IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. L.P.A. No. 177 of 2016 (O&M)
Date of Decision : January 24,2019

M/s Budh Ram Lalit Kumar .... Appellant
VERSUS
State of Punjab & ors. .... Respondents

2. L.P.A. No. 80 of 2016 (O&M)

M/s Mahesh Enterprises.. Appellant
VERSUS
State of Punjab & ors. .... Respondents

3. L.P.A. No. 175 of 2016 (O&M)

M/s Punam Chand Vijay Kumar............................ Appellant
VERSUS
State of Punjab & ors. .... Respondents

4. L.P.A. No. 176 of 2016 (O&M)

M/s Shivnath Rai Anil Kumar................................... Appellant
VERSUS
State of Punjab & ors. .... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. H.S.Brar, Advocate
for the appellants.

Mr. Deepak Gupta, Addl. A.G. Punjab.

Ms. Geeta Sharma, Advocate
for respondents No. 2 and 3.

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MANJARI NEHRU KAUL, J.

C.M. No. 347-LPA of 2016 in L.P.A. No. 177 of 2016
C.M. No. 183-LPA of 2016 in L.P.A. No. 80 of 2016
C.M. No. 345-LPA of 2016 in L.P.A. No. 175 of 2016
C.M. No. 346-LPA of 2016 in L.P.A. No.176 of 2016

For the reasons mentioned in the applications, the delay of 121 days in filing the aforesaid Letters Patent Appeals is condoned.

Main Case

This order will dispose of L.P.A. Nos. 177, 80, 175 and 176 of 2016. For facility of reference, facts have been extracted from L.P.A. No. 177 of 2016 arising out of C.W.P. No. 26455 of 2013 ***Budh Ram Lalit Kumar v. State of Punjab and others***. The appellant firm was engaged in the business of commission agent in the Market Committee at Abohar. Vide demand notice dated 11.09.2001, it was asked to pay an amount of Rs.1,74,068/- as Market Fee, Rs.1,74,068/- as Rural Development fee (RDF), Rs.1,74,068/- as penalty and interest in the amount of Rs.51,505/- @ 18% per annum, total amounting to Rs.5,73,709/- by the Secretary, Market Committee, Abohar, for the year 1999-2000 on the basis of the assessment order passed by him.

Against the above Assessment Order, the appellant filed an appeal under Rule 31 (13) of the Punjab Agricultural Produce Market (General) Rules, 1962 (hereinafter referred to as the "Rules"). The appeal was dismissed by the Dy. General Manager (Marketing) Punjab Mandi Board, Chandigarh, vide his order dated 25.10.2004. Further, the revision petition filed by the appellant under Section 42 of the Punjab Agricultural Produce Market Act, 1961 was also dismissed by the Secretary, Department of Agriculture, Punjab., Chandigarh, on 25.09.2013.

The appellant challenged the above order in C.W.P. No. 26455 of 2013 alleging that the agricultural produce was purchased from firms licensed in Market Committee, Bathinda, and in Market Committee, Jalalabad (West), and that the Market Fee and RDF were paid by them, and therefore, in terms of the amended Rule 29 (1) of the Rules notified on

4.9.1998, since the payment of the above fee and RDF was made by the sellers, no further liability towards the payment of the above amount could be fastened upon it. Amended Rule 29 (1) specifies that fee on agricultural produce, bought or sold by a licensee has to be paid in the notified market area and if that fee has been paid once, there is no requirement for payment in the same or another notified market area within the State. As per procedure laid down in the above Rule, a licensee who claims exemption from payment because of an earlier payment in respect of the same agricultural produce, has to make a declaration and provide a certificate in Form KK to the Market Committee where the exemption is claimed within a period of 60 days of the transaction.

The learned Single Judge has noticed that the appellant has admitted to the purchase of agricultural produce from respondents No. 4 to 6 who were licensees in their respective Market Committee and had submitted Forms KK to the Market Committee, Abohar. The learned Single Judge also noticed that Column 6 in the above Forms pertaining to the above amount or fee paid, number and date of the receipt was left blank. The counsel of the respondent further submitted before the learned Single Judge that no record is available with the Department of Food & Civil Supplies and the Sales Tax Authority at Bathinda, regarding the sales and purchases in question. On the basis of the foregoing the learned Single Judge concluded that there was no evidence regarding payment of Market Fee and RDF at any of the Market Committees and dismissed the writ petition.

We have heard learned counsel for the appellant and have perused the record. We are in agreement with the findings and view taken by the learned Single Judge. There is no shred of evidence to show that payment of Market Fee and RDF was made at any of the Market Committee in question and it is safe to conclude so, in the absence of any entry made in Column 6 of Form KK. Further, from the perusal of the record of L.P.A. No. 176 of 2016, it is apparent that Forms KK have not been even placed on record.

Learned counsel for the appellant has placed reliance on the orders passed in ***M/s Guru Nanak Industries v. State of Punjab and others*** (C.W.P. No. 3871 of 2000) and ***Market Committee, Rajpura and another v. State of Punjab and another*** (C.W.P. .No. 4855 of 2005). It may be noticed that in the instant case, there is no evidence at all to show that the market fee was ever deposited. Even a cursory glance at Forms KK reveal that the Column pertaining to the payment of market fee does not reflect the amount which ought to have been paid in the Market Committee in question. In view of the foregoing, the law cited by the learned counsel for the appellant is not applicable to facts of the case in hand.

As a result of the above, the appeals must fail and are dismissed with no order as to costs.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

24.01.2019
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Note: Whether speaking/reasoned Yes / No
Whether Reportable: Yes / No