GAHC010312522019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1326/2020

M/S. BHATTER TRADERS AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT 207, BHATTER TRADERS, J.P. AGARWALLA PATH, SIVASAGAR, ASSAM, REP .BY ITS MANAGER SRI RAJESH BHATTER

2: RAJESH BHATTER
S/O SRI HARI KRISHNA BHATTER
R/O B.G. ROAD
SIVASAGAR
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT. OF ASSAM, DEPTT. OF AGRICULTURE, HAVING THEIR OFFICE AT DISPUR, GUWAHATI, DIST. KAMRUP, (M), ASSAM

2:ASSAM STATE AGRICULTURAL MARKETING BOARD
A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-7
ASSAM

3:ASSAM STATE MARKETING COMMITTEE
HAVING ITS OFFICE AT
RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM

4:CHIEF EXECUTING OFFICER
ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-7
ASSAM

5:SIVASAGAR DISTRICT REGULATED MARKET COMMITTEE
SIVASAGAR
ASSAM

6:JORHAT DISTRICT REGULATED MARKET COMMITTEE
JORHAT
ASSA

Linked Case : WP(C)/2658/2019

M/S. JAI BAJRANGBALI FOOD PRODUCTS AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE SITUATED AT NEAR TOCKLAI BRIDGE
A.T.ROAD
JORHAT-785001
ASSAM AND FACTORY SITUATED AT A.T.ROAD
KENDUGURI JORHAT
ASSAM
REP. BY ONE OF ITS MANAGER SRI VIKASH SHARMA.

2: VIKASH SHARMA
S/O OF SRI VISHNU DUTT SHARMA
R/O A.T.ROAD
JORHAT
WARD-2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST.- KAMRUP(M)
ASSAM

2:ASSAM STATE AGRICULTURAL MARKETING BOARD
(A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT

1972)
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING COMMITTEE
HAVING ITS OFFICE AT
RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER
ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM
5:DIBRUGARH DISTIRCT REGULATED MARKET COMMITTEE
DIBRUGARH
ASSAM
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE
JORHAT
ASSAM

Linked Case : WP(C)/2667/2019

M/S. SITARAM RAMESWARLAL AND ANR.
A FIRM HAVING ITS REGD. OFFICE SITUATED AT A.T. ROAD
JORHAT-785001
ASSAM REP. BY SRI NARSING LAL BAHETI.

2: NARSING LAL BAHETI
S/O. LT. HANUMAN MAL BAHETI
R/O. A.T. ROAD
JORHAT
WARD NO. 2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING COMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM.
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/1328/2020

M/S. MAHABIR OIL TRADERS INDUSTRIES AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT 281
MAHABIR OIL INDUSTRIES
B.G. ROAD
SIVSAGAR-785640
ASSAM REP BY ITS MANAGER SRI RAJESH BHATTER

2: RAJESH BHATTER
S/O SRI HARI KRISHNA BHATTER
R/O B.G. ROAD
SIVASAGAR
ASSAM
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP
(M)
ASSAM

2:ASSAM STATE AGRICULTURAL MARKETING BOARD
A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-7
ASSAM
3:ASSAM STATE MARKETING COMMITTEE
HAVING ITS OFFICE AT
RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER
ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-7
ASSAM
5:SIVASAGAR DISTRICT REGULATED MARKET COMMITTEE
SIVASAGAR
ASSAM
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE
JORHAT
ASSAM

Linked Case : WP(C)/6723/2017

LAHKAR UDYOG PRIVATE LTD.
NATIONAL HIGHWAY NO. 37 A
PARUWA CHARIALI
DISTRICT SONITPUR
ASSAM
PIN - 784001
REP. BY ITS MANAGING DIRECTOR SRI SHYAMANTA LAHKAR

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY AGRICULTURE
DEPARTMENT
GOVT. OF ASSAM
DISPUR GUWAHATI-6.

2:THE ASSAM STATE AGRICULTURE MARKETING BOARD

RK MISSION RD
ULUBARI
GUWAHATI
ASSAM- 781007
INDIA
3:THE SONITPUR DISTRICT REGULATED MARKET COMMITTEE

DHEKIAJULI
REP. BY ITS SECRETARY.
4:THE ASSISTNT MARKETING INSPECTOR

SONITPUR
DIST. REGULATED MARKET COMMITTEE
DHEKIAJULI.

Linked Case : WP(C)/2672/2019

M/S. MODI ENTERPRISE AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS REGD. OFFICE SITUATED AT A.T.
ROAD
JORHAT-785001
ASSAM REP. BY SRI SUNIL KUMAR AGARWAL.

2: SUNIL KUMAR AGARWAL
S/O. SRI ONKAR MAL AGARWAL
R/O. A.T. ROAD
JORHAT
WARD NO. 2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING COMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/6720/2017

NEZONE FOODS PRIVATE LTD.
MISSION CHARIALI
KETEKIBARI
TEZPUR
DIST- SONITPUR
ASSAM
PIN- 784001
REP. BY ITS MANAGING DIRECTOR

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISIONER AND SECRETARY

2:THE ASSAM STATE AGRICULTURE MARKETING BOARD
R K MISSION ROAD
REHABARI
3:THE SONITPUR DISTRICT REGULATED MARKET COMMITTEE
DHEKIAJULI
REP. BY ITS SECRETARY
4:THE ASSISTANT MARKETING INSPECTOR
SONITPUR
DISTRICT REGULATED MARKET COMMITTEE
DHEKIAJULI

Linked Case : WP(C)/2675/2019

M/S. ASKARAN AMIT KUMAR PRINCHA AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS REGD. OFFICE SITUATED AT
MARWARI PATTY
JORHAT-785001
ASSAM REP. BY ONE OF ITS MANAGER SRI GYANCHAND PEDIWAL.

