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Reserved Judgment

Approved For Reporting

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA
AND
THE HON'BLE SRI JUSTICE SUBHASH UPADHYAY

Reserved on : 16.09.2026
Delivered on : 30.09.2026

WRIT PETITION (M/B) NO. 244 OF 2025

Ashirwad Agro Industries & another ..... Petitioners

Versus

State of Uttarakhand & others ..... Respondents

WITH

WRIT PETITION (M/B) NO. 245 OF 2025
WRIT PETITION (M/B) NO. 246 OF 2025
WRIT PETITION (M/B) NO. 247 OF 2025
WRIT PETITION (M/B) NO. 248 OF 2025
WRIT PETITION (M/B) NO. 250 OF 2025
WRIT PETITION (M/B) NO. 251 OF 2025
WRIT PETITION (M/B) NO. 263 OF 2025
WRIT PETITION (M/B) NO. 264 OF 2025
WRIT PETITION (M/B) NO. 266 OF 2025
WRIT PETITION (M/B) NO. 267 OF 2025
WRIT PETITION (M/B) NO. 268 OF 2025
WRIT PETITION (M/B) NO. 269 OF 2025
WRIT PETITION (M/B) NO. 318 OF 2025
WRIT PETITION (M/B) NO. 319 OF 2025
WRIT PETITION (M/B) NO. 320 OF 2025
WRIT PETITION (M/B) NO. 322 OF 2025
WRIT PETITION (M/B) NO. 323 OF 2025
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WRIT PETITION (M/B) NO. 335 OF 2025
WRIT PETITION (M/B) NO. 336 OF 2025
WRIT PETITION (M/B) NO. 420 OF 2025
WRIT PETITION (M/B) NO. 439 OF 2025

WRIT PETITION (M/B) NO. 515 OF 2025
WRIT PETITION (M/B) NO. 516 OF 2025
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WRIT PETITION (M/B) NO. 524 OF 2025
WRIT PETITION (M/B) NO. 525 OF 2025
WRIT PETITION (M/B) NO. 526 OF 2025
WRIT PETITION (M/B) NO. 135 OF 2026

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: Mr. Nikhil Singhal, learned counsel for petitioners in WPMB Nos. 323, 327, 328 & 329 of 2025

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: Mr. Rajeev Bhatt, learned counsel for petitioner in WPMB No. 135 of 2026

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: Ms. Monika Pant, learned counsel for private respondents in WPMB Nos. 420 and 515 of 2025

The Court made the following:

JUDGMENT: (per Hon'ble Chief Justice Sri Manoj Kumar Gupta)

1) The petitioners have challenged the constitutional validity of the first proviso to Section 27(c)(v) of the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act 2011 (for short 'the Act'), as well as the consequential notices demanding development cess.

2) The petitioners have manufacturing units in Uttarakhand. They bring notified agricultural produce such as paddy, wheat, maize, legumes, wood etc. from outside the State for use in manufacturing or processing different products, such as atta, suji, maida, rice, corn starch liquor, gluten, paper, boards, laminates, plywood etc. Their case is that the agricultural produce is brought into Uttarakhand for processing / manufacturing and not

for sale or any commercial transaction within the market area.

3) The impugned notices, however, proceed on the basis that when specified agricultural produce is brought into the market area from outside Uttarakhand, for processing or manufacturing, even after payment of market fee and/or development cess into the State, such arrival constitutes ‘Other Secondary Arrival’ within the meaning of the first proviso to Section 27(c)(v), and is therefore subject to development cess.

4) According to the petitioners, the impugned notices thus fasten liability to development cess solely on the event of bringing the agricultural produce from outside the State into the market area for processing or manufacturing, without there being any sale or purchase within the market area.

5) The principal submission of the petitioners is that the first proviso to Section 27(c)(v) is substantially similar, in its effect, to Section 27(c)(iii), which was struck down by the Supreme Court in ***M/s Gujarat Ambuja Exports Ltd. Vs State of Uttarakhand, (2016) 3 SCC 601***. It is contended that both provisions impose levy on agricultural produce brought from outside Uttarakhand for

processing or manufacturing and, therefore, the ratio in ***Gujarat Ambuja*** applies to the impugned proviso as well. Reliance is also placed upon ***M/s ITC Vs State of Karnataka, AIR 2005 Karnataka 330*** and ***APMC Yashwantpura Vs Selva Foods, (2022) 3 SCC 313*** to contend that mere import or bringing of agricultural produce into a market area for processing or manufacturing does not attract market fee in absence of the taxable event namely, sale or purchase taking place within the limits of the market area of the State.

