IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-278-2019

Date of Decision: 10.1.2019

M/s S.D. Cotton Factory

...Petitioner

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. Lakhwinder Singh Sidhu, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the assessment order dated 8.8.2012 (Annexure P-7) passed by respondent No.4; demand notice dated 8.8.2012 (Annexure P-8) directing the petitioner to pay a sum of ₹ 3,95,699/- along with interest; order dated 15.9.2015 (Annexure P-9) passed by respondent No.3 dismissing the appeal of the petitioner and the order dated 25.1.2018 (Annexure P-10) passed by respondent No.1 dismissing the revision of the petitioner.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is engaged in the business of sale, purchase and Ginning/processing of cotton (Kapah/ Narma) and is licensed under Section 10 of the Punjab Agricultural Produce Markets Act, 1961. Cotton is used to make variety of clothes, domestic uses

and medical uses. The Kapas is raw cotton or seed cotton. Ginning is process, which separates cotton fibers from cottonseed. Cotton fiber separated from seed cotton is called lint. Lint cotton separated from cottonseed is pressed in the form of full pressed bales with standard weight of 170 kgs. Ginning Out Turn (GOT) is percentage of lint obtained out of one quintal of kapas (seed cotton), after processing. Respondent No.4 vide assessment order dated 31.8.2010 (Annexure P-5) for crop years 2006-07 and 2007-08 framed the assessment on the basis of circular dated 4.4.2007 issued by respondent No.2 fixing the maximum GOT (Lint percentage) at 35%. For the crop year 2006-07, respondent No.4 held that the petitioner liable to pay ₹ 82,487/- along with interest on RDF from 30.9.2010 till payment whereas for the crop year 2007-08, the petitioner was held liable to pay ₹ 3,04,838/- along with interest on RDF from 30.9.2010 till payment. Accordingly, demand notice dated 1.9.2010 was issued to the petitioner for the payment of the aforesaid amounts. Feeling aggrieved, the petitioner filed an appeal by depositing 25% of the market fee and 25% of the RDF as is clear from the certificate dated 16.11.2010 (Annexure P-6). The appellate authority vide order dated 23.12.2011, allowed the appeal and set aside the assessment order dated 31.8.2010 and the demand notice dated 1.9.2010. The case was remanded back to respondent No.4 for making a fresh assessment after giving an opportunity of hearing to the petitioner. Respondent No.4 called the petitioner vide notice dated 19.6.2012 who submitted its reply dated 19.6.2012. Thereafter, respondent No.4 vide order dated 8.8.2012 (Annexure P-7) framed the assessment at ₹ 3,11,449/- as market fee, RDF, penalty and interest. A notice dated 8.8.2012 (Annexure P-8) was issued to the petitioner raising a demand of ₹ 3,11,449/- on account of market fee, RDF, penalty and interest. The petitioner challenged the said assessment order, Annexure P-7 and the demand notice, Annexure P-8, before respondent No.3 who vide order dated 15.9.2015 (Annexure P-9), dismissed the said appeal. Feeling aggrieved by the order, Annexure P-9, the petitioner filed revision before respondent No.1. Respondent No.1 vide order dated 25.1.2018 (Annexure P-10) dismissed the said revision petition. As per the information received by the petitioner vide letter dated 14.4.2010 (Annexure P-11) under the Right to Information Act, 2005, the yield of lint with one M/s Baba Lakhmir Das Rice Mills during the year 2005-06 was 35.913% and the said firm was required to pay a lump sum amount of ₹ 3000/- and no formal assessment was made. According to the Research Article dated 15.6.2018 (Annexure P-12), the GOT in the Indian conditions is as high as 42% and the variation ranges between 21-42 percent. Even as per the information (Annexure P-13) supplied by the Punjab Agriculture University, Ludhiana, the GOT was between 33% to 35.5% during the year 2006-07. The Cotton Corporation of India has stated that 'Out-turn is a productivity parameter that takes into account the percentage of lint and seeds extracted from cotton. The lint extraction from cotton ranges from 26 to 40 per cent per bale – with 40 per cent being considered extremely good quality cotton and most of the cotton procured in India has 30-35 per cent out turn' as is clear from the news item dated 19.10.2018 (Annexure P-14) published in daily 'The Hindu (Business Line)'. Further, on the basis of the assessment order, respondent No.4 issued recovery certificate (Annexure P-15) to respondent No.5 for effecting recovery from the petitioner and on the basis thereof, respondent No.5 had issued a notice dated 11.10.2018 (Annexure P-16) to the petitioner for the recovery of ₹ 3,80,189/- regarding arrears of SD Cotton Factory, Budhlada Road, Bhikhi. Hence, the present writ petition.

