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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21349 of 2013 (O&M)
Date of decision:04.07.2016

Technico Agri Sciences Limited ...Petitioner

Versus

The State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. M.L.Sarin, Senior Advocate, with
Mr. Nitin Sarin, Advocate, for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Ankit Aggarwal, Advocate, for
Mr. Anupam Singla, Advocate, for respondent No.4.

Mr. Sanjeev Sharma, Advocate,
for respondents No.2, 7, 14, 16 and 18.

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Rakesh Kumar Jain, J.

This petition is directed against the assessment order dated 12.07.2010 (Annexure P-10/B), order dated 24.03.2011 (Annexure P-15) passed by the General Manager (Enforcement), Punjab Mandi Board, rejecting the appeal filed by the petitioner, order dated 19.07.2013 (Annexure P-59) passed by the Special Secretary, Department of Agriculture, State of Punjab, dismissing the revision petition filed by the petitioner, order dated 27.08.2013 (Annexure P-63), dismissing the application for review/recalling by the same authority and also for quashing the orders dated 25.04.2011 and 12.06.2012 passed by the Under Secretary

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(Agriculture), Government of Punjab and all consequent notices, being violative of the Punjab Agricultural Market Produce Act, 1961 (hereinafter referred to as the "Act") and the Punjab Agricultural Market Produce Rules, 1962 (hereinafter referred to as the "Rules") and also to declare the seed potato to be different and distinct from normal potato, holding the same not to be agricultural produce, as defined in the Act.

In brief, the petitioner-company, previously known as "Chambal Agritech Limited", is a subsidiary of Technico Pty. Limited, Australia and is engaged in the production of Tissue Culture based soil free "TECHNITUBER® seed potatoes" using its own patented technology. The TECHNITUBER® seed potatoes are produced through a complex procedure applied to pathogen tested tissue culture plants under controlled environment conditions. These TECHNITUBER® seed potatoes are planted/grown under contract framing to produce high yielding early generation seed potatoes for local farmers as well as for other farmers in and around the country. The process undertaken by the petitioner for growing the TECHNITUBER® seed potatoes is reproduced as under:-

"1. STAGE GENERATION 0 (G-0) – 1 YEAR DURATION

- ► Pathogen tested tissue culture plantlets are put through a complex series of integrated Agri Biotech processes under controlled production protocols and environmental conditions to produce TECHNITUBER® seeds.
- ► The TECHNITUBER® seeds are then conditioned, pre-treated and stored so that they sprout and made ready for field planting and all this is carried out at the petitioner-company's seed facility under precise conditions.

2. STAGE GENERATION 1 (G-1) 5-6 months duration

- ► The petitioner-company contacts farmers in the State of

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Punjab, carries out a detailed selection of their land (based on technical requirements) and enters into written agreements with the farmers. That a sample seed multiplication through contract farming agreement is annexed herewith as ANNEXURE P-1.

- The TECHNITUBER® seeds are then provided to the farmers who plant the same in their fields.
- The harrowing, cross harrowing, planking, sowing, weeding, hilling, chiseling, rouging, irrigating, harvesting, grading, bagging, etc. of the seeds is carried out under strict supervision and advice of the petitioner-company's agronomy team. All the basic materials/ingredients like seeds, chemicals (insecticides, fungicides, micro-nutrients) and packing material is provided by the petitioner-company.
- At harvest during the month of February/March every year the seed potatoes of Generation 1 (G1) (hereinafter interchangeably referred to as "Seed" also) is lifted from the field. At this stage, the seed is dormant (not fit for sowing).
- The seed potatoes (G1) are placed in a cold storage to initiate the process of breaking the dormancy under strictly monitored conditions such as temperature, relative humidity, carbon dioxide levels, etc.

3. STAGE GENERATION 2 (G-2):1 YEAR DURATION

- The seed (G1) is transferred from cold storage and planted in the fields in the next season (October of the next year) to produce the Generation 2 seeds.
- Similar to Generation 1 all the work is carried out with the materials supplied and overall supervision by the agronomy team of the petitioner-company.
- The farmers are remunerated at pre-agreed rates per kilogram of the G-2 seeds produced.
- These seeds are still dormant (not fit for sowing) and are once again lifted and placed in cold storage to re-initiate the process of breaking the dormancy.
- After reconditioning, the product is taken out from cold

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> storage, dried, separated, repacked and finally sold to potato growers in the market as seed potatoes."