6) The petitioners also invoke the settled principles applicable to fiscal statutes that the charging provision must be clear and unambiguous and that a fiscal liability must be determined according to the language employed by the legislature and cannot be created merely on the basis of the perceived object or spirit of the enactment. For these propositions, reliance is placed, *inter alia*, upon ***Krishi Utpadan Mandi Samiti Vs Pilibhit Pantnagar beej Ltd., (2004) 1 SCC 391; Orient Paper & Industries Ltd. Vs State of M.P. & others, (2006) 12 SCC 468; A.V. Fernadez Vs The State of Kerala, 1957 SCC OnLine SC 23 and State of Rajasthan & others Vs Basant Agrotech (India) Ltd*.**, **(2013) 15 SCC 1**.

7) The respondents defend the validity of the impugned provision and the consequential demand of development cess. Their submission, in substance, are as follows :

7(i) The Act was enacted for regulation and development of agricultural produce markets, establishment of a modern marketing system, promotion of agricultural processing and export, and supervision and control of markets. According to the respondents, the State legislature possesses legislative competence under, *inter alia*, Entries 28 and 66 of List II and under Entry 24 subject to Entries 7 and 52 of List I and also Entries 26 and 27 of List I subject to Entry 33 of List III. It is submitted that various clauses of Section 27(c) constitute separate and independent charging provisions operating in different contingencies. Section 27(c)(ii) provides for market fee and development cess on transactions of sale, whereas clauses (iii), (iv) and (v) deal with different situations concerning agricultural produce brought into or moved within a market area. Thus, according to the respondents, clause (v) and its proviso have to be considered independently of clause (iii).

7(ii) It is pointed out that initially, Section 27(iii) did not contain the word ‘manufacture’. Certain demands against manufacturing units were consequently set aside. Thereafter, by amendment, the word ‘manufacture’ was incorporated in Section 27(c)(iii) and Section 27(c)(v) was also introduced as a separate charging provision. The respondents rely upon this legislative history to contend that the amended provisions were intended to cover distinct situations.

7(iii) The amended provisions were challenged before this Court. The Division Bench judgment in ***Maa Uma Agri Food (P) Ltd. Vs State of Uttarakhand, 2014 SCC OnLine Utt 2423*** upheld their validity.

7(iv) The principal defence of the respondents is that the decision of the Supreme Court in ***Gujarat Ambuja*** does not invalidate the first proviso to Section 27(c)(v). According to them, the Supreme Court struck down Section 27(c)(iii) on the ground of legislative competence but did not interfere with Section 27(c)(v) or its first proviso. Consequently, it is contended that the earlier Division Bench judgment upholding clause (v) subject to its clarification regarding market fee continues to operate.

7(v) On the above basis, it is further contended that since the first proviso to Section 27(c)(v) had formed part of the earlier challenge and was not struck down by the Supreme Court its validity cannot now be reopened by another Division Bench.

7(vi) The respondents seek to distinguish the impugned levy from the levy invalidated in ***Gujarat Ambuja***. Their case is that under the first proviso to Section 27(c)(v) only development cess and not market fee is leviable. The development cess is stated to be connected with the maintenance and development of facilities within the market area.

7(vii) According to the respondents, agricultural produce brought into the market area uses infrastructure and facilities developed and maintained by the market committee including roads, bridges and other market facilities. Manufacturing units as well as producers bringing agricultural produce into the market area derive the benefit of such facilities. Development cess is therefore sought to be justified as a charge towards their maintenance and development rather than merely as a tax upon import or manufacture.

8) Before examining the rival submissions, it would be apposite to notice the litigation and legislative history of the provisions in question, particularly since the controversy has travelled through more than one round of litigation culminating in the judgment of the Supreme Court in ***Gujarat Ambuja***.