2: GYANCHAND PADIWAL
S/O. SRI NATHMAL PEDIWAL
R/O. MARWARI PATTY
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE
MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.

3:ASSAM STATE MARKETING COMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/6728/2017

INDRAPRASTH ROLLER FLOUR MILLS
NATIONAL HIGHWAY NO. 37A
DOLABARI NO.01
DISTRICT SONITPUR
ASSAM PIN-784001
REP. BY IT'S PROPRIETOR SMT. TRIPTI TIBREWALA.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMM. and SECY. AGRICULTURE DEPTT.
GOVT. OF ASSAM
DISPUR
GHY.-06.

2:THE ASSAM STATE AGRICULTURE MARKETING BOARD

R K MISSION RD
ULUBARI
GUWAHATI
ASSAM-781007
INDIA.
3:THE SONITPUR DISTRICT REGULATED MARKET COMMITTEE

DHEKIAJULI
RE.P BY IT'S SECRETARY.
4:THE ASSTT. MARKETING INSPECTOR

SONITPUR
DISTRICT REGULATED MARKET COMMITTEE
DHEKIAJULI.

Linked Case : WP(C)/2671/2019

M/S. RATHI TRADERS AND ANR.
A FIRM HAVING ITS REGD. OFFICE SITUATED AT A.T. ROAD
JORHAT-785001
ASSAM REP. BY SRI RAJENDRA KUMAR RATHI.

2: RAJENDRA KUMAR RATHI
S/O. SRI GANAPAT LAL RATHI
R/O. A.T. ROAD
JORHAT
WARD NO. 2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING COMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/2534/2019

M/S. KRISHNA TRADING COMPANY AND ANR.
A COMPANY HAVING ITS REGD OFFICE SITUATED AT GOPAL COMPLEX
A T ROAD
JORHAT- 785001
ASSAM
REP. BY ONE OF ITS MANAGER SRI PREM RATAN SHARMA

2: PREM RATAN SHARMA
S/O- SRI MOTARAM SHARMA
R/O- AT ROAD
JORHAT
WARD NO.2
JORHAT- 785001
VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT OF ASSAM
DEPTT OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST- KAMRUP(M)
ASSAM

2:ASSAM STATE AGRICULTURAL MARKETING BOARD
A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI

GUWAHATI- 07
ASSAM
3:ASSAM STATE MARKETING COMMITTEE
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTIVE OFFICER
ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI- 07
ASSAM
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE
DIBRUGARH
ASSAM
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE
JORHAT
ASSAM

Linked Case : WP(C)/2670/2019

M/S. RADHAKRISHNAN FLOUR MILLS AND ANR.
A FIRM HAVING ITS REGD. OFFICE SITUATED AT RAHMAN ROAD
JORHAT-785001
ASSAM REP. BY ITS MANAGER SRI VIKASH KUMAR BERIA.

2: VIKASH KUMAR BERIA
S/O. SRI MAHESH KUMAR BERIA
R/O. A.T. ROAD
JORHAT
WARD NO. 2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT

1972
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING COMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/2559/2019

M/S. MORE ENTERPRISE AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS REGD. OFFICE SITUATED AT A.T. ROAD
JORHAT-785001
ASSAM REP. BY SRI SUSHIL KUMAR MORE.

2: SUSHIL KUMAR MORE

S/O. LT. MAHADEV MORE
R/O. A.T. ROAD
JORHAT
WARD NO.2
JORHAT-785001.
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE

HAVING THEIR OFFICE AT DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

2:ASSAM STATE AGRICULTURAL MARKETING BOARD

(A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURAL PRODUCE MARKET ACT
1972)
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
3:ASSAM STATE MARKETING OCMMITTEE

HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM.
4:CHIEF EXECUTING OFFICER

ASSAM STATE AGRICULTURAL MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM.
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE

DIBRUGARH
ASSAM.
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE

JORHAT
ASSAM.

Linked Case : WP(C)/2557/2019

M/S. JAYSHREE RAJASTHAN STORES AND ANR.
A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE SITUATED AT A.T. ROAD
JORHAT- 785001
ASSAM REP. BY ONE ITS PARTNERS SRI HARI NARAYAN AGARWALLA.

2: HARI NARAYAN AGARWALLA
S/O LT. CHAMPA LAL AGARWLLA

R/O A.T.ROAD
JORHAT
WARD-2
JORHAT-785001
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
HAVING OFFICE AT DISPUR
GUWAHATI
DIST.-KAMRUP (M)
ASSAM

2:ASSAM STATE AGRICULTURE MARKETING BOARD
(A BOARD CONSTITUTED UNDER THE ASSAM AGRICULTURE PRODUCE MARKET ACT
1972)
REP. BY ITS CHAIRMAN
RAM KRISHNA MISSION
MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM
3:ASSAM STATE MARKETING COMMITTEE
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
GUWAHATI
ASSAM
4:CHIEF EXECUTING OFFICER
ASSAM STATE AGRICULTURE MARKETING BOARD
HAVING ITS OFFICE AT RAM KRISHNA MISSION ROAD
ULUBARI
GUWAHATI-07
ASSAM
5:DIBRUGARH DISTRICT REGULATED MARKET COMMITTEE
DIBRUGARH
ASSAM
6:JORHAT DISTRICT REGULATED MARKET COMMITTEE
JORHAT
ASSAM

Advocate for the Petitioners : Ms. N. Hawelia, Advocate

Advocate for the respondents : Mr. B. Gogoi, SC, Finance
Mr. N. J. Gogoi, SC, ASAMB

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 03.10.2023

Date of Judgment : 03.10.2023

JUDGMENT AND ORDER (ORAL)

14 writ petitions are taken up for disposal by this common judgment and order taking into account the similarity of facts as well as the issues being paramateria.

