IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 22288 of 2016
Date of decision : September 26, 2017

M/s Goyal Rice Mills
.... Petitioner

Versus

Market Committee, Sangrur and another
.... Respondents

CWP No. 23650 of 2016

M/s Chet Ram Rice Mills
.... Petitioner

Versus

Market Committee and others
.... Respondents

CWP No. 22758 of 2016

M/s Luxmi Rice Mills
.... Petitioner

Versus

Market Committee and others
.... Respondents

CWP No. 22759 of 2016

M/s Puran Chand and sons
.... Petitioner

Versus

Market Committee and others
.... Respondents

CWP No. 22760 of 2016

M/s Jai Jagdambay Rice Mill
.... Petitioner

Versus

Market Committee and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Ishan Gupta , Advocate
for the petitioner.

None for respondent No.1.

Mr. Parambir Singh, Advocate

for respondent No.2.

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RAKESH KUMAR JAIN, J (oral).

This order shall dispose of five writ petitions bearing CWP No. 22288, 23650, 22758, 22759 and 22760 of 2016. However, for the sake of convenience the facts are extracted from CWP No. 22288 of 2016 M/s Goyal Rice Mills Vs. Market Committee,Sangrur and others.

The sole issue involved in this petition is as to whether the respondents can charge market fee from the petitioner on the purchase of rice (Basmati) from outside the State of Punjab?

In this regard, learned counsel for the petitioner has referred to Rule 30(9) of the Punjab Agricultural Produce Markets Rules, 1962 (for short the Rule) to contend that there is exemption from payment of fee in case the paddy/rice (Basmati) is imported from outside the State of Punjab.

It is submitted that the assessing officer has wrongly assessed the market fee vide the impugned order dated 31.8.2016 (Annexure P-2) and demand notice of the even date was also issued.

Counsel for the petitioner has relied upon the decision of this Court in **CWP No. 18315 of 2013 (O&M) M/s RSG Foods Ltd. Vs. State of Punjab and others** decided on 7.7.2014 and **CWP No. 801 of 2006 M/s Shiv Foods, Manwala Road, Dhuri Vs. Market Committee, Dhuri and another** decided on 3.8.2006 to contend that the exemption is in general from the levy of fee as prescribed under Section 23 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act').

On the other hand, counsel for the respondents has submitted that against the order of assessment passed by the assessing officer, the petitioner has the remedy of filing an appeal in terms of Rule 31 (13) (i) and (ii) of the Rules. Therefore, the present writ petitions are not maintainable in view of the alternative statutory remedy.

He has also submitted that even the Rule 30(9) is not absolute because the petitioner was required to submit the proof of making payment of market fee in the State from which paddy/rice has been imported along with purchase bills relating to distribution and Form K-2 which is to be furnished. The said documents were to be furnished within 60 days and in case it is not done then power has been conferred on the assessing authority to impose penalty accordingly.

Counsel for the petitioner, however, submits that as per his information, the documents were submitted in terms of proviso to Rule 30(9) of the Rules.

I have learned counsel for the parties and after perusing the record, am of the considered opinion that the present writ petitions are not maintainable because of the presence of right to appeal in terms of Rule 31 (13) (i) of the Rules against the order passed by the assessing authority to levy market fee upon the petitioner. Insofar as the other objection of the respondents is concerned that the petitioner cannot claim the exemption in terms of Section 30 of the Rules in view of proviso to Rule 30 (9), it is a matter of evidence which has to be proved before the appellate authority by the petitioner that the documents required under the proviso to Rule 30(9) were actually submitted by the petitioner to the assessing authority or not and if so then how the assessing authority has appreciated the said documents at the time of making assessment of the market fee against the petitioner. Since it is a matter of fact which has to be determined only in appeal, therefore, the present writ petitions are not maintainable and the same are hereby dismissed on this ground.

(RAKESH KUMAR JAIN)
JUDGE

September 26, 2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No