9) When the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011 came into force, Section 27(c)(iii), as it then stood, provided for levy of market fee and development cess upon agricultural produce reaching any market area of the State from another State or from outside the country for sale, storage, processing or transaction. The provision, however, did not expressly include agricultural produce brought into market for **manufacturing**. The relevant part of Section 27(c)(iii) was as follows :

> "27. A Committee shall, for the purposes of this Act, have the following power; namely –
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> ...
>
> (c)(i) to levy such fees, as may be prescribed for the issue or renewal of licenses; and
>
> ...
>
> (iii) any such agricultural produce which reaches any Market Area of the State for sale, storage, processing or transaction from any other State or out of Country for the first time it shall be registered as "First Arrival" and on

such produce, Market fee and Development cess shall be payable…"

10) Demands raised against manufacturing units in respect of agricultural produce brought from outside the State were challenged by the manufacturers by filing various writ petitions before this Court on the ground that no market fee and/or development cess was leviable on their agricultural produce since there was no sale or purchase of such produce in the designated market area. In ***M/s BST Textile Mills Pvt. Ltd. Vs State of Uttarakhand and another, Writ Petition No. 375 of 2012***, decided on 11.01.2013, this Court held that market fee/development cess could not be levied on agricultural produce brought into the market area for the purpose of manufacturing, since the provision, as it then stood, contemplated sale, storage, processing and transaction but not manufacture.

11) The Legislature thereafter amended Section 27(c)(iii) by expressly incorporating 'manufacturing' and simultaneously introduced Section 27(c)(v), with retrospective effect. The first proviso to Section 27(c)(v), with which we are presently concerned, provided, in substance, that where agricultural produce was brought

into a market area from outside Uttarakhand for processing or manufacturing, after payment of market fee and/or development cess in the originating State, such arrival would be treated as ‘Other Secondary Arrival’ on which, though no market fee would be leviable, development cess would, nevertheless, be payable. The amended provision is as follows :

> “27. A Committee shall, for the purposes of this Act, have the following power; namely –
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> ...
>
> (c) (i) to levy such fees, as may be prescribed for the issue or renewal of licenses; and
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> ...
>
> (iii) any such agricultural produce which arrives in any Market Area of the State for sale, storage, processing, manufacturing, transaction or other commercial purposes from any other State or out of Country for the first time it shall be registered as “Primary Arrival” and on such produce, Market fee and Development cess shall be payable.”
>
> (v) any agricultural produce, which is brought to any Market area from out side Uttarakhand State for sale, storage, transaction or commercial purpose after paying Market fee and/or Development cess than Market fees and Development cess shall be leviable on such produce :
>
> Provided that brought to Market area from outside Uttarakhand State for processing or manufacturing purpose after paying Market fee and/or Development cess from concerning State than it shall be called as “Other Secondary Arrival” and no Market fee shall be leviable however due Development cess shall be leviable.
>
> Provided further that the market fee and development cess shall not be payable on the sale of flowers in bulk.”

12) Relying on the amended provision, once again demands were raised for payment of market fee and/or development cess under Section 27(c)(iii) and Section 27(c)(v) of the Act from various manufacturers. It was challenged before this Court in case of ***M/s Century Pulp and Paper Vs State of Uttarakhand and another, with other connected cases, Writ Petition No. 847 of 2013***. A learned Single Judge by judgment dated 18.04.2013 upheld the demand on the ground that the lacuna which existed earlier in the relevant provision of the Act was cured by enactment of the Uttarakhand Agricultural Produce Marketing (Development & Regulation) (Amendment) Act, 2012 and therefore the reasoning on which the demand earlier made was quashed in ***M/s BST Textile Mills Pvt. Ltd.*** no longer existed. The judgment of learned Single Judge was challenged before Division Bench in ***Maa Uma Agri Food Pvt. Ltd. Vs State of Uttarakhand, 2014 SCC OnLine Utt 2423***. The Division Bench upheld the amended provisions. Its reasoning, material for the present controversy was that agricultural produce brought into the market area for manufacturing constituted a **separable transaction**, capable of being independently regulated and subjected to market fee/ cess in exercise of the legislative power under Entry 28

read with Entry 66 of List II. The judgment in ***Maa Uma*** was carried to the Supreme Court and the controversy came to be decided in ***Gujarat Ambuja Exports Ltd. and another Vs State of Uttarakhand and others, (2016) 3 SCC 601***. Significantly, the Supreme Court noticed and extracted the aforesaid reasoning of the Division Bench and specifically examined the legislative competence of the State of impose the levy.

