IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3748 of 2013 (O&M)
Date of Decision: 11.04.2019

M/s Garg Trading Co.

...Petitioner(s)

Versus

Punjab Agro Industries Corp. Ltd. & ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : None for the petitioner(s).

Mr. Anupam Singla, Advocate
for respondent No. 1

Mr. Karan Gupta, Advocate
for respondent No. 2

Mr. S.S. Brar, Advocate
for respondent No. 3.

Mr. A.P. Singh, Advocate
for respondent No. 4

Mr. K.B. Sharma, Advocate for
Mr. D.R. Sharma, Advocate
for respondent No. 5.

ARUN MONGA, J.

The petitioner seeks issuance of writ in the nature of mandamus directing the respondents to issue gate pass, make payment as per I-Forms and to restrain them from deducting T.D.S. From labour payments as per Instructions issued by the Punjab Mandi Board.

2. Succinctly, the facts in the present case are that the petitioner is a licensed commission agent working at Dhuri, Distt

Sangrur since 1995 from whom the respondents purchase crops during both the harvesting season.

3. It is averred by the petitioner that the respondents have failed to make the payment of commission and other charges including labour as the petitioner is required to make payment daily. The petitioner submits I-Forms (Annexure P-2) as per rules, which contain all the details of the expenses incurred by the petitioner. Yet, the respondents have failed to pay the expenses regarding labour charges, filling of bags, weighing, stitching of bags and commission of the petitioner within the stipulated time. Respondents did not issue requisite gate passes also to the petitioner which are necessary to maintain records.

4. It is further averred that the Punjab Mandi Board had issued instructions vide letter dated 01.04.2011 (Annexure P-3), whereby, all concerned agencies were directed to make payments as per I-Forms duly submitted by commission agents and issue gate pass as per Instructions. Deduction of TDS from the labour payments is also in violation of the Instructions.

5. The petitioner raised all these concerns with the respondents and served a legal notice dated 14.01.2013 (Annexure P-4). The respondents failed to advert the same. Hence the present writ petition.

6. Respondents No. 1, 2, 4 and 5 have controverted the averments in petition on the ground that the writ petition itself is not maintainable as each commission agent is allotted to a different Mandi/Procurement Agency. Claim raised by the petitioner related to respondent No.3 as is evident from Annexure

P-2 (I-Form). As regards the issuance of gate pass, the same is prepared under the signatures of commission agent and they have no role to play, so state the answering respondents No.1, 2 4 and 5. TDS deduction has been justified stating that it is a statutory obligation under the Income Tax Act, 1961 and it is mandatory.

7. On the other hand, respondent No. 3 contends that the District Office of the concerned procurement agency is the nodal office regarding release of quick and timely payments. The Minimum Support Price (MSP) is paid immediately on procurement of crops and other charges are released jointly after they are combined. Payments are subject to deduction of TDS as it is a statutory obligation under the Income Tax Act, 1961 and is mandatory. As regards the gate passes, the same are given to 'Aartiyas' on lifting the stock from the premises.

8. I have gone through the pleadings and have heard the learned counsels for the respondents.

9. A perusal of the instructions dated 01.04.2011 (Annexure P-3) issued by the Punjab Mandi Board and the Income Tax Act, 1961 show that the payment to the commission agents are required to be made by the purchaser within 2 days and cannot be kept pending for long time. Payments to be made by the respondents to commission agents are subject to deduction of TDS being a statutory obligation which cannot be dispensed with.

10. Other than making bald assertion in the petition that owing to delayed payment in charges/commission, the petitioner has not produced anything on record to show that he has suffered loss due to belated payments. Even otherwise, damages cannot

be proved in the writ proceedings as highly disputed questions of facts are required to be adjudicated. Proper evidence is required to be adduced to prove the loss, if any, by way of a civil court trial and, therefore, invokation of writ jurisdiction is not the proper remedy.

11. In view of my opinion expressed above and the reasoning contained therein, the writ petition is dismissed. No order as to costs.

(ARUN MONGA)
JUDGE

11.04.2019
vandana

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