208

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

CWP-6592-2014
Date of decision : 16.05.2017

M/s Modern Surgical Private Ltd.

... 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. Nitin Kaushal, Advocate
for respondent Nos.2 & 3.

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AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned orders dated 28.03.2003 (Annexure P-5) passed by the Secretary-cum-Assessing Authority, order dated 19.07.2004 (Annexure P-7) passed by respondent No.2 and as well as order dated 18.09.2013 (Annexure P-9) of the respondent No.1.

Mr. Sandeep Khunger, learned counsel appearing on behalf of the petitioner submits that the petitioner had purchased the cotton from M/s Subhash Cotton & Ginning Factory, Kurali and the market fee & rural development fee, had been paid by the said firm and certificate has been issued, in this regard, which fact is evident from Annexures P-2, P-3 & P-4. However, there is another sister concern of the aforementioned Firm called

M/s Subhash Chand and Company. It is the case of the respondent(s) that the Subhash Cotton Ginning Factory, Kurali is not a licensee and the market fee, thus, was not paid in respect of the cotton purchased for the purpose of ginning. M/s Subhash Chand and Company challenged the aforementioned order and in those proceedings, observation came at the back of the petitioner for recovering the amount from the petitioner and it is, in this background of the matter, assessment was done in the year 1999, resulting into, of 2004. Both the Authorities have referred to the provisions of Sub-Rule 4 of Rule 30 of the Punjab Agriculture Produce (General) Rules, 1962 (for short 'the 1962 Rules) on the premise that the Market Committee, Kurali, is not entitled to levy fee on paddy, cotton, etc., owing to the exemption, but the aforementioned fact despite having taken in the grounds of revision has not been pondered upon by the Authorities, thus, the impugned order is not sustainable in the eyes of law and prays for setting aside the same.

Mr. Nitin Kaushal, learned counsel appearing on behalf of respondent Nos.2 and 3 submits that the petitioner was required to obtain exemption in Form K and K-1 as per Rule 30(1-A) of the 1962 Rules, having failed to do so, much less, produced any record of payment of market fee by the purchaser or the seller, market fee was liable to be paid by the petitioner, thus, there is no illegality and perversity in the impugned order. The petitioner is not entitled to claim the exemption as per the provisions aforementioned, as it was ginning cotton, which has now been used by the petitioner for medical purposes, thus, urges this Court for upholding the impugned orders, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the provision of Sub-Rule 4 of Rule 30 of the 1962 Rules leaves no manner of doubt that the Authorities shall not charge any market fee on the cotton. For the sake of brevity, Sub-Rule 4 of Rule 30 of the 1962 Rules reads as under:-

> *"(4) No market fee shall be levied on paddy, cotton, timber, fire wood and groundnut taken from one notified market area to another notified market area for the purpose of processing or sawing, as the case may be."*

This aspect should have been discussed by the revisional authority, having not done so, in my view, there is a fallacy, much less, non-addressal of the issue, specifically raised. The matter, in my view, requires to be revisited and re-addressed.

Keeping in view the aforementioned facts, the impugned orders, under challenge, are not sustainable in the eyes of law and the same are hereby set aside. The matter is remanded to the Secretary-cum-Assessing Authority to decide the controversy afresh, in view of the statutory provisions of Rules and the facts as noticed by me and indicated in the writ petition, much less, in accordance with law.

The parties and as well as through their counsel are directed to appear before the Secretary-cum-Assessing Authority/respondent No.3 on 31.05.2017.

The petitioner and as well as the respondent(s) shall be at liberty to raise all other pleas other than, raised before the Revisional Authority.

Let this exercise be done within a period of four months from the date of the receipt of the certificate copy of this order.

Disposed of, accordingly.

(AMIT RAWAL)
JUDGE

16.05.2017
Yogesh Sharma

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