

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

**RSA No.1970 of 2014 (O&M)
Date of decision: 13.01.2017**

**Haryana State Agriculture Marketing Board, Panchkula and another
... Appellants**

Vs.

**M/s The Malt Company (India) Pvt. Ltd.
... Respondent**

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Suvir Kumar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present appeal, at the hands of the defendants, is directed against the impugned judgment and decree dated 15.03.2013 passed by learned Additional District Judge, Gurgaon, whereby he accepted the first appeal of the plaintiff modifying the judgment and decree dated 03.10.2012 of the learned trial Court and decreed the suit of the plaintiff for declaration and permanent injunction.

Brief facts of the case, as recorded by learned trial Court in para 2 of its judgment, are that plaintiff was a limited company duly incorporated under the Indian Companies Act and has got its factory unit at village Gadaipur, Tehsil Pataudi, District Gurgaon. Sh. Mohit Jain was the Director of the plaintiff company and he was fully conversant with the facts of the case. He was also

authorized to institute the suit, sign and verify pleadings, to engage counsel on behalf of the plaintiff company, vide resolution dated 23.03.2006 passed in the meeting of the Board of Directors of the plaintiff company. The plaintiff was dealing in manufacturing malt in its factory. He submitted that plaintiff company purchased barley i.e. an agriculture produce through various dealers of various markets which was exclusively used for manufacturing malt, from various organizers falling within territorial jurisdiction of various market committees with the State of Haryana and some organizers falling outside the State of Haryana. He averred that defendant No.2/Market Committee had served a demand notice letter No.71 dated 08.02.006 upon the plaintiff on form 'P' under Rule 31 of the Punjab Agriculture Produce Market Rules, 1962 for recovery of Rs.7,79,296/- which had been assessed for the levy of market fee and penalty on the business carried out by bringing barley during the period 01.06.2005 till 30.11.2005. In the amount of recovery mentioned in the demand notice, an amount of market fee had been held to be chargeable to the tune of Rs.3,89,648/- and an equal amount of penalty had been imposed to the tune of Rs.3,89,648/- total amounting to Rs.7,79,296/-. He further averred that no details of assessment and no copy of the orders passed by defendant No.2 under sub Rule (8) and (9) of Rule 31 of the Punjab Agriculture Produce Market Rules, 1962 was supplied or served before service of demand notice in form 'P'. So the plaintiff applied for supplying the same with written request on payment of fees. Copy of orders passed under sub Rule (8) and (9) of Rule 31 of Punjab Agriculture Produce Market Rules were supplied in the evening of 25.02.2006. He further averred that defendant No.2 had further served a letter/notice No.148 dated 02.03.2006 threatening the plaintiff to recover the said amount as arrears of land revenue. That notice No.71 dated 08.02.2006 and No.148 dated

02.03.2006 regarding demand and recovery mentioned in para No.5 of the plaint by defendant No.2 is malafide, wrong, illegal, void ab initio, against the provisions of Punjab Agriculture Produce Market Act, 1961 as well as Rules provided under Punjab Agriculture Produce, 1962 applicable to State of Haryana, against principles of natural justice, rules of law and equity and the said demand and recovery notices were illegal and liable to be set aside and withdrawn on the following grounds: -

(a) That the order passed by defendant No.2 on 31.01.2006 under sub Rule (8) of Rule 31 of the Punjab Agriculture Produce Market Rules, 1962 was never served upon the plaintiff before passing the order under sub Rule (11) of Rule 31 of the said Rules. Material to be made basis of assessment must be supplied to the assessee and opportunity to rebut should also be given. As estimate was made the basis of assessment by defendant No.2 without disclosing to the assessee the details of material relied upon by it, so the order of assessment was arbitrary and capricious. The order of assessment was quasi-judicial order. Principles of natural justice demand that there should be fair determination of question by quasi-judicial authorities. Arbitrariness will not be fairness. Neither any opportunity of representation was provided to the plaintiff against the order dated 31.01.2006 passed under sub Rule (8) of Rule 31 of the said Rules, nor it was conveyed or served upon plaintiff.

