IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-717-2013 (O&M)

Date of decision: 04.04.2018

M/s Sri Ram Cotton & Oil Mill

..... Appellant

Versus

The Market Committee, Bhiwani and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Mahesh Sangwan, Advocate for the appellant.

Mr. Anil Chawla, Advocate for the respondents.

RAMENDRA JAIN, J. (ORAL)

1. The appellant/plaintiff-firm has preferred this Regular Second Appeal against the judgment and decree dated 05.11.2012 of the Ist Appellate Court reversing the judgment and decree dated 15.06.2011 of the trial Court, whereby the suit of the appellant-firm was decreed.

2. Briefly stated, the appellant-firm during the period w.e.f. 12.10.2006 to 01.12.2006, has purchased agricultural produce from different Market Committees and had paid market fee in time. That apart, the appellant-firm had also submitted Form "LL" a little bit late beyond prescribed limit of 20 days. Therefore, respondent No. 1-Market Committee, issued a notice dated 08.01.2007 to the appellant-firm to deposit market fee @ 1% for its late submission of Form "LL". The appellant-firm replied to the said notice. However, respondent No. 1-Market Committee

without considering the same issued another notice dated 29.01.2017, which too was replied by the appellant-firm reiterating its stand. Thereafter, third notice dated 14.02.2007 was sent by respondent No. 1-Market Committee which too was duly replied by the appellant-firm. Despite that, fourth notice dated 24.02.2007 was issued by the respondents, demanding a sum of ₹1,22,614/- i.e. ₹72,614/- as market fee and ₹50,000/- as penalty.

3. Being aggrieved, the appellant-firm filed a suit for permanent injunction restraining the respondents from recovering the aforesaid amount or its part from it by any mode including by way of auction of movable and immovable properties of the appellant-firm and initiating any recovery proceedings. The trial Court after holding trial decreed the suit in toto vide judgment and decree dated 15.06.2011.

4. Being dissatisfied, the respondents preferred an appeal which was accepted vide impugned judgment and decree dated 05.11.2012, by setting aside the judgment and decree of the trial Court.

5. Learned counsel for the appellant-firm contends that respondent No. 1-Market Committee was not liable to charge market fee from the appellant-firm twice, simply because Form "LL" was filed late. The Ist Appellate Court has wrongly interpreted the judgment of the Hon'ble Apex Court in ***Haryana State Agricultural Marketing Board and others Versus Shri Ganesh Rice and General Mills and another, AIR 1999 (SC) 378.*** The Ist Appellate Court has erred in not relying upon a judgment delivered by a Division bench of this Court in ***CWP-13231-1991, National Co-operative Consumer Federation of India Ltd. Versus Market Committee, Bhiwani and others.***

6. On the other hand, learned counsel for the respondents has strongly refuted the aforesaid submissions of learned counsel for the appellant-firm.

7. This Court has given anxious consideration to the rival submissions made by learned counsel for both the sides.

8. The undisputed facts in this case are that the appellant-firm had paid the market fee in time against the agricultural produce purchased by it. It had also filed Form "LL" and declaration a little bit late beyond prescribed time.

9. The only question which arises in this appeal as to whether respondent No. 1-Market Committee was legally entitled to charge market fee twice along with penalty amount? For ready reference, relevant Section 37 of the Haryana Agricultural Produce Markets Act, 1961 (for short-'the Act') Act is reproduced as under:-

> "**37. Penalties. -** (1) Whoever contravenes any provisions of this Act, the rules regulations or bye-laws made thereunder shall, if no other penalty is provided for that contravention, be liable to imposition of penalty which may extend up to ten thousand rupees.
>
> (2) Notwithstanding anything, contained in forgoing sub-section, any person who willfully evades payment of any fee or sum due to the Committee under the provisions of this Act, the rules, regulations or bye-laws made thereunder shall, in addition to the payment of fee or sum due, be liable to imposition of penalty, which

shall not be less than twenty-five per cent and not more than fifty per cent of the amount of the fee or sum due, as the case may be, for the first two evasions.