2. The writ petitioners in the instant batch of the writ petitions have challenged the levy and collection of cess by the respondent authorities under the provisions of the Assam Agricultural Produce Market Act, 1972 post the GST regime and further sought for directions upon the respondents to refund the cess amount which have been wrongfully and illegally collected from the petitioners.

3. This Court prior to dealing with the dispute finds it relevant to take note of some of the provisions of the Assam Agricultural Produce Market Act, 1972 (for short, 'the Act of 1972') which are pertinent to the instant dispute. The said Act was enacted to provide for better regulation of buying and selling of agricultural produce and the establishment of market for agricultural produce in the State of Assam and for matters connected therewith. In terms with Section 2 (1) (i) of the Act of 1972 "Agricultural produce" has been defined to mean and include any produce whether processed or non-processed of agriculture, horticulture, animal husbandry, pisciculture, sericulture and forest as specified in the Schedule. In terms with Clause (xvi) of Section 2 (1) of the Act of 1972, "Market" has been defined as a regulated market established under the Act of 1972 for the market area and includes a market proper, a principal market-yard and a sub-market-yard or yards, if any. Clause (xvii) of Section 2 (1) of the Act of 1972 defines "Market area" to mean any area declared to be a market area under Section 5 of the Act of 1972. Section 5 of the Act of 1972 empowers the State Government by notification in the Official Gazette to declare the area specified in the notification under Section 4 or any portion thereof to be a market area for the purpose of the Act of 1972 in

respect of all agricultural produces specified in the said notification.

4. In the backdrop of the above, let this Court take into account the power to levy cess which is the subject matter of dispute in the instant batch of writ proceedings. Section 21 of the Act of 1972 stipulates the power to levy cess. The said Section 21 being relevant is reproduced hereinunder:-

"*21. Power to levy cess.*

(1) Every market committee shall levy and collect a cess on the agricultural produce bought or sold in the market area at a rate not exceeding two rupee for every one hundred rupees of the aggregate amount for which a specified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations.

(2) The Assam State Agricultural Marketing Board shall also have the power to levy and collect cess for any or all of the Market Committee(s) in the market areas in addition to the powers of the Market Committee (but not both), whenever felt necessary with approval of the State Government, on the agricultural produce bought or sold in such market area(s) at a rate not exceeding two rupees for every one hundred rupees of aggregate amount for which a specified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations.

(3) No cess will be levied on goods manufactured from the agricultural produce on which cess is proposed to be levied and which are ultimately exported out of the Country.

Explanation — 1. '[For the purpose of this section all Specified Agricultural Produce shall unless the contrary is proved be deemed to be bought or sold in notified market area if –

(i) Such produce is taken out or proposed to taken out of the said area; or

(ii) the agreement of sale or purchase thereof in respect of such produce is entered into the said area; or

(iii) in pursuance of sale or purchase or the agreement of sale or purchase such produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.]'

Explanation —2. The cess referred to in Section 21 shall be paid by the purchaser of the specified agricultural produce concerned.

21A. Prevention of evasion of cess.

(1) For prevention of the evasion of cess on Specified Agricultural Produce the Market Committee sail establish check gates at different points within the Market Area whenever felt necessary with the prior approval of the Board.

(2) [In case of any specific need for prevention of evasion of cess the Assam State Agricultural Marketing Board may also establish composite check gate(s) *for all Market Committees and/or any check gate at any point within any market area of any Market Committee whenever felt necessary with approval of the State Government.]'*

5. From a perusal of Sub-Section (1) of Section 21 of the Act of 1972, it reveals that every Market Committee, i.e. a Committee established under Section 7 of the Act of 1972 has been empowered to levy and collect a cess on the agricultural produce bought or sold in the market area at a rate not exceeding two rupee for every one hundred rupees of the aggregate amount for which a specified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations. Sub-Section (2) of Section 21 empowers the Assam State Agricultural Marketing Board to levy and collect cess for any or all of the Market Committees in the market areas in addition to the powers of the Market Committee (but not both), whenever felt necessary with approval of the State Government on the agricultural produce bought or sold in such market areas at a rate not exceeding two

rupees for every one hundred rupees of aggregate amount for which a specified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable considerations. Sub-Section (3) of Section 21 stipulates that no cess would be levied on goods manufactured from the agricultural produce on which cess is proposed to be levied and which are ultimately exported out of the Country. In terms with Exlanation-1, a legal presumption is drawn unless the contrary is proved that all specified agricultural produces would be deemed to be bought or sold in notified market area if (i) such produce is taken out or proposed to taken out of the said area; or (ii) the agreement of sale or purchase thereof in respect of such produce is entered into the said area; or (iii) in pursuance of sale or purchase or the agreement of sale or purchase such produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser. In terms with Explanation-2, the cess referred to in Section 21 shall be paid by the purchaser of the specified agricultural produce concerned. Section 21A of the Act of 1972 was enacted to check and prevent the evasion of cess. In terms with the said provision, the Market Committee shall establish check gates at different points within the Market Area whenever felt necessary with the prior approval of the Board. Further to that, for specific need, the Assam State Agricultural Marketing Board may establish composite check gate(s) for all Market Committees and/or any check gate at any point within any market area of any Market Committee whenever felt necessary with approval of the State Government.

