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

CWP-5546-2014
Date of decision : 03.04.2017

M/s G.S. Rice Mills

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate
for the petitioner(s).

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. S.S. Rangi, Advocate
for respondent Nos.2 and 3.

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AMIT RAWAL, J. (ORAL)

The grievance of the petitioner in the present writ petition is against the impugned order dated 10.01.2014 (Annexure P-14) passed by the Secretary to Government of Punjab, Department of Agriculture, Chandigarh, dismissing the revision petition preferred against the order dated 05.07.2006 (Annexure P-11) of the Appellate Authority, whereby whose jurisdiction against the assessment order dated 20.09.2001 (Annexure P-10) recovering the amount of ₹ 1,10,506 as market fee, ₹ 1,10,506/- as penalty, ₹ 1,10,506/- as RDF and ₹ 39,223/- as interest on account of having not paid the market fee with regard to the stepping of the paddy, had been imposed.

Mr. Sandeep Khunger, learned counsel appearing on behalf of the petitioner submits that the petitioner is carrying on a business of rice sheller and had been getting the paddy allotted through procuring agency as well as from his own source. For that purpose, he is required to pay market fee as per the provisions of the Punjab Agricultural Produce Markets Act, 1961 (for short 'the Act') and the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short 'the Rules), framed thereunder. On 12.10.1999, an inspection was done by the Deputy District Mandi Officer, Patiala and found that the petitioner had stored excess quantity of paddy, for which no market fee had been paid. In this regard, he submits that he had been allotted a pady from PUNSUP which fact is evident from the certificate dated NIL (Annexure P-8), whereby 24800-77 qtl. rice was recoverable from the miller against the storage of 58110 bags weighing 37771-5 qtl. Paddy Grade 'A' of crop year 1998-99 and out of which, certain quantity of rice had been delivered on the same date of inspection and remaining to be on 25.11.1999. The petitioner had received an assessment order dated 31.03.2001 (Annexure P-9) i.e. in prescribed format 'Form O' prepared under Rule 31(4) of the Rules. In this regard, he has drawn the attention of this Court to the second page of the notice, whereby a reference to the certain documents specified below has been given, but the detail of which is wanting. In this regard, he was totally oblivious regarding supply of the documents, though number of opportunities had been given by the Assessing Authority before passing of the assessment order, resulting into, imposition of the penalty and market fee, as indicated above. The appeal and revision was also met with the same fate.

He further submits that in case, the petitioner had been given effective opportunity, he would have produced on record the material to establish that the storing of the paddy/custom milled rise was on account of the allotment or purchase from various sources, in essence, all the aforementioned stocks were not subject to the market fee and therefore, there was no occasion for imposition of penalty.

On the contrary, Mr. S.S. Rangi, learned counsel appearing on behalf of respondent Nos.2 and 3 has drawn the attention of this Court to the letter dated 05.10.2011 (Annexure R-1) written by the petitioner to the Secretary Marketing Committee, Samana with regard to the non-availability of the record, in essence, more than 4-5 effective opportunities were given before passing of the assessment order to establish the stand for the first time in the written statement and as well as in the revision petition.

He further submits that the matter has to be put to an end as the inspection pertains to the period of 1999, thus, urges this Court dismissal of the present writ petition.

I have hard the learned counsel for the parties and apprised the paper book.

In order to advance justice and prevent miscarriage of justice, the petitioner should be given one effective opportunity to produce on record the relevant material to wriggle out of the wrath of the imposition of the market fee and penalty i.e. Certificate (Annexure P-8) and other relevant/connected documents, though the approach of the petitioner had been lackadaisical, callous, much less, tardy. The entire litigation is commencing from 1999 and had reached to this Court in 2014 and we are in 2017. Keeping in view the aforementioned facts, the matter requires reconsideration.

Mr. Sandeep Khunger, learned counsel appearing on behalf of the petitioner, has, during the course of the hearing, brought to the notice of this Court that before availing the statutory remedy of appeal, it is mandatory requirement to deposit 25% of the amount and an amount of ₹ 28,400/- had already been deposited. However, vide order dated 24.03.2014, another sum of ₹ 25,000/- has also been deposited. The same may be adjusted after the decision rendered by the Assessing Authority.

The parties be given liberty to take all possible objection and pleas with regard to the allegations and counter-allegations.

Accordingly, the impugned order dated 10.01.2014 (Annexure P-14), is hereby set aside subject to the cost of the ₹ 10,000/- to be paid to Mr. S.S. Rangi, learned counsel representing respondent Nos.2 and 3.

The matter is remitted back to the Assessing Authority to decide the controversy afresh as expeditiously as possible preferably within a period of two months from the date of the receipt of the certified copy of this order. The parties shall be at liberty to put-forth their stand.

The parties or through their counsel are directed to appear before the Assessing Authority on 25.04.2017.

With the aforesaid observations, the present writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

03.04.2017
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**