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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 6078 of 2011

J.D. Food Products Pvt. Ltd. Through: its Director, Girish Saluja, Aged about 35 years, S/o. Late Shri Daljeet Singh, Registered Office- Lane L-4, Vinoba Nagar, Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Agriculture, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh State Agriculture Marketing (Mandi) Board, Through: its Director, Beej Bhawan, Ravigram, Telibandha, Raipur, Chhattisgarh
3. Deputy Director, Chhattisgarh State Agriculture, Marketing (Mandi) Board, Regional Office, Saraswati Nagar, Near Pratap Talkies, Bilaspur, Chhattisgarh
4. Krishi Upaj Mandi, Samiti, Through: its Secretary, Torwa, Bilaspur, Chhattisgarh
5. Krishi Upaj Mandi Samiti, Through: its Secretary, Patelpaali, Raigarh, Chhattisgarh
6. Krishi Upaj Mandi Samiti, Through: its Secretary, Kharsia, District Raigarh, Chhattisgarh
7. Food Corporation of India, through: its Regional Director, Link Road, P.B. No.47, Bilaspur, Chhattisgarh

---- Respondents

AND

WPC No. 6228 of 2011

Savitri Food's Pvt. Ltd. Through: its Director, Manish Saluja, Aged about 31 years, S/o. Late Shri Daljeet Singh, 855-Sector-D, Urla Industrial Area, (Sarora), Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Agriculture, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh State Agriculture Marketing (Mandi) Board, Through: its Director, Beej Bhawan, Ravigram, Telibandha, Raipur, Chhattisgarh

3. Deputy Director, Chhattisgarh State Agriculture, Marketing (Mandi) Board, Regional Office, Saraswati Nagar, Near Pratap Talkies, Bilaspur, Chhattisgarh
4. Krishi Upaj Mandi, Samiti, Through: its Secretary, Torwa, Bilaspur, Chhattisgarh
5. Krishi Upaj Mandi Samiti, Through: its Secretary, Patelpaali, Raigarh, Chhattisgarh
6. Krishi Upaj Mandi Samiti, Through: its Secretary, Kharsia, District Raigarh, Chhattisgarh
7. Food Corporation of India, through: its Regional Director, Link Road, P.B. No.47, Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Faisal Akhtar, Advocate.
For State	:	Mr. Siddharth Dubey, Dy. G.A.
For respective Respondents	:	Mr. B.P. Gupta, Advocate Mr. Y.S. Thakur, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/08/2020

1. Since the relief sought for in the two writ petitions and also the issue involved in the two writ petitions coupled with the fact that the respondents also in the two writ petitions being the same, this Court proceeds to decide the two writ petitions by this common judgment.

2. The substantial relief that the petitioners have sought for in the present two writ petitions is for a direction to the respondents for refund of the amount paid by the petitioners to the respondents towards payment of Mandi Fees charged for the financial year 2004-05 along with interest @ 12% per annum.

3. The facts relevant for the adjudication of the two writ petitions are that the petitioner/company is a company incorporated under the

Companies Act and is engaged in the business of food processing industry. The petitioner/company is having a food processing units for the manufacturing of Daliya, Energy Food, Bread and Roller Flour Mills, etc. For the purpose of manufacturing the food products at the petitioners/company, it requires wheat and for which the petitioner purchases wheat directly from the respondent No.7-the Food Corporation of India (FCI) on advance payment being made. On the purchase of wheat by the petitioner from the FCI along with the sale consideration, the petitioner company also was required to pay fee @ 2% as Mandi Fee.

4. The grievance of the petitioners now is that the State Government had issued a notification on 03.08.2005 exempting payment of Mandi Fees on pulses and wheat which are brought by the processor from outside of the State for processing for the period between 1st April, 2004 to 31st March, 2006. Based upon the said notification, the petitioners are claiming for exemption of the Mandi Fee that they have paid and that since they have already paid the amount to the respondent No.7 and the respondent No.7-the FCI in turn having transferred the amount to the respondent No.2 to 6. The respondents No.2 to 6 should refund the money to the petitioners.

5. Counsel fro the petitioners referred to the document dated 06.02.2007 issued by the respondent No.2 to the petitioners asking the petitioners to submit the details of the payment of

Mandi Fee paid by the petitioners to the FCI. To the said letter given by the respondent No.2 to the petitioners, the petitioners had approached the FCI, which had provided the details of the payments made vide Annexure P/8 dated 02.03.2007 and which subsequently was forwarded by the FCI to the respondent No.2. However, thereafter there has been no further development, which lead to the petitioners filing the present two writ petitions.