6. The issue involved in the instant batch of writ petitions is as to whether post the 101st amendment of the Constitution and the enactment of the Central Goods and Service Tax Act, 2017 (for short, 'CGST Act, 2017'); the Integrated Goods and Service Tax Act, 2017 and the Assam Goods and Service Tax, Act 2017 (for short, 'AGST Act, 2017') whether the respondent Board or the Market Committees established under Section 7 of the Act of 1972 would have the power to levy cess.

7. At this stage, this Court finds it relevant to take note of the Constitution (101st Amendment) Act, 2016. The Statement of Objects and Reasons in relation to the Constitution (101st Amendment) Act, 2016 can be discerned from the Statement of Objects and Reasons of the Constitution (One hundred and twenty second) Bill, 2014. The said Statement of

Objects and Reasons are reproduced hereinunder:-

"STATEMENT OF OBJECTS AND REASONS

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union Territory with legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

***2**. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—*

(a) subsuming of various Central indirect taxes and levies such as Central excise duty, additional excise duties, excise duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, service tax, additional customs duty commonly known as countervailing duty, special additional duty of customs, and Central surcharges and cesses so far as they relate to the supply of goods and services;

(b) subsuming of State value added tax/sales tax, entertainment tax (other than the tax levied by the local bodies), Central sales tax (levied by the Centre and collected by the States), octroi and entry tax, purchase tax, luxury tax, taxes on lottery, betting and gambling; and State cesses and surcharges insofar as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of integrated goods and services tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws

governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of goods and services tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period which may extend to five years;"

8. From the above quoted Statement of Objects and Reasons pertaining to the bill introduced in the Lok Sabha, namely, the Constitution (122nd Amendment) Bill, 2014, it stipulates amongst others that the Constitution was proposed to be amended to introduce Goods and Services Tax for conferring concurrent taxing powers on the Union as well as the States including Union Territories with legislature to make laws for levying Goods and Services Tax on every transaction of supply of goods or services or both. It is seen from the said Statement of Objects and Reasons, more particularly Clause 2 (a) that the Constitutional amendment would be carried out to provide for subsuming of various Central indirect taxes and levies such as Central excise duty, Additional excise duty, Excise duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, service tax, Additional customs duty commonly known as Countervailing duty, Special Additional duty of customs, and Central surcharges and cesses so far as they relate to the supply of goods and services. In terms with Clause 2 (b) of the Statement of Objects and Reasons, it was proposed to amend the Constitution thereby subsuming of the State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry Tax, Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling; and State cesses and surcharges insofar as they relate to supply of goods and services.

9. It is further relevant to take note of that the Constitution (101st Amendment) Act, 2016 was enacted on 08.09.02016 to amend the Constitution. By the said Amending Act of 2016, new Articles 246A, 269A and 279A were inserted. Amendments were also

made to Articles 248, 249, 250, 268, 269, 270, 271, 286, 366 & 368. Article 268A was omitted. Further to that, it is also seen that amendments were also carried out to the Schedule 7 to the Constitution, i.e. both to Union List and State List. In List I, Entry 84 was substituted. In List II, i.e. the State List, Entry 52 was omitted, Entry 54 was substituted, Entry 55 was omitted and Entry 62 was substituted.

10. This Court at this stage finds it relevant to take note of Entry 52 of List II as it stood prior to its omission which read as under:

> "52. Taxes on the entry of goods into a local area for consumption, use and sale therein."

11. After the Constitutional amendment, the Parliament enacted the Central Goods and Service Tax Act, 2017 (CGST Act, 2017) to make provisions for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. On the same date, another statute was enacted, namely, the Integrated Goods and Service Tax Act, 2017 (IGST Act, 2017) to make provisions for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. Another enactment, namely, the Union Territories Goods and Service Tax Act, 2017 was passed on the same date to make provisions for levy and collection of tax on intra-State supplies of goods or services or both by the Union Territories and for matters connected therewith or incidental thereto. Simultaneously, the Assam Goods and Service Tax Act, 2017 (AGST Act, 2017) was also enacted by the Assam Legislative Assembly to make provisions for levy and collection of tax on intra-State supply of goods or service or both by the State of Assam and for matters connected therewith or incidental thereto.

12. Keeping in mind the Statement of Objects and Reasons as contained in the Constitution (122nd Amendment) Bill, 2014 for which the Constitution (101st Amendment) Act, 2016 was passed which amongst others would subsume the Central cesses and surcharges so far as it relates to supply of goods and services, a notification was published bearing Notification No.12/17-Central Tax (Rate) dated 28.06.2017 by the Government of India, Ministry of Finance, (Department of Revenue) in exercise of the power conferred by Sub-Section (1) of

Section 11 of the CGST Act, 2017 whereby exemption was given to the intra-State supply of services of the description as specified in Column No.3 of the Table from so much of the Central Tax leviable thereon under Sub-Section (1) of Section 9 of the CGST Act, 2017, as is in excess of the said tax calculated at the rate as specified in corresponding entry on Column No.4 of the said Table, unless specified, otherwise subject to the relevant conditions as specified in the corresponding entry in Column No.5 of the said table. At SL. No.54 of the said Table with the Heading 9986, services relating to cultivation of plants and rearing of all form of animals except rearing the horses, for food fibre, fuel, raw material or other similar products or agricultural produce amongst others, services by any Agriculture Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce were exempted.