(b) That the joint order passed by defendant No.2 on 06.02.2006 for assessment or market fee and imposition of penalty is quasi-criminal. Nobody can be condemned unheard before imposing the penalty. It was incumbent upon defendant No.2 to serve notice upon the plaintiff. In this case, defendant No.2 after calculation of market fee, straightway imposed the penalty equal to the amount of market fee. Thus, the order imposing the penalty was most arbitrary

and illegal.

(c) That defendant No.2 had imposed market fee and penalty on the import of barley by the plaintiff from various mandis of the State to its factory premises for manufacturing of malt. For preparation of malt, barley is soaked in water, allowed to sprout and then dried in kiln. Malt is thus prepared for the production of beer, horlicks, bournvita and other medicinal preparation and was not used for any other purposes. It was thus evident that when barley was converted into malt by the said manufacturing process, the end produce was totally different and distinct from the original agriculture commodity i.e. barley. Thus provisions of Section 23 of the Punjab Agriculture Produce Market Act, 1961 are not applicable. The aforesaid demand stated in para No.5 of the plaint relates only to import of barley for manufacturing of malt. It does not come within the preview of "brought for processing". The plaintiff did not deal in processing of barley. It was dealing in manufacturing of malt, as stated above. Preparation of malt did not come within the category of processing of barley and malt was the end product of manufacturing process and was not liable for market fee, rather was leviable to excise duty.

(d) That in the assessment order of the market fee, defendant No.2 had levied an amount of Rs.62,938/- as market fee on account of late submission of Form LL to defendant No.2, as stated in the order dated 06.02.2006 by defendant No.2. It had been repeatedly held by the Hon'ble Courts that the period of 20 days for submitting form LL was only directory provisions and not mandatory provision and if Form LL reached late, even the Market Committee cannot claim market fee again, because it will amount to charging market fee twice on the same product and it would be clear abuse of the rules and rulings of the Hon'ble High Court as well as Hon'ble Supreme Court. This was

elaborately made clear in the notice dated 09.01.2006 served by the plaintiff upon the defendants, in which it was also made clear that Form LL issued by the Market Committee was for which agriculture produce was purchased. So late arrival of Form LL to the plaintiff due to fault of Market Committee which issued the Form LL was beyond the control of the plaintiff. Furthermore, as soon as the agriculture produce was brought to the factory of the plaintiff, the Market Committee, Pataudi was informed regarding the arrival of agriculture produce in the factory, which implied bonafide intention on the part of the plaintiff. So seen from any angle and by any stretch of imagination, the plaintiff is not at all reasonable for late submission of Form LL to defendant No.2 and the plaintiff could not be blamed and penalized by demanding from him payment of market fee and penalized by demanding from him payment of market fee again, because he was already paid the market fee which purchasing the barley from the dealers from which he purchased the barley.

(e) That through the plaintiff manufactured malt out of barley and it did not come within the purview of processing of barley which an agriculture produce. After manufacture of malt, it does not remain an agriculture produce, as has been explained above in this notice. But even otherwise, Hon'ble Chief Minister of Haryana announced the Industrial Policy of the Govt. which had been reflected in the brochure, by which it had been stated that the State Government had adopted new Industrial Policy 2005, which had come into force with effect from 06.06.2005, under which no market fee shall be levied on agriculture and horticulture produce used as raw material by food processing industries within the State, except rice, wheat, mustard and cotton. Thus, barley was not included in that. Manufacturing product of malt prepared by the plaintiff in its factory was used for beer, horlicks, bournvita and some medicinal

preparation. Thus, it was food malt manufacture unit and was exempted from payment of market fee.

The plaintiff company had averred that there was no other equally efficacious remedy available to the plaintiff, except to file the suit of injunction, because recovery imposed by the defendants upon the plaintiff is illegal, so jurisdiction of the Civil Court was not excluded from granting injunction against the defendants. As the act of the defendants under the Act and Rules regarding imposition of fee and fine and its recovery were without jurisdiction, so the plaintiff was entitled to file the suit and was entitled to injunction restraining the defendants from initiating recovery proceedings against the plaintiff in respect of the amount mentioned in the aforesaid notice of recovery. He also submitted that no suit between the same parties under whom they or any of them claim litigation on the same grounds has been previously instituted or finally decided by a court of competent jurisdiction or limitation. He also further submitted that factory premises of the plaintiff as also the offices of defendants No.2 were situated within Gurgaon District, the impugned notice of recovery was issued at Gurgaon and cause of action arose at Gurgaon.