13) Upon examining the scheme, object and constitutional setting of the enactment, the Supreme Court did not accept the conclusion reached by the Division Bench in so far as Section 27(c)(iii) was concerned. It held that the primary object of market legislation is regulation of transactions in agricultural produce and protection of the producer in the buyer-seller relationship. Section 27(c)(iii), in so far as it sought to impose market fee and development cess upon agricultural produce merely brought from outside the State into the market area for manufacturing without any sale or purchase within the market area, travelled beyond the permissive field of legislation. Section 27(c)(iii) was accordingly struck down for want of legislative competence.

14) It is equally important to note that while the Supreme Court struck down 27(c)(iii) and dealt separately with Section 27(c)(iv), it did not expressly pronounce upon or strike down Section 27(c)(v) or its proviso. It is principally on this circumstance that the respondents base their demand to the development cess.

15) Here it is also relevant to note that the State also filed a review application before the Supreme Court for review of its judgment in ***Gujarat Ambuja*** but it was rejected by the Supreme Court by order dated 29.03.2016.

16) The aftermath of ***Gujarat Ambuja*** also generated litigation concerning refund of the market fee and development cess already collected. In ***Shyam Oil and Rice mills Vs State of Uttarakhand & another, along with connected matters, Writ Petition (M/S) No. 3252 of 2016***, this Court permitted the manufacturers to make representations for refund. The Director, Mandi Parishad vide its order dated 10.02.2017 dismissed the representation for refund. This once again led to filing of various writ petitions before this Court challenging the order of the Director, Mandi Parishad, rejecting the representations. Ultimately, this Court by judgment dated

16.05.2017, passed in case of ***Sheel Chand Flour Mills Pvt. Ltd. and another Vs State of Uttarakhand and others, along with connected matters, Writ Petition (M/S) No. 2440 of 2016***, held that once the mandi fee was held to be unconstitutional and not validly imposed, the amount in the normal course was liable to be refunded. The relevant observation made by this Court is extracted below :

> "14. Article 265 of the Constitution of India stipulates that no tax shall be levied or collected except by the authority of law. Since the Supreme Court, in "*M/s Ambuja Exports Ltd. & another vs. State of Uttarakhand & others*", 2016 (3) SCC 601, had held that Section 27(3), whereby mandi fees and development cess were levied, was unconstitutional, levy of the said amount by the Mandi Samitis is not authorized by law and is illegal. Once the levy is declared illegal by the Supreme Court, collection of fees and cess, under the said illegal levy, would also be illegal; and, consequently, all those, from whom mandi fees and development cess was illegally collected, would be entitled to claim refund of the said amount; and such a benefit of refund cannot be confined only to those who were parties before the Supreme Court in "*M/s Ambuja Exports Ltd. & another vs. State of Uttarakhand & others*". The mere fact that the Supreme Court has not, specifically, directed refund of the amount would not disable the respondent-writ petitioner from claiming refund, for the State cannot be permitted to retain the amount, collected by them under an unauthorized and illegal levy; and the said amount would be required to be refunded to those from whom such amounts were levied and collected."
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> (emphasis supplied)

ANALYSIS AND CONCLUSIONS

17) The principal question which arises for consideration is whether the first proviso to Section 27(c)(v) of the Uttarakhand Agricultural Produce Marketing (Development and Regulation) Act, 2011, in so far as it provides for levy of development cess on agricultural produce brought from outside the State for manufacturing or processing is within the legislative competence of the State Legislature.

18) As already noticed, the Division Bench of this Court in ***Maa Uma Agro Foods Private Limited Vs State of Uttarakhand, 2014 SCC OnLine Utt 2423***, while considering the validity of the amended provisions, had upheld the competence of the State Legislature to levy market fee and development cess on agricultural produce brought into the market area for manufacture. The reasoning proceeded on the basis that the act of bringing agricultural produce into the market area, even when it was brought for manufacture, constituted a separable transaction which could independently be regulated and subjected to levy under Entry 28 read with Entry 66 of List II of the Seventh Schedule. The Division Bench observed:

> "...The transaction of bringing the agricultural produce, be it for the purpose of manufacture *inter alia*, is what attracts the levy of market fee/cess. We would think that this is a separable transaction, which is well

> within the province of the State Legislature and the powers available to it in Entry 28, read with Entry 66, of List II. Entry 28 of List II provides for "markets". The Entries are fields of legislation. It is elementary that widest and most liberal interpretation must be placed on the Entries. An interpretation may not be placed, which will deprive the competent Legislature of the full legislative powers it enjoys."