13. Similar to the notification issued by the Central Government, on 29.06.2017, a notification bearing No.FTX.56/2017/25 was issued by the Finance (Taxation) Department of the Government of Assam, whereby in exercise of the powers under the proviso to Sub-Section (1) to Section 11 of the AGST Act, 2017, the Governor of Assam on being satisfied that it was necessary in public interest to do so, on the recommendation of the Council, exempted the intra-State supply of service description as specified in Column No.3 of the Table in the notification from so much of the State Tax leviable therein under Sub-Section (1) of Section 9 of AGST Act, 2017 as is in excess of the said tax calculated at the rate as specified in corresponding entry in Column No.4 of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in Column No.5 of the said Table. At Sl. No.54 of the said notification with the Heading 9986, services relating to cultivation of plants and rearing of all live forms of animals except the rearing of horses, food, fibre, fuel, raw materials or other similar products or agricultural produce by way of services by any Agriculture Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce were exempted.

14. It is also very pertinent to note that on 29.07.2017, a notification was issued by the Finance (Taxation) Department of the Government of Assam notifying that all the check gates/check posts currently operated by the Environment & Forest/Excise/ Transport /Police /

Taxation Department and Assam State Agriculture Marketing Board in the State of Assam were withdrawn with effect from the midnight of the 31st of July, 2017. On the basis of the said notification dated 29.07.2017, the Chief Executive Officer of the respondent Board had issued an order on 31.07.2017 stating inter-alia that all the check gates established under the provision of Section 21A of the Act of 1972 as per the Government notification dated 31.05.2003, 04.12.2003 as well as 06.08.2015 issued by the Deputy Commissioner, Cachar were withdrawn. On the same date, the Additional Secretary to the Government of Assam, Agriculture Department had issued a communication to the Chief Executive Officer of the Respondent Board stating inter-alia to withdraw the check gates under the establishment of the Assam State Agricultural Marketing Board w.e.f. from the mid-night of 31.07.2017. Surprisingly, the Additional Secretary in the communication mentioned that normal realization of cess under Section 21 of the Act of 1972 on specified agricultural commodities from the market area would continue. On the basis of the above, the respondent Board, continued to levy cess under Section 21 of the Act of 1972 even after the CGST Act, 2017 and AGST Act, 2017 coming into force. It is under such circumstances that the instant batch of writ petitions were filed challenging the levy and seeking refund.

15. Before proceeding further, this Court finds it relevant to note that it is well settled by the law laid down that cess means a tax levied for some special purpose which may be levied as an increment to an existing tax. Paragraph Nos.36 to 39 of the judgment of the Supreme Court in the case of ***Union of India & Another vs. Mohit Mineral (P) Ltd.***, reported in ***(2019) 2 SCC 599*** expounds the above proposition which are quoted herein below:-

> ***33.*** *The petitioners have challenged the legislative competence of Parliament to enact the Compensation to States Act, 2017. The petitioners submit that impugned legislation has transgressed the limits of its power granted under the Constitution. It is contended that although the impugned legislation is described as for the purpose of giving compensation to States by the Centre to States for loss of revenue but in fact it imposes tax (termed as cess), hence in pith and substance the legislation does not belong to the subject falling within the limits of its power but is outside it.*
>
> ***34.*** *Part XI of the Constitution deals with the relation between the Union and the States, Chapter I of which deals with "Legislative Relations". Article 245 deals with "Distribution of*

Legislative Powers". Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule of the Constitution. Parliament, and subject to Clause (1) of Article 246, the legislature of a State also have power to make laws with respect to any of the matters enumerated in List III of the Seventh Schedule. Article 248 deals with residuary power of legislation in following manner:

> "***248. Residuary powers of legislation***.—*(1) Subject to Article 246-A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.*
>
> *(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."*

35. *Article 246-A as noticed above provides that "notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State". In the present case, we are concerned with a cess imposed by the Compensation to States Act, 2017. The Act by Section 8 levies and authorises collection of cess. We need to first examine nature of cess. Cess has been defined in Black's Law Dictionary, 10th Edn. as "An assessment or tax."*

36. *P. Ramanatha Aiyar, Advanced Law Lexicon, 3rd Edn. defines "cess" as follows:*

> "*Cess" is "An assessment tax; levy; specifically : (a) A rate or local tax .... (b) In Scotland, the land tax. (c) in India, a tax for a special object; as, a road cess". (Webster)*
>
> ***
>
> *The word "cess" is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment. Shinde Bros. v. Commr., Raichur, per dissenting Judge and India Cement Ltd. v. State of T.N.*
>
> ***

The word "cess" means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. (Shinde Bros. v. Commr., Raichur, AIR SC at p. 1525)."

37. *This Court had considered the expression "cess" in Shinde Bros. v. Commr., Raichur, M. Hidayatullah, J., as he then was in his dissenting opinion has defined the cess ("no contrary opinion was expressed by majority in that regard") in para 39, which is to the following effect :*

"*39. Now the health cess is first assailed on the ground that there is no entry "Health cess" as such in the legislative entries. The word "cess" is used in Ireland and is still in use in India although the word "rate" has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment. By Schedule A(1) read with Section 3 of the Act, it is collected as an additional levy with a tax, which, as described in Schedule A, is undoubtedly one within the powers of the State Legislature and has been so even prior to the Constitution."*

38. *In the Constitution Bench judgment of this Court in India Cement Ltd. v. State of T.N., the above definition given by Hidayatullah, J., was quoted with approval in para 19, which is quoted as below :*

"*19. Here, we are concerned with cess on royalty. One can have an idea as to what cess is, from the observations of Hidayatullah, J., as the learned Chief Justice then was, in Shinde Bros. v. Commr., Raichur where at SCR p. 571, the learned Judge observed :*

