

CWP No.27156 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.27156 of 2013
Date of decision:12.02.2016**

M/s Dhanna Mal Mulkh Raj

...Petitioner

Versus

The Secretary to Government of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.K.Girdhar, Advocate,
for the petitioner(s).

Mr. Vinod S. Bhardwaj, Addl. A.G., Punjab.

Mrs. Geeta Sharma, Advocate,
for respondent Nos.2 and 3.

Rakesh Kumar Jain, J.

This order shall dispose of a batch of 15 cases bearing CWP Nos.27156, 27228, 27810, 27829, 27836, 27887, 27915, 27930, 27964, 27966, 28114, 28135, 28214, 27326 and 27333 of 2013. However, for the sake of convenience, the facts are being extracted from CWP No.27156 of 2013.

The facts, as narrated in the petition, are that on 25.01.1997, the petitioner purchased wheat of ₹4,42,080/- from the Food Corporation of India, Sangrur (for short “FCI, Sangrur”) in the open auction under the Open Market Sale Scheme. The petitioner is alleged to have paid the price

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of the wheat along with taxes, market fees and the Rural Development Fund (RDF) to the FCI, Sangrur, who had further paid the market fee and the RDF to the concerned Market Committee. The petitioner received a notice dated 11.11.1997, followed by another notice dated 15.05.1998, asking it to produce all the records regarding the transaction of purchase and sale of the wheat, to which the petitioner filed a reply on 25.09.1998 to respondent No.4, in which it was averred that though the petitioner had appeared before the Secretary, Market Committee, Jagraon and produced the records but the same were never perused. It was further averred that the entire market fee and the RDF was paid to the FCI at Sangrur, which was subsequently paid by it to the Market Committee concerned. It is further averred that respondent No.4 again issued a letter dated 17.02.1999, requiring the petitioner to appear before it. The petitioner appeared and produced the entire records. However, after a period of 3 years on 25.09.2002, respondent No.4 again sent a letter to the petitioner for producing the record of the year 1996-97, to which the petitioner filed a reply dated 01.10.2002 reiterating the payment of market fee and RDF on the purchase of the wheat. Thereafter, the respondents served Form 'O' on 11.07.2003 under Rule 31(4) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short "Rules"), which was followed by another letter by respondent No.4 dated 22.07.2004 and, thereafter, on 09.08.2004, a demand notice was issued under Rule 31(11) of the Rules, holding the petitioner liable to pay the market fee of ₹40,278/- and also imposed the penalty of the same amount, asking the petitioner to pay ₹80,556/- towards the market fee along

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with interest @ 18% per annum. The said assessment order dated 09.08.2004 was challenged by the petitioner by way of an appeal in which it was urged that the market fee has already been paid to the Market Committee, Sangrur, therefore, they are not liable to pay the market fee again. The said order was set aside on 17.03.2005 and the matter was remanded back to the Assessing Authority, Sangrur. After remand, respondent No.4 passed the order afresh on 03.05.2005 holding the petitioner liable to pay the market fee, which was again challenged by way of an appeal which was dismissed on 08.01.2007. The petitioner challenged the order dated 03.05.2005 and 08.01.2007 by way of CWP No.3941 of 2007, which was dismissed on 04.02.2008, with liberty to the petitioner to avail his remedy of revision before the competent authority. The petitioner, therefore, filed the revision petition which was dismissed on 25.09.2013 along with other 14 petitions. The petitioner has, thus, challenged the order dated 03.05.2005 passed by respondent No.4, order dated 08.01.2007 passed by respondent No.3 and the order dated 25.09.2013 passed by respondent No.1, *inter alia*, on the grounds that once the market fee had been paid by the petitioner at the time when wheat was purchased from FCI, Sangrur within the Market Committee, Sangrur, who had further deposited it with the concerned Market Committee, the respondents cannot hold the petitioner liable to pay the market fee for sale of the said wheat in the area of the Market Committee, Jagraon. In this regard, the petitioner has referred to Rule 30 of the Rules and has relied upon a decision of the Supreme Court in the case of **Haryana State Agriculture Marketing Boards vs. Sh.**

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Ganesh Rice and General Mills, 1999(1) R.C.R. (Civil) 463, a Division Bench decision of this Court in the case of **Punjab State Agricultural Marketing Board and another vs. State of Punjab and another**, CWP No.2291 of 2007, decided on 20.02.2007 and a Single Bench decision of this Court in the case of **Din Dayal Mahadev Parshad Mahavir vs. Market Committee, Rewari**, 1975 PLJ 274.

