119 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-1344-CWP-2020 in/and
CWP-827-2020 (O&M)
Date of decision : 27.01.2020

M/s Sukhbir Agro Energy Limited
...... Petitioner

versus

State of Punjab & ors.
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN

***

Present : Mr.Sameer Sachdeva, Advocate
for the applicant-petitioner.

***

<u>AJAY TEWARI, J. (Oral)</u>

<u>CM-1344-CWP-2020</u>

1 For the reasons recorded, the application is allowed. Document Annexure P-17 is taken on record.

<u>CWP-827-2020</u>

2 By this petition the petitioner has challenged the order dated 18.10.2018 (Annexure P-1) and all related proceedings whereby it has been saddled with the liability to deposit Market fee/RDF for rice. Paras No.2 and 5 of the present writ petition are as follows :-

> *"2 That the factual matrix of the case is that the petitioner firms have set up their work unit in Punjab, which falls under the notified market area of respondent market committee. The petitioners have been duly issued licence by the competent authority. As per the business dealings, the petitioner-Company brings paddy/rice for*

sale/storage/processing not only from within notified market area of their site, but also from different parts of Punjab and also from other States, which are also a big producer of various qualities of paddy/rice. The petitioner Company converts the paddy/rice purchased into export quality rice and exports the bulk of it to foreign countries by transporting the refined rice produced from their site to the exporters outside the State of Punjab. With respect to the purchases of rice from the State of Punjab the petitioners are regularly and honestly paying the due fees and there is absolutely no dispute, default or irregularities in the record of the petitioners in payment of market fee to the respondents.

5 That to the utter shock and surprise of the petitioner firm, the respondent initially issued notice in 2008 to the petitioners calling upon them to deposit fees on produce purchased from outside the State of Punjab. In response thereto, the representative of the petitioner firm immediately approached the office of respondent and submitted the detailed facts and figures showing that the petitioner firm had duly deposited the entire amount qua market fee and RDF as per rules for the aforesaid period and the notice is totally wrong and illegal as goods were meant for storage purpose only. The copy of response dated 5.11.2008 is attached as ANNEXURE P-2. Alongwith with it the petitioner also showed the relevant record to show that produce with it is meant for storage purpose only. The copy of railway receipt and agreement for rent is attached as ANNEXURE P-3 and P-4. However, to the utter surprise of the petitioner, neither the record produced by the petitioner was considered nor the representative of the petitioner was allowed to make clear the things to the effect that the petitioner firm had already deposited the requisite market fee as well as RDF as required under the rules and no *market fee is required to be paid for sale transactions outside the State of Punjab. Consequently with adamant attitude and with closed minds the respondents passed the assessment orders and issued demand notice dated 11.5.2009 (ANNEXURE P-5) against which appeal and revision was also dismissed with cloased mind (ANNEURE P-6 and P-7).*

3 Thus the stand of the petitioner before this Court is that the goods on which fee is sought to be levied actually do not belong to the petitioner. These goods have merely been kept by it for storage while they belong to somebody else. It is worthwhile to mention here that this is the third writ petition in the series of writ petitions filed by the petitioner with respect to the same goods.

4 The first petition filed by the petitioner was ***CWP No.14391 of 2015***. Paras 2 and 4 of that petition are as follows :-

> *"2 That as per the business dealings, the petitioner-Company purchases paddy/rice not only from within notified market area of Guru Harsahai, Distt. Ferozepur but also from different parts of Punjab and also from other States, which is also a big producer of various qualities of paddy/rice. The petitioner Company converts the paddy/rice purchased into export quality rice and exports the bulk of it to foreign countries by transporting the refined rice produced from Guru Harsahai, Distt. Ferozepur to the exporters outside the State of Punjab. Rice purchased from different shellers located in Punjab is also exported abroad by the petitioner in addition to the rice produced by the petitioner.*
>
> *4 That to the utter dismay of the petitioner, during the period April 2008 to June, 2008, the respondent committee issued various notices/letters to the petitioner on the premise*

that the petitioner had not deposited the requisite returns with respect to business undertaken by the petitioner-company during the period April 2008 with the alleged premise that in the month of April 2008 the petitioner company brought 25,270 Qntl. Rice from M/s. Maa Lakshmi Bhandar Barki Khadri, Bihar, which is amounting to Rs.3,04,50,350/-, whereby the petitioner has been saddled with responsibility to pay additional market fee and rural development fund and interest and penalty for the paddy/rice brought outside the State of Punjab. The turnover of paddy/rice purchased from other States outside the State of Punjab was not included by the petitioner in his return filed before respondent No.3 as the transactions of purchase were completed outside the State of Punjab and no transaction took place in the respondent No.3 Committee.