'*39. ... The word "cess" is used in Ireland and is still in use in India although the word "rate" has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment.*' "

39. *The meaning of "cess" as noticed above was again reiterated by a two-Judge Bench judgment of this Court in Vijayalashmi Rice Mill v. CTO, in para 13, following has been laid down :*

> "*13. Hence ordinarily a cess is also a tax, but is a special kind of tax. Generally tax raises revenue which can be used generally for any purpose by the State. For instance, the income tax or excise tax or sales tax are taxes which generate revenue which can be utilised by the Union or the State Governments for any purpose e.g. for payment of salary to the members of the armed forces or civil servants, police, etc. or for development programmes, etc. However, cess is a tax which generates revenue which is utilised for a specific purpose. For instance, health cess raises revenue which is utilised for health purposes e.g. building hospitals, giving medicines to the poor, etc. Similarly, education cess raises revenue which is used for building schools or other educational purposes."*

16. The above proposition of law would show that what the Respondent Board and the Market Committees were levying cess in exercise of powers under Section 21 of the Act of 1972 which was nothing but a tax for the purpose of the Act of 1972. This power to tax has to be found in List II of the Schedule 7 of the Constitution. Section 21 of the Act of 1972 shows that the incidence of the levy is upon agricultural produce bought or sold in the market area. This power to levy is traceable to Entry 52 of List II which permitted tax on entry of goods into a local area for consumption, use or sale. Apart from Entry 52 of List II, the power can also be traced to Entry 54 of List II as it stood prior to the Amending Act of 2016 whereby the State had the power to levy tax on sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I.

17. In the backdrop of the above, let this Court take up for consideration the dispute involved. Two questions arise for consideration before this Court. First, (i) whether the respondent Board had the authority and jurisdiction by virtue of Section 21 of the Act of 1972 to levy cess after the Constitution (101st Amendment) Act 2016 and the CGST Act, 2017 and AGST Act, 2017 had come in force? (ii) If not, whether the petitioners herein would be entitled to the refund of the amounts which the Respondent Board had illegally collected from the petitioners?

18. This Court in the preceding segments of the instant judgment had dealt with Statement of Objects and Reasons in respect to the Constitution (122nd Amendment) Bill, 2014, the

Constitution (101st Amendment) Act, 2016 the enactment of the CGST Act, 2017, AGST Act, 2017, IGST Act, 2017 as well as the Notification bearing No.12/17-Central Tax (Rate) dated 28.06.2017 and the Notification bearing No.FTX.56/2017/25 dated 29.06.2017 as well as the effect thereof.

19. This Court at this stage finds it relevant to take note of the submission of Mr. N. J. Gogoi, the learned Standing Counsel of the Respondent Board who submitted that pursuant to the coming into effect of the GST regime, the Respondent Board have been realizing the cess on the basis of the communication dated 31.07.2017 issued by the Additional Secretary, Agriculture Department whereby it was mentioned that the normal realization of cess under the Act of 1972 would continue. It is however pertinent to mention that w.e.f. 12.06.2020, the respondent Board stopped the levy and realization of cess.

20. This Court supra dealt with the power on the basis of which the levy of cess was made under Section 21 of the Act of 1972. The said power is traceable to Entry 52 as well as Entry 54 of List II of the Schedule 7 to the Constitution. By the Amending Act, 2016, i.e. the Constitution (101st Amendment) Act, 2016, Entry 52 was omitted and Entry 54 was substituted. With the substitution of Entry 54 of List II, the power on sale or purchase of any goods except newspaper was taken away and it was limited to tax on sale of petroleum crude, high speed diesel, motor spirit-petrol, natural gas, aviation turbine fuel and alcoholic liquor for human consumption. Under such circumstances, the State could not have levied cess though the Respondent Board or the Market Committees on agricultural produce bought or sold in a market area. Further to that, after the Amending Act, 2016, the said cess so collected/levied under Section 21 of the Act of 1972 was subsumed by the CGST Act, 2017 and the AGST Act, 2017 as these Statues specifically deal with the levy and collection of tax on intra-State supplies of goods or services or both by the Central Government and the State Government respectively by virtue of Article 246A of the Constitution. It is for that reason the Notification bearing No.12/17-Central Tax (Rate) dated 28.06.2017 and the Notification bearing No.FTC.56/2017/25 dated 29.06.2017 were issued by the Central Government and the State Government respectively to exempt such levy of cess at Serial No.54 of Heading 9986 in both the Notifications. In view of the above analysis, this Court is of the firm opinion

that the Respondent Board or the Market Committees could not have levied cess after the coming into effect of the CGST Act, 2017 and AGST Act, 2017.

21. This aspect of the matter can also be looked into from another angle by taking into account the fundamentals of the powers to tax and levy. There are three stages in the imposition of tax. First stage is the declaration of liability, i.e. the part of the statute which determines which person in respect of what property is liable. The second stage is assessment. The assessment particularizes the exact amount which a person liable has to pay. The third stage is the method of recovery if the person taxed does not voluntarily pay. The core of a taxing statute is a charging section and the provision for levying such a tax defines persons who are liable to pay tax. If that core disappears, the remaining provisions lose its efficacy. It is well settled by the judgment of the Supreme Court in the case of ***Associated Cement Companies Ltd. vs. State of Bihar and Others***, reported in ***(2004) 7 SCC 642*** that exigibility of tax is not the same as liability to pay tax. The former depends on charge created by the statute and the later on computation in accordance with the provisions of the Statute. The Supreme Court further held in the said judgment that the liability to pay tax and the actual payment of tax are also conceptually two different aspects. It was observed that exemption pre-supposes a liability or in other words, unless there is a liability, the question of exemption does not arise. The above propositions have also been explained in detail by the Supreme Court in the case of ***Peekay Re-Rolling Mills (P) Ltd. vs the State Assistant Commissioner and Another***, reported in ***(2007) 4 SCC 30***. Paragraph Nos.35 to 39 of the said judgment are quoted herein under:-