19) The Supreme Court in ***Gajarat Ambuja***, in paragraph 10, had extracted the aforesaid observations from the Division Bench judgment and thereafter proceeded to frame a specific issue as to whether the State Government had the legislative competence to enact the impugned provisions.

20) The Supreme Court, however, did not accept the findings of the Division Bench in ***Maa Uma***. The Supreme Court examined the scheme and object of the 2011 Act and observed that the primary object of market legislation is to ensure a fair return to the producer and that such legislation is essentially intended to govern the buyer-seller relationship. It then found that Section 27(c)(iii) travelled beyond that scheme in so far as it sought to levy market fee and development cess upon units which merely brought agricultural produce from outside the State into the market area for carrying out manufacturing without there being any sale or purchase of

the produce within the market area. In this regard it has been observed as follows :

> "33. The primary object, thus, of any market legislation is to ensure that the producer of the agricultural produce gets a fair return. It is also essentially meant to govern the "buyer-seller" relationship. In this context, an examination of Section 27(c)(iii) would show that it is against the scheme of the Act, as it seeks to levy market fee and development cess even on those units which merely bring agricultural produce from outside the State into the market area for carrying out manufacturing, in that there is no sale or purchase of the product within the market area per se."

21) The Supreme Court thereafter specifically examined the question of legislative competence with reference to Entry 52 of List I and Entry 28 of List II. In doing so, the Supreme Court referred to ***Belsund Sugar Co. Ltd. Vs State of Bihar, (1999) 9 SCC 620***, and the Constitution Bench decision in ***ITC Ltd. Vs Agricultural Produce Market Committee, (2002) 9 SCC 232***, including the scope of Entry 28. While recognizing that Entry 28 constitutes an independent field of State Legislation relating to "markets and fairs", the Court nevertheless concluded that the State Legislature lacked competence to levy market fee upon agricultural produce brought into the market area not for sale, but for manufacturing or further processing. The relevant discussion is as follows :

> "34. Further, it is important to examine the legislative competence of the State Legislature to enact the

particular provision. The two relevant entries in play here are Entry 52 of List I and Entry 28 of List II. Entry 28 of List II pertains to Markets and Fairs, while Entry 52 of List I pertains to Industry. In *Belsund Sugar Co. Ltd v. State of Bihar, (1999) 9 SCC 620*, it was held, *inter alia*, as under:

> "16. It becomes at once clear that if location of markets and fairs simpliciter and the management and maintenance thereof are only contemplated by the Market Act, then they would fall squarely within the topic of legislative power envisaged by List II Entry 28. However, the Market Act, as we will presently show, deals with supply and distribution of goods as well as trade and commerce therein as it seeks to regulate the sale and purchase of agricultural produce to be carried on in the specified markets under the Act. To that extent the provisions of List III Entry 33 override the legislative powers of the State Legislature in connection with legislations dealing with trade and commerce in, and the production, supply and distribution of goods. Once we turn to Entry 33 of the Concurrent List, we find that on the topic of trade and commerce in, and the production, supply and distribution of, goods enumerated therein at Sub- clause (b), we find listed items of foodstuffs, including edible oilseeds and oils."

35. The scope of the term 'Industry' for the purpose of List I Entry 52 was examined at length by Ruma Pal, J. in her concurring opinion in the constitution bench decision of ***ITC Ltd. vs. Agricultural Produce Market Committee, (2002) 9 SCC 232***, wherein it was held as under:

> "126. To sum up: the word 'Industry' for the purposes of List I Entry 52 has been firmly confined by *Tika Ramji vs. State of U.P., AIR 1956 SC 676* to the process of manufacture or production only. Subsequent decisions including those of other Constitution Benches have re-affirmed that Tika Ramji's case authoritatively defined the word 'industry'- to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever

the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'.

127. Applying the negative test as evolved in *Tika Ramji* in this case it would follow that the word 'industry' in List II Entry 24 and consequently List I Entry 52 does not and cannot be read to include List II Entries 28 and 66 which have been expressly marked out as fields within the State's exclusive legislative powers. As noted earlier Entry 28 deals with markets and fairs and Entry 66 with the right to levy fees in respect of, in the present context, markets and fairs. List I Entry 52 does not override Entry 28 in List II nor has Entry 28 in List II been made subject to Entry 52 unlike List II Entry 24. This Court in ***Belsund Sugar*** (supra) has also accepted the argument that List II Entry 28 operated on its own and cannot be affected by any legislation pertaining to industry as found in List I Entry 52.