On the other hand, the case of the respondents is that the transaction of wheat relates to the period 1996-97 purchased by the petitioner from the FCI, Sangrur and, thereafter, the said wheat was brought to the market area of Jagraon for further transaction. It is also alleged that there were total 90 release orders issued by the FCI, Sangrur related to the firms at Jagraon regarding purchase of wheat in 1996-97, out of which, except for the petitioner-firm(s), all the firms have already produced their records before the Secretary, Market Committee regarding the above said purchase of wheat from the FCI at Sangrur and had paid the market fee. It is also alleged that Rule 29 of the Rules was amended in the year 2002 and the said amendment cannot be applied retrospectively because the transaction relates back to the period 1996-97 and before 04.09.1998, the market fee and RDF was leviable on each transaction of agricultural produce if the same was not held in the same market area. It is further argued that the un-amended Rule 29 shall be applicable to the transaction in question and in any case Rule 30 would not be applicable because it operates in a different field as Rule 29 is regarding the levy and collection of fee on the sale and purchase of the agricultural produce, whereas Rule 30

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deals with the exemption from payment of fee in respect of sale and purchase of any agricultural produce manufactured or extracted from the agricultural produce in respect of which such fee has already been paid. It is also submitted that the judgments relied upon by counsel for the petitioner is not applicable to the facts and circumstances of the present case.

I have heard learned counsel for the parties and examined the available record.

There is no dispute on the facts that the petitioner had purchased the agricultural produce (wheat) from the FCI, Sangrur and paid the market fee and RDF on it. It is also not in dispute that the petitioner had brought the said wheat within the market area of Jagraon for the purpose of sale and the respondents have asked it to pay the market fee on the sale of the wheat in the market area of Jagraon. The dispute is as to whether the petitioner is liable to pay the market fee on the agricultural produce (wheat) purchased at Sangrur, on which the market fee and RDF had already been paid, and then sold it in the market area of Jagraon in its same form i.e. without its any further manufacture or extraction of anything from it?

The other question would be as to whether the amendment in Rule 29 of the Rules, brought by the notification dated 15.11.2002, would operate retrospectively or not?

Section 23 of the Punjab Agricultural Produce Markets Act, 1961 (for short “the Act”) deals with the levy of fees. Section 23 of the Act is reproduced as under:-

“23. Levy of fees - A committee shall, subject to such rules as may be made by State Government in this behalf, levy on ad-valorem basis –

- (i) Fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred ; and
- (ii) Also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees.

Provided that –

- (a) No fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and
- (b) A fee shall be leviable only on the parties to a transaction in which delivery is actually made.

Section 43 deals with the power of the State Government to make Rule by way of notification for carrying out the purposes of the Act. Rule 29 deals with the levy and collection of fee on the sale and purchase of the agricultural produce. The said Rule 29, for the purpose of ready reference, is reproduced as under:-

“29. Levy and collection of fees on the sale and purchase of agricultural produce. [Section 23 & 43(2)]. (1) Under section 23 a Committee shall levy--

- (i) fees on the agricultural produce bought or sold by a licensee; and
- (ii) also additional fees on the agricultural produce when sold by a producer to a licensee;

in the notified market area at the rate fixed by the Board from time to time.

Provided that no fee shall be levied on the agricultural produce bought or sold in respect of which fee has already been paid in the same or other notified market area within the State. The licensee dealer who claims exemption from payment of fee shall make declaration and give certificate to that effect in Form ‘KK’

within a period of sixty days of the transaction of agricultural product in question to the Committee from where the exemption is claimed:

The certificate in Form 'KK' shall be prepared in quadruplicate from the book-let, duly attested and issued by the Secretary of the concerned committee or its authorized officer, against the payment, fixed by the committee. It shall be the duty of the dealer, claiming exemption from the payment of fee to send the original copy of Form 'KK' to the committee within whose market area the agricultural produce is brought. The second copy shall be sent to the office of the committee within whose market area such agricultural produce is bought and the third copy shall be retained by the dealer, who purchased the agricultural produce and the fourth copy shall be retained by the dealer who sold the agricultural produce and the same shall be kept as a part of their accounts, maintained in respect of payment of the fee. In case, the dealer fails to present the certificate referred to above within a period of sixty days, then the Assessing Authority shall impose penalty equal to the amount of ten per cent of market fee for the next month, twenty per cent of the market fee for further next month, thirty per cent of the market fee for further next month, forty per cent of the market fee for further next month and fifty per cent of the market fee for the subsequent next month. If, the dealer fails to submit the aforesaid certificate within the stipulated period, the the penalty equal to the amount of the market fee due, shall be imposed upon him:

Provided further that the dealer claiming exemption from the payment of fee under sub-rule (1), shall also produce a copy of the railway receipt, forwarding note, bill, bilty or challan, as the case may be, duly signed by him or his authorized agent in the office of the committee where the agricultural produce is bought before it is loaded the second copy shall be produced by the said dealer in the office of the committee, within whose market area the agricultural produce is brought before it is unloaded and the third copy shall be retained by him. In case no such copy is produced by the dealer in the office of concerned committee, no claim for exemption shall be entertained;

Provided further that no such fee shall be levied on,-

- (i) the agricultural produce imported from a foreign country;
- (ii) the certified seeds;
- (iii) the timber or firewood of the following categories imported from outside the State of Punjab:-
 - a) Kail;
 - (b) Deodar;
 - (c) Partal (Spruce and Fir);
 - (d) Hollock (Assam Teak);
 - (e) Champ;
 - (f) Teak;
 - (g) Sal;
 - (h) Chil.