> "***35.*** *The first aspect of the argument of the respondent is with respect to the impact of exemption upon the liability to tax. In our opinion, exemption can only operate when there has been a valid levy, for if there was no levy at all, there would be nothing to exempt.*
>
> ***36.*** *In this regard two cases decided by this Court are relevant. The first is Pine Chemicals case which involved questions of sales tax and exemption under the Jammu and Kashmir General Sales Tax Act, 1962. While examining certain exemption orders made by the*

Government, the Court observed as follows:

> "*25. Under Section 4(1) of the Jammu and Kashmir General Sales Tax Act the goods are taxable only once, that is, it could be taxed only at one point of sale. We have already held that the Government Orders 159 and 414 are exemption orders and exempt the sale by the appellants of their manufactured products. The exemption would not arise unless the goods are taxable at the point of their sale. Thus the effect of exempting their sale is that the said goods manufactured by them could not be taxed at the second or subsequent sales also as that would offend Section 4(1) which provides for single-point levy. In cases where there are no exemption orders and the State fixed the second or subsequent sale as point of taxation the first or prior or subsequent sales are not exempted sales but are not taxable sales.*"
>
> *(emphasis supplied)*

37. *Thus the Court was of the opinion that when certain goods were subjected to the single-stage tax condition, and the stage identified for the levy was exempted, subsequent sales could not be taxed by the authorities despite the exemption.*

38. *This position has been reaffirmed in Associated Cement. In Associated Cement the Court was faced with an argument very similar to the one made before us today. The case involved an exemption notification issued by the State Government which reduced the liability to tax under the Bihar Finances Act, 1981 to the extent of tax paid under an earlier Ordinance in respect of entry of goods. The appellant claimed that it was entitled to adjust the entry tax paid under the Entry Tax Act while computing the tax payable under the Bihar Finances Act. The respondent however argued that such adjustment could not be made since the same was exempted, which meant that there was no liability to tax. The Court rejected the argument of the respondent, holding as follows:*

> "*17. Crucial question, therefore, is whether the appellant had any 'liability' under the Act. ... The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and rules framed thereunder, if any. It is to be noted that liability to pay tax chargeable under Section 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability, question of exemption does not arise. Liability arises in terms of*

Section 3 and tax becomes payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate."

(emphasis supplied)

39. *A reading of the above judgments makes it amply clear that exemption does (sic not) negate a levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfill the liability is done away with."*

22. The law if applied to the facts of the present cases would make the exemption so granted by the notification No.12/2017-Central Government (Rate) dated 28.06.2017 issued by the Government of India, Ministry of Finance, Department of Revenue at Sl. No.54 and the notification No.FTX.56/2017/25 dated 29.06.2017 issued by the Finance (Taxation) Department of the Government of Assam at Sl. No.54 in respect to service by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale and purchase of agricultural produce pre-supposes that the cess which was collected by virtue of the Act of 1972 had been subsumed by the CGST Act,2017 as well as AGST Act, 2017. Under such circumstances, the levy of cess by the Respondent Board or the Market Committee after the said notifications had come into effect was unconstitutional as well as *ultra vires* to the provisions of CGST Act, 2017 and the AGST Act, 2017.

23. In the backdrop of the above analysis, let this Court take into account the second point for determination as to whether the petitioners herein would be entitled to the refund of the illegally collected cess under Section 21 of the Act of 1972 after coming into effect of the CGST Act, 2017 and the AGST Act, 2017. To decide the second aspect of the matter, it would be relevant to take into account the pleadings of the parties before this Court. From a perusal of the writ petitions, it reveal that the petitioners are in the business of re-sale and for that purpose bring materials from outside the State of Assam. It is the categorical case of the petitioners that at the time of when they bring the said goods to the State of Assam, the respondent Board had levied cess inspite of coming into

effect CGST Act, 2017 as well as the AGST Act, 2017. There is no averment made in the writ petitions that the cess so collected from the petitioners by the respondent Board or by the Market Committees were not passed on to the customers of the petitioners.

24. This Court vide an order dated 25.07.2023 sought for instructions from the respondent Board as to whether any proper account were maintained in respect to the petitioners in the instant batch of writ petitions and how much amount of cess was collected from the petitioners in the meantime pursuant to the filing of the writ petitions. Subsequent thereto, three affidavits were filed on 21.09.2023 whereby detail collection of cess from the writ petitioners for the period from 01.07.2017 to 12.06.2020 were placed. At the cost of repetition, it is reiterated that from 12.06.2020, the respondent Board had stopped the collection of cess vide notification No.ASAMD/DEV/913/2020/16 dated 12.06.2020. The three additional affidavits gave district-wise details of the collection of cess from 01.07.2017 to 12.06.2020. The petitioners had also filed additional affidavits bringing on record the amount of cess collected from them by the respondent Board during the period from 01.07.2017 to 12.06.2020.

