IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15110 of 2014
Date of decision: 16.10.2018

M/s Kartarpur Cold Storage and Ice Factory
...........Petitioner

Versus

Assessing Authority-cum-Secretary, Market Committee, Jalandhar and others
..........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rohit Sud, Advocate,
for the petitioner.

Mr. Gagandeep Singh Chinna, Advocate,
for respondent Nos. 1 and 2.

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Ritu Bahri, J.

Petitioner is seeking quashing of orders dated 01.01.2009, 25.03.2010 & 28.10.2013 (Annexures P-5, P-6 & P-8) passed by the respondents, whereby market fee of Rs.27,52,510/- has been assessed and levied on the petitioner under Rule 31 (9) of the Punjab Agricultural Produce Markets (General) Rule, 1962.

The petitioner-firm was originally granted licence No.4105/JAL/SAMB on 01.04.2003 (Annexure P-1), which was valid upto 31.03.2013. Thereafter, the Assessing Authority issued an assessment notice dated 10.11.2008 (Annexure P-2) in Form 'O' under rule 31 (4) of the Punjab Agricultural Produce Markets (General) Rule, 1962 (for short '1962 Rules') for making assessment of the petitioner company from 01.04.2006 to 04.06.2008. Thereafter, petitioner was issued a demand notice on 09.01.2009 (Annexure P-3) directing him to pay Rs.27,52510/- to the Market Committee Jalandhar City as market fee and penalty. To the said notice, petitioner gave his reply dated 22.01.2009 (Annexure P-4) taking a plea that no market fee/RDF could be levied as there was no sale/purchase of goods by the petitioner company. Thereafter, assessment order dated 01.01.2009 (Annexure P-5) was passed, against which, petitioner filed an appeal, which was dismissed vide order dated 25.03.2010 (Annexure P-6). Revision against the said order was also dismissed vide order dated 28.10.2013 (Annexure P-8).

Petitioner is seeking quashing of the aforesaid orders on the ground that it was not dealing in the sale and purchase of agricultural goods and licence dated 01.04.2003 (Annexure P-1) had been taken only for storage of agriculture produce. Since no sale and purchase of agricultural produce has been done, the petitioner could not be levied the market fee and penalty as per Section 23 of the Punjab Agricultural Produce Markets Act, 1961.

Learned counsel for the petitioner has referred to the receipt (Annexure P-10) to show that the market fee has already been deposited in Form 'K' by the person, who had stored its produce in the godown of the petitioner and this fact was in the knowledge of the respondents. He has further referred to the chart (Annexure P-11) to show that the total amount of merket fee and RDF has been paid on the goods in the godown. Further reference has been made to the order dated 04.05.2001 (Annexure P-12), whereby the assessing authority had not conducted any verification before framing of assessing and the assessment made purely on assumptions without verification, was set aside. It has been argued that the assessing authority could not levy RDF under Section 5 of the Punjab Rural Development Act, for which, the competent authority is Punjab Rural Development Board. Finally, it has been argued that penalty of 10 times has been imposed without applying its mind judiciously.

Learned counsel for the respondents, while referring to the impugned orders dated 01.01.2009, 25.03.2010 & 28.10.2013 (Annexures P-5, P-6 & P-8), has argued that an inquiry was carried out on 04.06.2008 and as per inquiry report sent by the District Market Officer, Jalandhar, vide letter dated 10.06.2008, the outgoing register of the petitioner firm was perused and it was found that the petitioner firm was engaged in the work of sale and purchase of agricultural produce. Except for the potato produce, the firm has supplied mainly, apple and oranges to the outer States/markets for sale purpose. The alleged receipt (Annexure P-10) cannot be connected with the record, which was inspected on 04.06.2008. Receipts (Annexures P-10 and P-11) have been issued by Kanwar Charanjit Singh and as per licence No.4105 (Annexure R-1), he was one of the partners of the petitioner firm. He has further argued that Kanwar Charanjit Singh had got issued licence No.4151 on 13.02.2009 for his firm i.e. Kunwar Charanjit Singh Sodhi, which was for sale and purchase of agricultural produce. But, before 13.02.2009, this firm did not have any licence for sale and purchase of the goods. He has further argued that as per Section 10-A of the Punjab Agricultural Produce Markets Act, 1961, in case the petitioner, who had been issued licence for storage of agricultural produce, is found indulging in sale and purchase of agricultural goods, he can be levied market fee under Section 23 of the 1962 Rules. He finally argued that before passing of the order dated 01.01.2009 (Annexure P-5), petitioner had been issued notices (Annexures P-2 and P-3) in accordance with Rule 31 (4) of the 1962 Rules through registered post, which were received back with the report of refusal.