(2) The responsibility of paying the fees prescribed under sub-rule (I) shall be of the buyer and if he is not a licensee then the seller who may realize the same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee.

(2-A) The additional fees shall be realized from the producer by the licensee through whom the producer sells the agricultural produce and if the sale is made by the producer direct to a licensee the additional fees shall be realized by the licensee from out of the sale proceeds of the agricultural produce; and

(3) The fees including additional fees shall be paid to the committee or a paid officer duly authorized to receive such payment within seven days of the day of transaction but before the resale or processing or export of such agricultural produce out of the notified market area:

Provided that in case any notified agricultural produce is found resold or processed or dispatched outside the notified market area without paying market fees on such produce, the market fee shall be levied with such penalty as has been provided in sub-rule (9) of the rule 31.

Explanation:- In computing the period of seven days specified in sub-rule 3 of rule 29 and sub-rule (1) of rule 31, the day of transaction shall be included.

- (4) A receipt in Form K shall be granted forthwith to the person making payment in respect of any fees paid under these rules.
- (5) Every officer or servant employed by a Committee for the collection of fees shall be supplied by the committee with a badge of office in such form as may be prescribed by it. The badge shall be worn by the officer or servant concerned while discharging his duties.
- (6) Every such officer or servant shall before entering on his duties furnish such security as may be prescribed by the bye-laws of the committee concerned.
- (7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area.
- (a) If the agreement of sale or purchase thereof is entered into in the said area; or
- (b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or
- (c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.
- (d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.
- (8) If in the case of any transaction any two or more of the acts mentioned in sub-rule (7) have been performed within the boundaries of two or more notified market areas the market fee shall be payable to the committee within whose jurisdiction the agricultural produce has been weighed in pursuance of the agreement of sale or, if no such weighment has taken place to the committee, within whose jurisdiction the agricultural produce is delivered.”

Rule 29 of the Rules provides for levy of fees on the agricultural produce purchased or sold by a licensee. The first proviso to Rule 29 says that no fee shall be leviable on the agricultural produce bought

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or sold in respect of which fee has already been paid in the same or other notified market area within the State. This proviso has been introduced by notification dated 15.11.2002, but prior thereto, the first proviso to Rule 29 was that “*provided that no such fees shall be levied on the same agricultural produce more than once in the same notified area*”. Therefore, till 15.11.2002, when the notification No.11/12/2002-M/3/7394 dated 15.12.2002 was issued for substituting the first proviso of Rule 29 of the Rules, no fee was leviable on the same agricultural produce which was bought or sold by the licensee more than once in the same market notified area. However, by virtue of the amendment in Rule 29 w.e.f. 15.11.2002, the words “or other notified market area within the State” were also added giving a respite to the licensee from the payment of market fee and RDF on the sale and purchase of the same agricultural produce again in the entire State. Since the transaction in the present case admittedly relates to the period of 1996-97, which is much prior to the notification dated 15.11.2002, therefore, the amended provision, brought in Rule 29 w.e.f. 15.11.2002, would not be applicable to the case of the petitioner.

Insofar as Rule 30 is concerned, which has basically been relied upon by the petitioner, it deals with the non-payment of market fee twice in case there is a sale or purchase of the agricultural produce, which is manufactured or extracted from the agricultural produce in respect of which the fee has already been paid in the same notified market area or in any other market area of the State. Rule 30 is altogether different from Rule 29 because Rule 29 simply deals with levy of fee on the agricultural produce

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bought or sold within the notified market area, whereas Rule 30 deals with an exemption from payment of fees in case an agricultural produce is brought in the notified market area on which the market fee has already been paid and out of that agricultural produce, something is manufactured or extracted, then on the said component, which would also be an agricultural produce, if sold/purchased, no market fee would be leviable. Insofar as the judgments relied upon by the petitioner are concerned, none of these are applicable to the facts and circumstances of this case and, therefore, the petitioner cannot support his case with the said precedents.

Thus, in view of the aforesaid discussion, the impugned order(s) have rightly been passed against the petitioner(s) and as such, the present petition(s), being denuded of any merit, are hereby dismissed.

No costs.

February 12, 2016
vinod*

(Rakesh Kumar Jain)
Judge