The petitioner-company has been the pioneer in India for production of tissue culture based TECHNITUBER® seed potatoes which are grown in village Manpura, Tehsil Baddi, District Solan, Himachal Pradesh, which are not meant for human consumption and are only meant for cultivation by farmers into a final crop of potatoes which is fit for human consumption. It is alleged that the Seeds Act, 1966 permits the sale of certified seeds as well as non-certified seeds and the non-certified seeds are known as "truthfully labeled seeds" i.e. self certified with respect to germination, genetic purity etc. Similarly, the petitioner-company sells its seeds as "truthfully labeled seeds". It is further averred in the petition that the "seed", as defined under the Seeds Act, 1966, includes tubers which are being grown by the petitioner on the basis of contract farming. It is further alleged that initially the petitioner-company started framing itself by entering into "Land Management Agreements" whereby it carried out the seed multiplication through cultivation itself but due to the increase in production, the petitioner-company started outsourcing the said task to farmers through contract farming. The petitioner-company was granted license w.e.f. 21.02.2003 to carry on the business of a dealer (wholesale at State level) for sale of seed potatoes in the whole of Punjab State as per the Seed Act, 1966 and Seed (Control) Order, 1983 and the said license was renewed from time to time. It is further alleged that the Punjab Mandi Board clarified that some specific crops planted through contract farming shall attract Market Fee and Rural Development Fee (hereinafter referred to as the "MF & RDF") @ 0.25% instead of 2%, which was deposited by the petitioner with the Market Committee, Amloh, after a memorandum of settlement was arrived at but the Market Committee, Amloh, passed a fresh assessment order on 12.07.2010 (Annexure P-10/B), demanding MF & RDF @ 2% each for the period from 2003 to 13.03.2006 and also imposed penalty asking the petitioner-company to pay a sum of ₹29,03,840/-, which has been specifically impugned in this petition.

The petitioner filed an appeal (Annexure P-10/C) on 27.08.2010 against the order dated 12.07.2010 (Annexure P-10/B), which was dismissed by the General Manager (Enforcement), Punjab Mandi Board on 24.03.2011 (Annexure P-15) on the ground that the seed potatoes were not certified by the Punjab State Seed Certification Authority, which order has also been challenged in the present petition.

Aggrieved against that order dated 24.03.2011, the petitioner filed the revision petition before the Special Secretary to Government of Punjab, Department of Agriculture, Chandigarh, which was dismissed on 19.07.2013 vide order Annexure P-59 on the ground that the petitioner could not place on record any document which proves that the potato harvest which was being sent to Chambal Agritech Ltd. was a certified seed which is mandatory under the Punjab Seed Certification Authority and there is also no other document on record which shows that the said seed was treated with chemicals as is required for certification of seed so that it cannot be used for human consumption and the petitioner also failed to produce any document which proves execution of agreement with the

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farmers regarding harvesting of potato seeds.

The petitioner filed an application for review/recalling of the order dated 19.07.2013 (Annexure P-59) along with other material but the said application was rejected vide order dated 27.08.2013 (Annexure P-63) on the ground that there was no provision for review in the Act.

The present petition has, thus, been filed against the aforesaid orders, in which the basic issue is as to whether the petitioner is liable to pay the MF & RDF on the seed potatoes in terms of the Section 23 of the Act read with Rule 29 of the Rules.

Counsel for the petitioner has submitted that as per Section 23 of the Act, the fee is leviable on the agricultural produce, which is defined under Section 2(a) of the Act. It is further submitted that the agricultural produce is one which is specified in the schedule appended with the Act in which the potato seed is not mentioned rather it is potato "Alu" at entry No.20. It is further submitted that since the potato seed is not an agricultural produce, therefore, it does not attract the provision of levy of fee. In support of his submission, he has relied upon the judgment of the Supreme Court rendered in the case of **Krishi Utpadan Mandi Samiti and Ors. vs. Pillibhit Pantnagar Beej Ltd. and another,** (2004) 1 SCC 391.

Counsel for the respondents has submitted that there is no exemption from payment of MF & RDF either on the potato or potato seed as it is available only on certified seeds. In this regard, he has referred to Rule 29(1) 3rd proviso (ii) of the Rules. He has further submitted that Rule 14 of the Seed Rules, 1968 provides for three classes of seeds and in the absence of any certification from the Certification Authority established under the Seed Act, 1966, the petitioner cannot claim exemption from payment of MF & RDF.