128. If 'industry' does not include 'markets and fairs' it is important to define what markets and fairs connote. 'Market' may strictly be defined as ‘the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly exposed, at a fixed time and place’.

……At common law, fairs and markets were also franchises or rights to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given. This included the right to levy a toll or sum payable by the buyer upon sales of articles in a market. The sense in which the words has been used in Entry 28 appears to cover not only such right but the market place itself including the ‘concourse of buyers and sellers' and the regulation of all these.” *(emphasis laid by this Court)*

36. A perusal of the abovementioned judgments makes it clear that List I Entry 52 governs the process of manufacture and production. Therefore, in the instant case, the State Legislature did not have the competence to enact the impugned provisions which sought to levy market fee and development cess even on those agricultural produce which were not being brought into the market for the purpose of sale, but for the purpose of manufacture or further processing.

> Since the State Legislature was not competent to enact the impugned provision of Section 27(c)(iii) of the Act, the same is liable to be struck down as the same was enacted by the State Legislature without having the legislative competence to do so."
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> (emphasis supplied)

22) The Supreme Court ultimately set aside the judgment of this Court in ***Maa Uma*** and struck down clause (iii) of Section 27(c). Section 27(c)(iv), however, was specifically upheld.

23) The effect of the decision on the reasoning of the Division Bench in ***Maa Uma*** is significant. The proposition that bringing agricultural produce into a market area for manufacture constitutes, by itself, a separable transaction capable of sustaining a levy under Entry 28 read with Entry 66 of List II cannot survive in so far as Section 27(c)(iii) is concerned. It was on that very basis that the levy under the said provision has been sustained by the Division Bench in ***Maa Uma***, whereas the Supreme Court held that the State Legislature lacked competence to impose market fee and development cess upon agricultural produce brought into the market area not for sale but merely for manufacturing or further processing.

24) It is true, as urged by the respondents, that the Supreme Court expressly struck down Section 27(c)(iii) and did not strike down Section 27(c)(v) or its first proviso. This circumstance, however, has to be appreciated in its proper perspective. The appeals before the Supreme Court arises from the challenge to Section 27(c)(iii) and Section 27(c)(iv) and, the Supreme Court adjudicated upon those provisions. The absence of an express declaration regarding Section 27(c)(v), therefore, cannot be treated as an affirmative pronouncement upholding its validity.

25) The principle declared by the Supreme Court while examining the legislative competence of the State Legislature cannot be ignored while testing the validity of another provision which is alleged to impose a levy upon substantially the same event. The question, therefore, is whether the event upon which it imposes development cess can constitutionally be distinguished from the event which the Supreme Court held incapable of sustaining the levy under Section 27(c)(iii).

26) This brings us to the constitutional entries relied upon by the respondents. Entry 24 of List II deals with industries, subject to Entries 7 and 52 of List I. Entries 26

and 27 of List II deal respectively with trade and commerce within the State and production, supply and distribution of goods, both being subject to Entry 33 of List III. Entry 28 of List II deals with markets and fairs, while Entry 66 of List II enables the State Legislature to levy fees in respect of matters contained in List II.

27) Entry 66 of List II does not constitute an independent substantive field of legislation. A fee levied there under must have a nexus with a matter which otherwise falls within the legislative competence of the State under List II. Likewise, Entries 24, 26 and 27 of List II cannot, merely because the agricultural produce is ultimately utilised in manufacture or thereafter enters trade or commerce, confer competence to levy development cess upon the anterior event of its being brought from outside the State into a market area. The legislative competence has to be tested with reference to its true nature and incidence of the levy and not merely by reference to the ultimate use to which the goods may substantially be put.

28) Entry 28 of List II undoubtedly constitutes an independent legislative field relating to ‘markets and fairs’. The issue, however, is whether the particular event

subjected to levy by the proviso falls within the field. That question stands substantially answered in ***Gujarat Ambuja***. Notwithstanding the availability of Entry 28 read with Entry 66 of List II, the Supreme Court held that the State Legislature lacked competence to impose market fee and development cess upon agricultural produce brought into the market area not for sale, but merely for manufacture or further processing. The mere physical entry of agricultural produce into an area notified as market area, therefore, does not, by itself, render such movement an activity relating to a "market" so as to sustain the levy under Entry 28 read with Entry 66 of List II. Consequently, we find no force in the contention that Entry 28 of List II would confer power in the State Legislature to impose development cess on agricultural produce brought into a market area not for sale but only for manufacture or further processing.