(3) In case any person is found willfully evading payment of any fee or sum due to the Committee, more than twice during the period of one financial year, his licence shall be liable to be cancelled, in addition to the the penalty imposed.

(4) No penalty under this section shall be imposed-

(i) without affording the person aggrieved an opportunity of being heard;

(ii) after expiry of a period of five years from such contravention; and

(iii) by an officer detecting or investigating the offence or an officer junior in rank to such officer."

10. Bare perusal of the aforesaid section makes it abundantly clear that the same has not application in the instant case in view of the fact that its clause (2) speaks about the imposition of penalty upon a person who is found evading payment of market fee. Sub-clause (4) (i) envisages that "no penalty under this section shall be imposed without affording the person aggrieved an opportunity of being heard". Clasue (3) is not relevant for adjudication of this case.

11. Clause (1) of Section 37 of the Act says that whoever contravenes any provisions of this Act, the rules, regulations or bye-laws made thereunder shall, if no other penalty is provided for the contravention,

be liable to imposition of penalty which may extend up to ten thousand rupees. In the instant case, there is a violation of the above provision of the Act, therefore, at the most the appellant-firm can be said to be liable for penalty.

12. There is nothing on the record that any show-cause notice was ever issued by the respondents to the appellant-firm before imposing penalty of ₹50,000/-. Therefore, the penalty imposed upon the appellant-firm cannot be said to be justified.

13. As far as, placing reliance by the Ist Appellate Court upon the judgment of Hon'ble Supreme Court in ***Shri Ganesh Rice and General Mills and another's case (supra)*** is concerned, this Court is of the considered opinion that the same has not been rightly interpreted by it, inasmuch, as in that case Form "LL" was not filed till the matter came before the Hon'ble Supreme Court. Despite that the Hon'ble Supreme Court, in view of the statement of learned counsel for the market committee gave a concession that the market committee would not insist upon the compliance within the period of limitation prescribed under the rules, in case, Form "LL" and declaration is submitted by the respondent-rice mill within two weeks whereas, in the instant case, the market fee was deposited in time, but the Form "LL" and declaration was filed beyond that prescribed period of 20 days. Therefore, the case of the appellant-firm is on better footing to that of ***Shri Ganesh Rice and General Mills and another's case (supra).***

14. A Division Bench of this Court in ***National Co-operative Consumer Federation of India Ltd.'s case (supra),*** held that Rule 30(5) of

the Punjab Agricultural Produce Market (General) Rules, 1962, envisages that the agricultural produce brought from a place within the State for which the market fee has already been paid in any of the Market Committee in the State shall be exempted from payment of market fee for the second time.

15. The mandate of the above Rule is that once a market fee has been paid by a licencee or a dealer at any place within the State, such a person would under no circumstances be required to pay the same for second time. Had the legislature intended to levy market fee for second time, there was no obstacle in its way to make a provision to the effect that if a person does not produce the exemption certificate in Form "LL", he would be required to pay the market fee once over again. In other words, the above provision does not speak about any implausible term that a licencee would require to pay market fee, if such an exemption certificate is not produced. Therefore, in the absence of such a provision, the only harmonious interpretation which can be taken is that a licencee cannot be burdened with the payment of market fee again and again, if the same has already been paid with any of the market committees within the State, but the said licencee would be liable to pay the penalty under the Act. Holding so, and placing reliance upon a judgment dated 05.05.1993 delivered by another Division Bench of this very Court in ***CWP-2863-1991, M/s Annad Canvass Mills Pvt. Ltd. Gurgaon Versus State of Haryana and others,*** a penalty of ₹5000/- was imposed upon the licencee.

16. In view of the discussion above, this appeal is accepted, setting aside the impugned judgment of the Ist Appellate Court dated 05.11.2012 and affirming the judgment of the trial Court dated 15.06.2011. However,

in the peculiar facts and circumstances of the case, the appellant-firm is burdened with penalty of ₹10,000/- which shall be deposited by it within two months from today with respondent No. 1-Market Committee, failing which this appeal shall be deemed to have been dismissed.

April 04, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

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