulates the manufacturing process in the scheduled industries not with a view earn a revenue. This is declared under Section 2 of the Act, 1951. Section 9 of the Act of 1951 provides for the collection and payment of cess amount from a scheduled industry. Under Section 9(4) thereof, the Central Government may credit the cess amounts to the respective Development Council, established under the 1951 Act, for, inter alia, carrying out research and advising the Central Government on the effective development of the scheduled industries. The Central Act of 1951 thus focuses directly on the manufacturing processes of scheduled items.

134. Conversely, the State Act of 1972 regulates commercial sale of agricultural produce in a market area. Under the State Act of 1972, the market committee intervenes after preparation of an agricultural produce as opposed the Central Act of 1951, regulating the 'manufacturing process' itself. The market committee, inter alia, acts as mediator between seller and buyer of agricultural produce. The Act of 1972 and the Central Act of 1951 thus operate across entirely different areas and or fields. The

Act of 1972, therefore, does not occupy a field covered by the Central Act of 1951.

E. CONCLUSIONS

135. The 'De-oiled Rice Bran' and 'Rice Bran Oil' are **not** 'agricultural produce'. The inclusion of 'De-oiled Rice Bran' and 'Rice Bran Oil', under the expression "Oils" in the Schedule to the Act of 1972 is illegal and is quashed and struck out therefrom. Rice Oil produced from rice bran is also illegal and is quashed and struck out from the schedule to the Act of 1972.

136. Consequently, the executive notification being **No.429-M.W&C/9M-9/2000 dated January 29th, 2002** including 'Rice Oil and 'Rice Bran Oil' to the Schedule of the Act of 1972, is quashed.

137. The executive notification being **No.2537-M.W.&C/1M-05/9 dated August 22nd, 2008** has merely extended the operation of **The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972** to the Burdwan District, and hence the same is not interfered with. We, however, clarify that the said notification of 2008 will not in any way empower the State and/or the market committee of the Burdwan District to levy market fee on the manufacture and trade of 'De-oiled Rice bran' and 'Rice Bran Oil' in the said market area.

138. **The West Bengal Agricultural Produce Marketing (Regulation) (Amendment Act), 2014** is intra-vires the Constitution of India and did not require the prior consent of the President of India before the introduction of the bill in the legislature so also **The West Bengal Agricultural Produce Marketing (Regulation) Amendment Act, 2017**.

139. The **executive notification no. 877-AM O 9M-46/2011 dated 24th July, 2017** issued pursuant to the Amendment Act of 2014 (supra) and 2017(supra), adding 'De-oiled Rice Bran and Rice Bran Oil' to the Schedule of the Act of 1972 is hereby quashed. All and any market fees levied by the State respondents on the Rice bran oil and de-oiled Rice bran are declared illegal.

140. Consequently, the demand for market fee raised and recovered by the market committee of Burdwan District on the petitioner/appellant for manufacturing 'De-oiled Rice Bran and Rice Bran' Oil is declared illegal.

141. The definition of 'sale' introduced by the Amendment Act of 2014 is **not** contrary to the definition of the Sales of Goods Act, 1930. The definition of 'sale' under the 1972 Act flows from entry no. 26 read with entry no. 66 of the State List.

142. The Industries (Development and Regulation) Act, 1951 and the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 provides for different regulatory mechanisms. The Act of 1972 is not in conflict with the Act of 1951.

143. The order dated June 30, 2016 and order dated May 16, 2019 on the petitioner/appellant for manufacturing 'De-oiled Rice Bran' and 'Rice Bran Oil' in the Burdwan district are illegal and quashed.

F. DIRECTIONS

146. ***All*** and ***any*** market fee paid by the appellant/petitioner to the Burdwan Market Committee for manufacturing de-oiled rice bran and rice bran oil till date shall be refunded to the appellant/writ petitioner, with 12% simple interest within 14 days from the date of this judgement. This direction, however, will not create any rights in favour of any third party who has not

challenged and approached Court against the inclusion of Rice Bran Oil and De-Oiled Rice Bran under the Act of 1972, discussed above.

147. The Registry of this Court shall refund to the appellant any sums lying with it deposited by the appellant in aid of these proceedings together with all accrued interest, upon a request in writing made to it by the appellant.

148. **F.M.A. 1221 of 2025 and F.M.A. 1222 of 2025** are allowed and connected applications, if any, shall stand disposed of in terms of this judgement and impugned judgement is set aside.

149. There shall however be no order as to costs.

150. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

I Agree.

(Ajay Kumar Gupta, J.)