According to the respondents, the petitioner is engaged in purchase of potatoes from the farmers, which is thereafter stored in different stores/cold storage and is further sold. It is further submitted that the decision in **Krishi Utpadan Mandi Samiti's case (supra)** is also not applicable as in that case, the matter was pertaining to the certified seed of wheat.

I have heard learned counsel for the parties and examined the available record with their able assistance.

This petition is filed against the assessment order and orders of the Appellate Authority and the Revisional Authority. The petitioner has now produced voluminous record, which was perhaps not produced before the authorities below much-less the Revisional Authority as it is evident from the petition which was filed for review/recall of the order of the Revisional Authority along with various documents but the said application for recalling was dismissed on the ground of jurisdiction. It is also evident from the impugned order (Annexure P-59) that the petitioner did not refer to the decision of the Supreme Court in **Krishi Utpadan Mandi Samiti's case (supra)**, which has now been strongly relied upon by the petitioner to contend that the potato seed is not an agricultural produce and reference has also been made to para 35 of the said judgment in which it has been held that *“there is no nexus whether the seed has been chemically treated or not* *and the levy of market fees. Since the seed is a separate commodity from grain, the same is not covered under Schedule I of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same".*

It is also pertinent to mention that in the earlier writ petition bearing CWP No.4506 of 2013, permission was granted to the petitioner to raise all the grounds before the Revisional Authority who was further directed to decide the lis between the parties as early as possible preferably within a period of six months but it appears that the petitioner did not take all the pleas before the Revisional Authority who had passed the impugned order Annexure P-59 only on the ground that the petitioner has failed to show that the potato seed, even if it is considered to be the seed, was certified. There is no dispute that in order to attract levy of MF & RDF at the behest of the concerned Market Committee, the produce shall have to be the "agricultural produce" and should be specified in the schedule appended to the Act, in which potato seed is conspicuous by its absence as only potato (Alu) is mentioned as an agricultural produce, whereas in case of cotton, its seed "Banaula" has specifically been mentioned as agricultural produce at entry No.15 and cotton (ginned and un-ginned/Kapas and Rui) has also been mentioned as agricultural produce at entry No.17.

Further Rule 29(1) 3rd proviso (ii) of the Rules, relied upon by the respondents, is actually applicable or not is again neither discussed nor decided by the Revisional Authority as it has not been decided as to whether the potato seed, as claimed by the petitioner, is an agricultural produce or not.

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Thus, keeping in view the fact that various aspects of the matter have been left un-debated and unanswered either on facts or on law as the petitioner has now produced on record huge documentary evidence to allege that the potato produced by them is a potato seed and is not just potato (Alu) which is not being consumed by human beings and is being used for further multiplication of the produce and is, thus, not an agricultural produce to attract the provisions of Section 23 of the Act and Rule 29 of the Rules besides the legal aspect of the matter which is also required to be looked into by the Revisional Authority more particularly in the light of the decision of the Supreme Court in **Krishi Utpadan Mandi Samiti's case (supra).** Hence, I am of the considered opinion that it would be just and expedient to remand the case back to the Special Secretary (Agriculture), Government of Punjab (Revisional Authority) to pass a fresh well considered speaking order after affording sufficient opportunity to the parties to the lis which would include filing of the fresh documents by both the sides and also after taking into consideration their respective contentions issue-wise.

Hence, the present petition is hereby allowed, impugned orders Annexures P-59 and P-63 are set aside and the matter is remanded back to the Revisional Authority to decide the lis between the parties afresh by passing a well considered speaking order after providing them sufficient opportunity to lead their respective evidence by way of producing relevant documents and after considering their respective contentions, in accordance with law. The parties are directed to appear before the Revisional

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Authority on 11.07.2016. Till then, the respondents are directed not to take any coercive steps to recover the MF & RDF @ 2% and shall also give Form Q to the petitioner for the purpose of export, as ordered by this Court vide order dated 03.03.2014 passed in this petition. It is further directed that the Revisional Authority shall decide the lis between the parties as early as possible, preferably within a period of six months, from the date of appearance of the parties before it.

July 04, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**