After hearing learned counsel fr the parties, present petition deserves to be dismissed. A perusal of the order dated 01.01.2009 (Annexure P-5) shows that as per enquiry report dated 10.06.2008, from the outgoing register of the petitioner firm, it was found that it was indulged in the sales of apple and oranges to the outer States. It was also found that the firm purchased 2609 boxes of apple, price of which came to Rs.10,43,600/- at the rate of Rs.400/- as per market rate, 2966 boxes of orange, price of which came to Rs.14,83,000/- at the rate of Rs.500/-. Except this, the firm purchased 7325 quintal onion, price of which came to Rs.87,90,000/- at the rate of Rs.1200/- per quintal. In this way, the firm had done purchase of Rs.1,13,16,600/- from 08.02.2008 to 01.05.2008. It was also observed that *basmati* had also been purchased by the said firm, record pertaining t which was not available. The firm was not cooperating in the assessment proceedings. Thereafter, amount of Rs.2,26,332/- as market fees and Rs.2,26,332/- as RDF was found to be recoverable from the firm on the work worth Rs.1,13,16,600/- and penalty of 10 times as per Rule 31 (9) of the Punjab Agricultural Produce Market (General) Rules, 1962 was imposed, which came to Rs.22,63,320/-. Relevant Rule 31 (9) is reproduced as under:-

> "31 (9) In addition to the fee or additional fee levied or determined under sub-rule (3) or sub-rule (7), the assessing authority may recover from the defaulter penalty ten times of the fee or additional fee fund due to be payable."

Argument of learned counsel for the petitioner that the market fee has been imposed without verification, is liable to be rejected. As per details given above, the only transaction, which reflected sale purchase of agricultural produce had been made part of the assessment order. In between transactions of storage of agricultural produce have been left out. Evidence with regard to purchase of market goods was made out from the register of the firm.

Another fact, which goes against the petitioner is that one of the partners of petitioner firm namely Kanwar Charanjit Singh was issued a separate licence No.4151 on 13.02.2009 for sale and purchase of agricultural produce and before issuance of this licence, the said firm did not have any licence for sale and purchase of agricultural produce. Receipts (Annexures P-10 and P-11) in respect of Kanwar Charanjit Singh cannot be of any help to the petitioner as even these receipts have been issued after the date of checking i.e. 04.06.2008. Moreover, record of purchase and sale of agricultural produce is reflected in the order dated 01.01.2009 (Annexure P-5). Moreover, as per provisions of the Punjab Agricultural Produce Markets Act, 1961, a penalty can be levied by the Secretary, Market Committee irrespective of the fact, whether the business of buying and selling of the agricultural produce is satisfied in the licence or not.

In the present case, at the time of checking of petitioner firm on 04.06.2008 and even while filing its reply dated 22.01.2009 (Annexure P-4), no evidence was led by the petitioner to show that person(s), who had deposited the agricultural produce in its godown, had paid the market fee and had given copy of form 'K'. Hence, the petitioner cannot claim exemption under Section 29 of the above said Act. Hence, the impugned orders passed by the competent authority do not suffer from any illegality, much less perversity, warranting interference by this Court.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

16.10.2018
ajp

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