29) We are also unable to accept the contention that the impugned proviso can be distinguished merely because it provides for development cess alone and not market fee. Section 27(c)(iii), which was struck down in ***Gujarat Ambuja*****,** itself contemplate both the market fee and development cess. The infirmity identified by the

Supreme Court was not dependent merely upon the nomenclature of the impost. The Court was concerned with the event upon which the liability was sought to be fastened namely, agricultural produce being brought from outside the State into the market area for manufacture or further processing despite absence of any sale or purchase therein.

30) Consequently, if the first proviso to Section 27(c)(v) makes development cess payable merely because agricultural produce is brought from outside Uttarakhand for manufacture or processing retaining development cess while excluding market fee, it does not remove the constitutional infirmity. What is relevant is the true nature and incidence of the levy and not the name by which the levy is described.

31) For the same reason, the statutory description of movement of agricultural produce as “primary arrival” or “other secondary arrival” cannot determine legislative competence. These are classifications created by the State enactment and cannot enlarge the legislative field available to the State Legislature. While examining the constitutional validity the substance of the transaction has

to be seen and thereafter it has to be ascertained that what event actually attracts the levy.

32) The respondents' submission that development cess is justified because manufacturing units utilizes roads, bridges and other infrastructure developed and maintained by the market committees also does not answer the question of legislative competence. The purpose for which the proceeds of a levy are utilized is distinct from the source of legislative power to impose the levy. The utilization of the amount collected for development of market infrastructure cannot by itself confer legislative competence if the event upon which the levy is imposed does not otherwise fall within the legislative field of the State.

33) Equally, the levy cannot be sustained by treating it as one arising out of a sale or other commercial transaction if that is not event upon which the impugned demands proceeds. If there is a sale or purchase of notified agricultural produce within the market area the liability would have to be determined under the charging provision applicable to such transaction. That would constitute a different statutory and factual foundation. In the case before us, however, the demand is founded upon

agricultural produce having been brought from outside Uttarakhand for manufacture or processing.

34) The matter, therefore, has to be decided on the basis of the event which actually attracts the levy under the impugned proviso. If the liability of development cess arises merely upon agricultural produce being brought from outside the State into the market area for manufacture or further processing notwithstanding the absence of any sale or purchase of such produce within the market area the distinction sought to be drawn by the respondents between Section 27(c)(iii) and the first proviso to Section 27(c)(v) is merely of form rather than substance. The ratio of ***Gujarat Ambuja*** cannot be circumvented by shifting substantially the same levy from one sub-clause to another, by describing the movement of goods as 'Primary Arrival' or 'Additional Secondary Arrival', or by retaining development cess while excluding market fee. The legislative competence of the State has to be tested by reference to the substance and incidence of the levy.

35) We, accordingly, hold that the reasoning in ***Maa Uma*****,** in so far as it treated the mere bringing of the agriculture produce into a market area for manufacture as

independent or separable sufficient to sustain the levy under Entries 28 and 66 of List II, does not survive the judgment of the Supreme Court in ***Gujarat Ambuja***. Consequently, in so far as the proviso to Section 27(c)(v) authorizes levy of development cess merely upon agricultural produce brought from outside the State into a market area for manufacture or further processing without any sale or purchase of such agricultural produce within the market area, it suffers from the same lack of legislative competence which led the Supreme Court to strike down Section 27(c)(iii).

36) We, therefore, hold that the first proviso to Section 27(c)(v) to the aforesaid extent to be beyond the legislative competence of the State Legislature. The impugned notices and the consequential demands, in so far as they require petitioners to pay development cess solely on agricultural produce brought from outside the State for manufacture or processing, cannot be sustained and are accordingly quashed.

37) It is, however, clarified that nothing stated herein shall preclude the levy of market fee or development cess where on the facts of a particular case the ingredients of any other valid charging provision of the

Act are independently satisfied including where the levy is founded upon a taxable transaction of sale or purchase within a market area.

38) The writ petitions accordingly stand disposed of.

39) No order as to costs.

MANOJ KUMAR GUPTA, C.J.

SUBHASH UPADHYAY, J.

Dt: 30TH SEPTEMBER, 2026
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HIMANSHU NEGI

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