Having been served in the suit filed by the plaintiff, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the demand notice vide letter No.71 dated 08.02.2006 is illegal, null and void? OPP
2. Whether the notice No.148 dated 02.03.2006 is wrong, illegal and void ab initio? OPD
3. Whether the plaintiff is entitled to the injunction as prayed

for? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff is estopped from filing the present suit by its own act and conduct? OPD
6. Whether the plaintiff has not come to the Court with clean hands? OPD
7. Whether the suit is barred under the provisions of Specific Relief Act? OPD
8. Whether the suit has not been filed by duly authorized person? OPD
9. Relief.

In order to prove their respective stands taken, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff could prove its case partly. Accordingly, suit was partly decreed. Demand notice No.71 dated 08.02.2006 and demand notice No.148 dated 02.03.2006 were declared illegal to the extent of market fee on purchase of agriculture produce for Rs.62,93,806/-, already paid by the plaintiff. However, these very two demand notices were declared valid to the extent of remaining amount.

Defendants did not file any appeal. However, feeling aggrieved against the abovesaid judgment and decree, plaintiff filed his first appeal, which came to be allowed by the learned First Appellant Court, vide its impugned judgment and decree dated 15.03.2013, decreeing the suit of the plaintiff in toto. Hence this second appeal at the hands of the defendants, along with an

application under Section 5 of the Limitation Act, seeking condonation of delay of 215 days in filing the appeal.

Heard learned counsel for the appellants.

Although the applicants-appellants were apparently negligent in filing the instant appeal, after a long delay of 215 days, yet taking a liberal view of the matter and proceeding on the principle of law that Courts should make an endeavour to decide the lis between the parties on merits, instead of technicalities, including the delay, application for condonation of delay is allowed and the delay of 215 days in filing the appeal is condoned.

Coming to the merits of the case, when confronted as to how the cogent findings recorded by learned First Appellate Court are suffering from any patent illegality or perversity, enabling this Court to interfere, learned counsel for the appellants failed to point out any such patent illegality and rightly so, it being a matter of record. In fact, since the appellants-defendants themselves have accepted the impugned judgment and decree passed by learned trial Court, partly decreeing the suit of the plaintiff, declaring two demand notices, referred to hereinabove, as partly illegal, learned counsel for the appellants was rightly feeling handicapped in this regard, in advancing the case of the appellants, despite making his best efforts.

A bare combined reading of both the judgments and decrees would show that learned trial Court was not justified, while partly decreeing the suit, which was deserved to be decreed in toto. In such a situation, learned First Appellate Court was well within its jurisdiction to modify the judgment and decree passed by learned trial Court and the suit of the plaintiff was rightly decreed in toto, by passing the impugned judgment and decree, which deserve to be upheld.

The relevant observations made by learned First Appellate Court in paras 17 to 20 of the impugned judgment, which deserve to be noticed here, read as under: -

“Thus in my considered opinion the learned counsel for defendant cannot fall back upon Section 23 of the Act by contending that since the barley was brought after having been purchased from various Mandis in Haryana and outside for process, therefore, market fee is leviable. Since conversation of barley into malt has not been treated to be a process as stated in Section 23 of the Act, because here it is a case of manufacturing of malt and it is separate from barley, hence it cannot be stated to be purchase of barley for processing.

It is further stated at bar by learned counsel for both the parties that now there is no market fee leviable on the purchase of barley. However, perusal of Haryana Government Agricultural Department notification 11/58 Agricultural Section 1-2016/12017 dated 06.07.2006 clearly shows that after in sub rule 5 of Rule 30, Rule 6 has been added, which shows that except rice, wheat, mustard and cotton used, no market fee shall be leviable on other agriculture or horticultural produce. Here we are concerned about purchase of plaintiff of barley from 01.06.2005 to 30.11.2005 as such the said notification which is effective from 06.07.2006, cannot be applied retrospectively.