5 In that petition interestingly, the petitioner disclosed that the market committee had issued a notice to it; it had participated in the assessment; the market fee had been assessed; it had filed an appeal against it; that appeal had been dismissed and thereafter it had filed a revision which was also dismissed. However, that petition was got attached along with another writ petition bearing ***CWP No.9538 of 2014***, titled as ***M/s Bhagwati Lacto Foods Pvt. Ltd. Vs. State of Punjab & others*** where the dealers had challenged the notice. That bunch of petitions were decided by this Court by judgment and order dated 30.11.2016 (Annexure P-9). A perusal of this judgment shows that it dealt with only those cases where notices had been issued and not where assessment had been finalized right upto the stage of revision. Thereafter the petitioner filed ***CWP No.29814 of 2017 titled as M/s Sukhbir Agro Energy Private Limited Vs. Punjab State Agricultural Marketing Board***

and others, para 2 (wrongly mentioned as para 23), 8 and 9 of the said petition are as follows :-

> *2 That as per the business dealings, the petitioner firm purchases agricultural produce/foodgrains not only from within notified market area of their Company premises but also from different parts of Punjab and also from other States/UTs like UP, Bihar, Delhi etc. The petitioner converts the agricultural produce/foodgrains purchased into export quality and refine them and exports the bulk of it to the exporters/dealers outside the State of Punjab. Agricultural produce/foodgrains purchased from different shellers/dealers located in Punjab is also exported by the petitioner in addition to the agricultural produce/foodgrains stocked by the petitioners through storage/stock tramsfer.*
>
> *8 That in the setting of the above legal provisions, the petitioners states that a substantial part of its business relates to purchase of agricultural produce/foodgrains from Pucca Artias/commission agents in notified market areas in the other States. It is submitted that where the petitioners are licensee holder under Act and having sister units, they buy agricultural produce from katcha artias and where it is not, it buys from pucca artias/commission agents. The agricultural produce/foodgrains purchased in the instant case is from pucca artias/commission agents outside the State of Punjab where the petitioners are not a licensee. The market fee and RDF and other applicable local and other statutory dues has already been paid on its agricultural produce/foodgrains as is apparent and clear from the bills, bilties etc. given to the respondents. The petitioners further undertake to produce all the relevant documents issued by the dealers outside State of Punjab certifying the sale and payment of market fees and RDF and other applicable local and other statutory dues with respect to the purchase of agricultural produce/foodgrains by the petitioner as and*

when directed by this Hon'ble Court.

9 That the petitioners entered into various agreements with different commission agents (Pucca Artias) outside the State of Punjab to purchase of agricultural produce/foodgrains for the petitioners, the payment for which is made by the petitioners in outside the State of Punjab and weighment and delivery of the agricultural produce so purchased also takes place outside State of Punjab. The market fee and RDF and other applicable charges/taxes/fees is to be paid by the commission agents in the other States who are licensees of notified market areas of other States and who charge the same from the petitioners at the time of sale/purchase in outer States which the petitioners have duly paid while discharging the bills. The documents pertaining to purchase of agricultural produce/foodgrains from other States including photocopies of sale bills, challan form and good receipt, transportation bill paid by the petitioners outside State of Punjab relating to the transactions of the aforesaid period have already been produced time and again before the respondents."

6 In this petition interestingly the petitioner did not disclose or attach the orders of assessment, appeal and revision and merely stated that the decision in CWP No.14391-2015 had not been followed. In that the petitioner had not mentioned that he had filed any such similar petition earlier as well nor was the previous history mentioned. That writ petition was disposed of with the following order :-

"In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of an appropriate writ, order or direction against the illegal and arbitrary action of the respondents, whereby, the petitioner has been illegally and maliciously called upon by the respondents to deposit fees/penalties.

> *2. Learned counsel for the petitioner submitted that a legal notice dated 18.10.2017 (Annexure P-4) has been sent to the Secretary, Market Committee, Guruharsahai, District Ferozepur/respondent No.3, but no action has been taken thereon so far.*
>
> *3. After hearing learned counsel for the petitioner and perusing the averments made in the petition and without expressing any opinion on the merits of the controversy, we dispose of the writ petition by directing respondent No.1 to take a decision on the legal notice dated 18.10.2017 (Annexure P-4) within a period of two weeks from today after affording an opportunity of hearing to the petitioner by passing a speaking order in accordance with law."*

7 It is thereafter that the impugned order has been passed. Along with this writ petition the petitioner has attached (Annexure P-2) which was its initial reply filed on 05.11.2008 in which it had taken the plea that infact the rice did not belong to it.

8 It was in these circumstances that respondent No.2 passed the impugned order rejecting the claim of the petitioner noticing that the petitioner had been changing its stand at different times from claiming at one point that the goods had been purchased by it and at other times that the goods belong to some other party and had been kept by it only for storage.

9 We put these inconsistencies to the learned counsel for the petitioner. His argument is that these high handed actions were being taken by the respondents against many persons and the crux of the matter is that the respondents are seeking to levy fee and market fee and RDF on goods on which these already stand paid in other States and therefore, these 'minor inconsistencies' in pleadings should not deter this Court from

seeing the larger picture and eliminating the injustice.

10 We are afraid that it is not possible for us to stomach this facile argument. Pleadings in a Court of law are sacrosanct and can not be wished away by raising an argument that injustice transcends pleadings.

11 We find that the petitioner has dis-entitled itself from any relief by these shoddy, inconsistent and rather mutually destructive pleadings.

12 Petition stands dismissed.

13 Since the main case has been decided, the pending miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

27.01.2020
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No