THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.19065 of 2004

ORDER :

Heard the counsel for petitioner, and the learned Standing Counsel for A.P. Agricultural Market Committee, for respondent.

2. This Writ Petition is filed assailing the proceedings dt.07.08.2004 of the respondent-Market Committee in levying an amount of Rs.16,32,450/- towards market fee and penalty of Rs.31,53,441/- on alleged undisclosed turnover for the year 2000-01.

3. The petitioner is a trader dealing in export of processed frozen prawns.

4. Prawn is a notified commodity under the Andhra Pradesh Agricultural (Produce and Livestock) Market Act, 1966 (**for short, 'the Act'**).

5. The petitioner is a licencee from the respondent-Market Committee at Bhimavaram, and he was dealing in prawns in the area of operation of the said Market Committee.

6. It is not in dispute that petitioner filed returns under Section 12-A of the said Act on the basis of which there was an assessment done by the respondent who is Secretary of the Agricultural Market Committee for the year 2000-01. However it appears that petitioner had disclosed turnover with the Commercial Tax Office, Bhimavaram for the same accounting year 2000-01 of Rs.68,65,90,430/- while showing a turnover of only Rs.37,12,46,276/- to the respondent-Market Committee.

7. Therefore, the respondent-Market Committee issued a show-cause notice on 05.02.2004 stating that petitioner had submitted lesser turnover to it when compared with the turnover disclosed to the Commercial Tax Office for the year 2000-01 and suppressed Rs.31,53,44,154/- and evaded market fee of Rs.15,76,721/-.

8. The petitioner gave a letter on 07.02.2004 requesting time up to last week of March, 2004 to comply with the said show-cause notice asking him to furnish correct and complete returns stating that their account books relating to the year 2000-01 were in the Head Office and their accountant had gone on long leave.

9. Thereafter, on 03.03.2004, the respondent-Market Committee rejected the said request and granted one week time to produce the account books for the said year stating clearly that otherwise best judgment assessment proceedings under Section 12-B (i) and Section 12-B (iii) of the Act would be confirmed without any further notice, and the escaped turnover would be subjected to collection of Market Fee. Copy of the assessment order of the Commercial Tax Office, Bhimavaram dt.06.11.2003 of the petitioner was also enclosed to the notice dt.03.03.2004.

10. Since no books of accounts were produced as directed in the notice dt.03.03.2004, the respondent passed orders on 11.03.2004 to the best of his judgment under Section 12-B and served it on the petitioner on 15.03.2004.

11. Aggrieved by the said assessment proceedings dt.11.03.2004, the petitioner filed WP.No.7636 of 2004. In the said Writ Petition, the petitioner contended that this order was passed in violation of principles of natural justice and sufficient time was not granted to it to produce the books of accounts. He contended that though remedy of appeal was available, petitioner would have to pay substantial amount to avail the remedy of appeal and so it is not an effective alternative remedy.

12. The learned Standing Counsel for respondent therein agreed that the period of time granted to petitioner is not sufficient for production of records though he contended that the order passed was correct.

13. On 15.06.2004, this Court allowed the Writ Petition setting aside the assessment order dt.11.03.2004 on the ground that petitioner did not have sufficient opportunity for production of books of accounts. It therefore directed the respondent to frame a fresh assessment for 2000-01 after giving petitioner sufficient opportunity for production of books of accounts for the said assessment year. It directed the petitioner to produce the books of accounts and cooperate with the respondent for framing appropriate revised assessment. It granted six (06) weeks' time from the date of its order, i.e., 15.06.2004, for production of the record and then directed the respondent to frame appropriate assessment within eight (08) weeks from that day.

14. Thereafter, the petitioner did not produce the books of accounts before the respondent or any other material in respect of the alleged evaded turnover.

15. Therefore, on 07.08.2004, the respondent passed a fresh re-assessment order under Section 12-B of the Act to the best of his judgment on the basis of the material available before him, i.e., on the basis of the turnover disclosed by the petitioner to the Commercial Tax Office, Bhimavaram. He concluded that there is an undisclosed turnover of Rs.31,53,44,154/- on which petitioner had evaded market fee to the tune of Rs.15,76,721/-. He therefore held that the petitioner should pay Rs.16,32,450/- towards market fee assessed and a penalty of Rs.31,53,441/- on the undisclosed turnover for the year 2000-01.

16. Assailing the same, the present Writ Petition is filed.

17. The counsel for petitioner contended that after receipt of the order passed by this Court on 15.06.2004 in WP.No.7636 of 2004 the petitioner approached the respondent and personally enquired from him as to when to place the books of accounts, and the respondent advised the petitioner to bring the books of accounts relating to

2000-01 only after issuance of notice by respondent. He contended that the respondent neither issued notice within six (06) weeks as stipulated by the High Court nor conducted enquiry, and unilaterally passed the impugned order imposing market fee and penalty.

18. A perusal of the impugned order shows that petitioner did not file books of accounts and other necessary material on the evaded turnover within the stipulated time as directed by the Court in its order dt.15.06.2004 in WP.No.7636 of 2004. The plea of petitioner that respondent advised him to bring the books of accounts for the year 2000-01 only after issuance of notice by the market fee is not borne out by any material. It also does not appear to be correct because the respondent is a Secretary of the Market Committee and the question of the Market Committee again issuing a separate notice to petitioner does not arise. If the petitioner had the books of accounts ready with him within the time stipulated by the order dt.15.06.2004 in WP.No.7636 of 2004, he ought to have informed the respondent of the availability of the books of accounts and other material through a notice to the respondent, but the petitioner has not chosen to do so. Since the petitioner has failed to avail the opportunity granted by this Court on 15.06.2004 in WP.No.7636 of 2004 by producing the books of accounts and the necessary material within the time stipulated by this Court, he cannot complain that the respondent has violated principles of natural justice by failing to conduct any enquiry. It would amount to allowing the petitioner to take advantage of his own wrong. The material available with the respondent was the turnover disclosed by the petitioner before the Commercial Tax Office, Bhimavaram, and the respondent cannot be found fault with for relying on the same and directing the petitioner to pay market fee which was evaded as well as penalty by invoking Section 12-B of the Act.

19. The counsel for petitioner sought to contend that the penalty imposed is excessive and that under Sub-Section (iii) of Section 12-B, the upper limit of penalty is two times the market fee due and the respondent ought not to have levied the penalty in the facts and circumstances of the case.

20. In the facts of the present case, though the petitioner was given adequate time by this Court to produce the books of accounts, he failed to do so. Therefore, it cannot be said that his conduct is such that he should be exonerated from levying of any penalty.

21. Therefore, I find no merit in the Writ Petition, and it is accordingly dismissed. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-08-2017
Ndr/*