3. We have heard the learned counsel for the petitioner.

4. The primary challenge in this writ petition is to the demand of market fee, RDF, penalty and interest for the crop years 2006-07 and 2007-08 raised by the Market Committee and upheld by the appellate and the revisional authorities.

5. The assessing authority under Punjab Agricultural Produce Market (General), Rules, 1962 passed assessment order No. 1065 dated 31.8.2010 for the crop years 2006-07 and 2007-08. The basis for the purposes of assessment was the GOT as mentioned in circular letter No.81 dated 04.04.2007 issued by the Punjab Mandi Board. In appeal, the said assessment order was set aside and the matter was remitted to the assessing authority. The fresh assessment was to be made after getting the data from Cotton Corporation of India (CCI), Cotton Ginning Association of India and Punjab Agriculture University regarding the GOT. In pursuance thereto, the assessing authority upon receipt of the report from CCI, Cotton Ginning Association and Punjab Agricultural University considering the GOT between 32% to 35% framed the assessment vide order dated 8.8.2012 (Annexure P-7) by ordering the following recoveries:-

Year	**Market Fee**	**RDF**	**Penalty**	**Interest**
2006-07	6531/-	6531/-	65,310/-	5878/- (upto 31.3.12)
2007-08	24485/-	24485/-	244840/-	17629/- (upto 31.3.12)

6. Accordingly, the demand notice dated 8.8.2012 (Annexure P-8) was issued to the petitioner for depositing an amount of ₹ 3,95,699/-. Feeling aggrieved, the petitioner filed an appeal before the appellate

authority. The appellate authority vide order dated 15.9.2015 (Annexure P-9) upheld the assessment order by observing that the CCI and the Punjab Agricultural University, Ludhiana submitted the reports regarding the GOT on the basis of the samples collected from different places and at different levels which pertained to their average yield/outturn. The relevant observations of the appellate authority read thus:-

> "In this case, after hearing to the arguments advanced by the counsels for the appellant firm and the respondent and considering the facts of the case and perusing the concerned record it has transpired that the Assessing Authority has obtained the requisite information from Cotton Corporation of India and Punjab Agricultural University, Ludhiana for drawing assessment against the firm regarding the ginning outturn and the same is as follows:-
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> | | |
> |---|---|
> | Cotton Corporation of India | 32.71% to 34.57% |
> | Punjab Agricultural University, Ludhiana. | 33% to 35.2% |
>
> On the basis of the aforesaid facts, the arguments advanced on behalf of the appellant firm carry no weight because Cotton Corporation of India and Punjab Agricultural University, Ludhiana submit reports regarding the ginning outturn of Cotton/Narma during a given year and the same is based on samples collected from different places and at different levels and the same pertains to their average yield/outturn. As such, the arguments of the appellant firm that the samples of

> ginned cotton checked by Agricultural University and Cotton Corporation of India are based on the results derived from superior quality of ginned cotton, is wrong. As such, there is no weight in the arguments advanced on behalf of the firm."

The revisional authority vide order dated 25.1.2018 (Annexure P-10) affirmed the said findings of the appellate authority and dismissed the revision.

7. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the concurrent findings of facts recorded by the authorities below which may warrant interference by this Court. The material produced by the petitioner before the authorities below remained unsubstantiated.

8. In view of the above, the assessment order as upheld by the appellate and the revisional authorities cannot be faulted. Consequently, we do not find any substance in the writ petition and the same is, hereby, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 10, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**