25. This Court further finds it pertinent to take note of another additional affidavit filed on 28.09.2023 by the Chief Executive Officer of the Respondent Board. In the said affidavit, it was mentioned that the only source of income of the Respondent Board was the collection of cess and from such collection, the salaries of the employees and other development works for construction of market places, construction of cold storages, infrastructure development of market under the Marketing Board were carried out. But with the stoppage of collection of cess, the respondent Board are not even in a position to pay the salaries to its employees as because no financial grant was received by the Respondent Board from the date of its inception. It was further mentioned that as on date, more than 800 employees are working in the Respondent Board, the 24 numbers of districts regulated Market Committees and regulated Market Committees under the

Respondent Board as well as contingency menial. For payment of monthly salaries of the employees, the Respondent Board has to incur an amount of Rs.4.20 crores approximately. Further to that, it was mentioned that the Respondent Board was facing acute financial crisis for which it is unable to pay the monthly salaries of the employees out of its own sources. Under such circumstances, the Respondent Board approached before the Government for granting financial aid for payment of salaries. The Government of Assam, Finance Department granted some financial aids for release of salaries to the employees of the Respondent Board the details of which are herein under:-

In the year 2020-21	Rs.27,92,47,471.00
In the year 2021-22	Rs.40,50,00,000.00
In the year 2022-23	Rs.40,50,00,000.00
In the year 2023-24	Rs.7,62,50,000.00
Total	Rs.116,54,97,471.00

26. It was also mentioned that on 08.02.2022, an amount of Rs.1032.37 lakhs in the form of grant-in-aid for payment of salaries etc. in respect of the staff of the Respondent Board under establishment, expenditure for the year was received by the Agriculture Department in the State Bank of India in the name of the Chief Executive Officer of the Respondent Board. It was only upon receipt of the said amount, the salaries of the employees could be released. For the year 2023-24, a sum of Rs.7,62,50,000/- was received in the month of September, 2023 which was used for payment of salaries of the employees. It has also been stated that inspite of that, 10 months' salary, i.e. from November, 2022 to August, 2023 is still due to employees of the Market Committees

and for 7 months for the employees working in the Headquarter of the Respondent Board due to non-availability of fund and non-receipt of the financial grant-in-aid from the Government of Assam. Further to that, it was also mentioned that the Respondent Board as on 22.09.2023 has a bank balance of Rs.4,79,923/- against salary and other expenses. The Respondent No.2 is unable to pay the retirement benefits to its retired employees who retired upto August, 2022.

27. In the backdrop of the above, let this Court take note the settled principles of law as regards refund and restitution. The Supreme Court in the case of ***State of Maharashtra and Others vs. Swanstone Multiplex Cinema Private Limited***, reported in ***(2009) 8 SCC 235*** dealt with the doctrine of unjust enrichment as well as also the aspect as to whether any tax unjustly collected be permitted be retained. Paragraph nos.33 to 37 of the said judgment being relevant are quoted hereinunder:-

> "***33.*** *We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for their own benefit. To the aforementioned extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.*
>
> ***34.*** *In Mafatlal Industries Ltd. Section 72 of the Contract Act providing for restitution may be taken recourse to. Doctrine of "unjust enrichment" was resorted to, observing:*
>
> > "*108. (iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the plaintiff-petitioner alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right*

nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State i.e. by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."

35. *In Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs this Court has held:*

> *"45. From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11-B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11-B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in the absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the appellant-petitioner to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss."*

36. *It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to.*

37. *We, therefore, direct that the State shall realise the amount to the extent the respondent had unjustly enriched itself and pay the same to a voluntary or a charitable organisation, which*

according to it is a reputed civil society organisation and had been rendering good services to any section of the disadvantaged people and in particular women and children. We would request the Hon'ble the Chief Minister of the State to take up the responsibility in this behalf so that full, proper and effective utilisation of the amount in question is ensured."

28. In the said judgment, reference was also made to the judgment of the Nine Judges of the Supreme Court in the case of ***Mafatlal Industries Limited & Others vs. Union of India vs Others***, reported in ***(1997) 5 SCC 536***. It was observed by the Supreme Court that the claim for refund can only succeed if it is **alleged** and **proved** that the person from whom the tax was illegally collected had not passed on the burden of the duty to another person or other persons. In the instant case, there are no averments made in the writ petitions that the goods which have been brought for resale, the burden of cess were not passed on to the customers of the petitioners. Under such circumstances, the question of the amount collected from the petitioners as cess during the period from 01.07.2017 to 12.06.2020 to be refunded to the petitioners do not arise.

29. It is also equally important in view of the judgment in the case of ***Swanstone Multiplex Cinema Private Limited*** (supra) to address another issue as to whether the Respondent Board can be permitted to retain the benefit of the cess levied by them illegally during the said period. In the said case, the Supreme Court observed that the Court may direct a party to divest itself of the money or benefit which in justice, equity and good consense belong to someone else, and accordingly, in that case, the Supreme Court directed the State to realize the amount from the respondents therein and pay the same to a voluntary or a charitable organization.

30. In the instant case, the Respondent Board and the Market Committee after having lost their powers to levy cess, the financial position of the Respondent Board is in a penurious state. It is surviving as could be seen from the additional affidavit filed on 28.09.2023 on the basis of grant-in-aid received from the State Government. Under such circumstances, it is the opinion of this Court that directing the State to recover the said

amount from the Respondent Board would not be in the interest of justice, equity, good conscience as well as also it would seriously hamper the functioning of the Respondent Board in terms with the provisions of the Act of 1972.

31. Accordingly, this Court is not inclined to pass any direction(s) for restitution by the respondent Board of the cess so collected during the period from 01.07.2017 to 12.06.2020.

32. With the above observations and directions, the instant batch of writ petitions stands disposed of.

JUDGE

Comparing Assistant