In any case, the market fee on the purchase of Rs.3,26,71014/- from 01.06.2005 to 30.11.2005 is exempted in view of the fact that under Section 23 of the Act work

manufacturing is not covered. The plaintiff cannot be estopped to challenge the impugned recoveries of market fee merely if it in past pertaining to certain purchase paid market fee by submitting LL form.

There is no dispute with the proposition of law laid down by Hon'ble Apex Court in (supra) Haryana State Agricultural Marketing Board, which has been heavily relied upon by learned counsel for the defendants to support his contentions that if a dealer wants to claim exemption, then as per Rule 30, it has to fulfill certain conditions by submitting LL form with market committee and to make other formalities by filing form M. As regard its having paid market fee already in a market area, then such form shall be filed within 20 days of the date of bringing agriculture produce within the notified market area. In that case the Hon'ble Supreme Court granted time to respondent to file declaration and form LL within two weeks from the date of passing of the judgment. The said authority in fact does not overrule the authority of Hon'ble Division Bench of Punjab and Haryana in case (supra) The Malt Company (India) Pvt. Ltd.'s because the provision of Section 23 was not involved in case Haryana State Agricultural Market Board and others (supra). ”

When asked by the Court as to how the defendants-appellants were entitled to the benefit of Section 23 of the Punjab Agricultural Produce Market Act, 1961 (for short 'the Act') and the statutory rules framed thereunder, particularly when the market fee was sought to be levied, in spite of the fact that it was not leviable, learned counsel for the appellants had no answer. In fact, in

the present case, two demand notices referred to hereinabove, issued by the appellants-defendants were patently illegal and the same were rightly declared as such by learned First Appellate Court. Since the findings recorded by learned First Appellate Court have been found factually correct and legally justified, the impugned judgment and decree deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

- 1. Haryana State Agriculture Marketing Boards Vs. Sh. Ganesh Rice and General Mills, 1999 (1) SCC 86.**
- 2. Messrs Ganesh Cotton Company Vs. The Market Committee, Kot Kapura and others, 1967 (2) ILR (Punjab) 590.**
- 3. M/s Rameshwar Dass Gauri Shanker Vs. The Market Committee, Ellenabad, 1970 PLJ 324.**
- 4. M/s Prem Chand Ram Lal, Sangrur Vs. The State of Punjab and others, 1971 AIR (Punjab) 50.**
- 5. Jagatjit Industries Ltd. Vs. State of Punjab, 1993 PLJ 504.**

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, it is unhesitatingly held that learned First Appellate Court committed no error of law, while decreeing the suit of the plaintiff-respondent in toto, by passing the impugned judgment and decree. In view of the peculiar facts and circumstances of the present case, provisions of Section 23 of the Act were not applicable.

Plaintiff was not dealing in the processing of barley. It was dealing in manufacturing of malt. These facts have gone undisputed on record. Preparation of malt does not come within the category of processing of barley,

malt being the end product of manufacturing process. No market fee was leviable, rather only excise duty was leviable. Under these circumstances, market fee was sought to be levied illegally. Once the form LL had been duly submitted, the Market Committee was not entitled to claim the market fee again as the said demand would amount to charging the market fee twice over on the same agriculture produce, which would run contrary to the law laid down by the Hon'ble Supreme Court as well as this Court in the abovesaid judgments.

It is also a matter of record and not in dispute that the plaintiff-respondent had paid the market fee once, as per Ex.P38 and the appellants-defendants were seeking to charge the plaintiff again with equal amount of penalty in violation of Section 23 of the Act, which was not permissible in law. Since the learned First Appellate Court has rightly appreciated the true facts of the case as well as relevant provisions of law applicable thereto, the suit of the plaintiff was rightly decreed in toto. Under these circumstances, it can be safely concluded that since the learned First Appellate Court committed no error of law, while passing the impugned judgment and decree, the same deserve to be upheld, for this reason as well.

Learned counsel for the appellants could not refer to any question of law, much less substantial questions of law enabling this Court to entertain the present appeal, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reference can be made to the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present Regular Second Appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs.

13.01.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No