6. The respondents No.2 to 6 are represented by Mr. Yashwant Singh Thakur, Advocate. The contention of Mr. Thakur is that the Mandi Fee is charged by the respondent No.2 under the provisions of Krishi Upaj Mandi Adhiniyam. Mr. Thakur accepts that vide Annexure P/2 the notification State Government had exempted collection of Mandi Fee on the pulses and wheat, which are brought by the processor from outside of the State for processing. According to Mr. Thakur, the contention of the petitioner as regards availability of an exemption for the financial year 2004 to 2006 is not in dispute. However, it needs verification of facts from the records to establish whether the petitioners are entitled for refund or not. According to Mr. Thakur, subject to the petitioner furnishing the details of the payments made by him in respect of wheat which was brought by the petitioner from outside the state for processing. The claim of the petitioner can be considered in accordance with law in terms of the notification dated 03.08.2005. Mr. Thakur further submits that it also needs to be considered whether the petitioners had passed on the burden

upon the consumers, who had purchased the products from the petitioners/company. According to Mr. Thakur, if the petitioners have passed on the liability to the customers, then he would not be entitled for refund, or else it would amount to unjust double enrichment.

7. Mr. Siddharth Dubey, Dy. G.A. supplementing the arguments of Mr. Thakur submitted that what is paramount necessary to be considered is whether the wheat purchased by the petitioners was from outside the State of Chhattisgarh or not? According to the State counsel, if the petitioners suggest that they had purchased wheat from the FCI, then it cannot be construed that the wheat was purchased from outside the State, because according to the petitioners themselves, the wheat was purchased from the godowns of the FCI situating within the State of Chhattisgarh. The State counsel also further reiterated the contention that it would be relevant to verify whether the petitioners have passed on the burden to the en-consumers or not before deciding the claim of the petitioners.

8. From the submissions made by the counsel appearing on all the sides, there does not seem to be any dispute so far as there being an exemption from payment of Mandi Fees on pulses and wheat which are brought by the processor from outside the State for processing during the period 01.04.2004 to 31.03.2006. For ready reference, the notification dated 03.08.2005 is reproduced hereinunder:

> **"In exercise of the powers conferred by sub-section (1) of section 69 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1973 (No. 24 of 1973) the State Government hereby exempts from the Market Fees (Under Sub-section (1) of Section 19 of said Act) on the pulses and wheat which are brought by processor from outside of the State for processing for the period from First April, 2004 to 31.03.2006."**

9. On a query being put to the learned counsel for the petitioners as to whether he had passed on the liability to the end-consumers or not, the learned counsel for the petitioners was not in a position to make a clear statement, thus it becomes a matter of verification. From the submissions made by the counsel for the respondents, it is evidently clear that principally they are admitting the fact that in the event of there being any purchase of wheat by the petitioners from outside the State for processing, they would be entitled for the benefit of exemption. However, in the factual matrix of the writ petitions itself, the petitioners have pleaded that they have purchased wheat from FCI and the wheat was purchased from the godowns situated within the territories of State of Chhattisgarh. The fact that they have purchased wheat from the godowns situated within the State of Chhattisgarh would mean that the purchase was made not from outside the State, but was an intra-State sale. The fact that the FCI might have purchased wheat from outside the State of Chhattisgarh would be immaterial, irrelevant at this stage for the reason that the moment the FCI purchases the wheat from any 3rd party outside the State and procures the wheat, stores it in the State of Chhattisgarh the purchase of wheat by FCI gets complete. The whole transaction gets concluded. Any subsequent purchase of

wheat by a 3rd party from FCI cannot be construed to make the purchase of wheat by the petitioners from the FCI's godown in the State of Chhattisgarh to be a purchase from outside the State. The principle theory of notional extension cannot be brought into force in the aforesaid given facts and circumstances.

10. In case, if the petitioners have purchased wheat from outside the State independently during the relevant period of 01.04.2004 and if the petitioners are able to produce cogent documents and records in this regard, the same would have to be considered by the respondents in terms of the notification for the refund of the Mandi Fees. It is also necessary to get an undertaking from the petitioners supported with cogent document to establish that the petitioners had not passed on the said liability to the end consumers of the petitioners-company and in case if the petitioners have passed on the liability to the end-consumers, even then the petitioners would not be entitled for any relief of refund. As it would amount to undue double enrichment that is to say that the petitioners on one hand have recovered the liability from the consumers, who had purchased the finished products from the petitioners and at the same time the petitioners also are demanding for refund of the money from the Department

11. Given the said facts, subject to the petitioners producing cogent documents in support of the aforesaid observations made in the preceding paragraphs, the respondents authorities are directed to consider the same in accordance with the notification dated

03.08.2005 and shall pass an appropriate order at the earliest from the date the petitioners are able to provide the relevant documents in respect of their claim.

12. The two writ petitions accordingly stand disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved