IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-4145-2018
Reserved on 09.05.2022
Pronounced on: 20.05.2022

M/S ARORA INDUSTRIES & ORS .... Petitioners

Versus

PUNJAB STATE AGRICULTURAL MARKETING BOARD & ORS
.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sameer Sachdeva, Advocate,
for the petitioners.

Mr. S.P. Garg, Advocate,
for respondents No.1, 3 & 4.

Mr. Pawan Sharda, Senior DAG, Punjab,
for respondent No.2.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking an appropriate writ, order or direction to be issued to set aside the impugned orders dated 04.01.2018 (Annexure P-10) and 07.02.2018 (Annexure P-11), by which orders, the petitioners have been directed to deposit market fee and RDF (Rural Development Fee).

2. In brief, the facts that can be culled out are that the petitioners are engaged in the business of sale, purchase, storage and processing of agricultural produce/food grains like paddy, rice etc. in its premises situated at District Ferozepur/Moga. The petitioner firm purchases agricultural

produce/food grains not only from within the notified market area of their Company premises but also from different parts of Punjab and other States like UP, Bihar, Delhi etc. The said agricultural produce/food grains purchased is converted into export quality products and exported in bulk outside the State of Punjab. The petitioner purchased rice from Narayan Commercial Center situated at Lucknow and got the same transported to its premises and on that account, was issued a notice for recovery of Rs.3,20,898/- each for market fee and RDF. The said demand was followed by another letter dated 07.02.2018. The petitioner replied to the said letter stating that the market fee was not chargeable qua transaction of sale or purchase which takes place outside the local notified market area. Reference was made to Section 23 of the Punjab State Agricultural Produce Markets Act, 1961 (for short, the Act) and Rule 29(7) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short, the Rules). As the said demand was not withdrawn, the instant writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioners herein would contend that the market fee and RDF cannot be levied on agricultural produce/food grains brought from outside the State of Punjab. It is argued that the petitioners, in the instant case, have purchased foodgrains from UP and Rajasthan and, therefore, by virtue of Section 23 of the Act and Rule 29(7) of the Rules, the demand for market fee and RDF would be unsustainable. He would urge that the very bill of purchase would reflect that the transaction has taken place outside the State of Punjab. He has relied upon judgment rendered in ***M/s Guru Nanak Industries Versus State of Punjab and others***, CWP No.3871 of 2000, decided on 01.08.2018 wherein

Section 23 of the Act and Rule 29 of the Rules have been interpreted and it has been held that if the entire transaction takes place outside the State, market fee would not be payable. The said matter was remanded back to the Secretary, Market Committee to determine afresh as to whether the sale or purchase of the agricultural produce had taken place within the market area.

4. Mr. S.P. Garg, learned counsel appearing on behalf of respondents No.1, 3 and 4 argues that the petitioners herein have rushed to this Court without challenging the assessment order that has been passed, which is an appealable order under Rule 31(13) of the Punjab Agricultural Produce Markets (General) Rules, 1962 made under Punjab Agricultural Produce Markets Act, 1961. It is contended that the Market Committee has inherent right to assess the business of the petitioners for the payment of the market fee while disputing the fact that the petitioners export rice as claimed by them. It is submitted that the transactions to purchase of rice or paddy by the petitioners from outside the States are completed within the market area of the Committee, Talwandi Bhai like taking delivery of the produce, weighing the same and making payments, and these transactions have been done within the notified area of the Committee.

5. I have heard learned counsel for the parties and have gone through the pleadings of the case and the case law cited.

6. For ready reference, Section 23 of the Act and Rule 29(7) are reproduced as under:-

> <u>Section 23 of the Act</u>
>
> **23. Levy of fees.** A committee shall, subject to such rules as may be made by the State Government in this behalf, levy on

ad-valorem basis –

(i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees.

Provided that –

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made ; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.

Rule 29 (7) of the Rules

29. Levy and collection of fees on the sale and purchase of agricultural produce. -

xx xx xx

(7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area.

(a) If the agreement of sale or purchase thereof is entered into in the said area; or

(b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

(d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

7. The market fee is chargeable under the Act as and when sale or purchase is deemed to have taken place in the notified market area. Rule 29(7) of the 1962 Rules becomes relevant, which, in turn, stipulates that for the purpose of this Rule, agricultural produce shall be deemed to have been bought or sold in a notified market area (i) if the agreement of sale or purchase thereof is entered into in the said area; or (ii) if in pursuance of the agreement of sale or purchase, the agricultural produce is weighed in the said area; or (iii) if in pursuance of the agreement of sale or purchase, the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser; (iv) if the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

8. The factual position that emerges is that the paddy was purchased, weighed at Lucknow/Rajasthan and brought into Punjab. Other than the written statement filed that the agricultural produce was weighed within the market area, there is nothing available on the record for the Court

to conclude as such. The judgment as rendered in ***M/s Guru Nanak Industries's case (supra)*** has clearly held that Section 23 of the Act provides for levy of fee on agricultural produce bought or sold within the market area. However, in Rule 29 (7) of the Rules, a deeming section has been added providing for certain eventualities which, in turn, would lead to the conclusion that the agricultural produce was bought or sold within the market area, hence, market fee will be leviable. Any one of those eventualities in isolation may not itself lead to conclusion regarding the agricultural produce being bought or sold in the market area, if seen these parameters considered in the light of the principles as laid down in the Sale of Goods Act, 1930. Hon'ble the Supreme Court in ***Agricultural Market Committee Versus Shalimar Chemical Works Limited-AIR 1997 Supreme Court 2502*** opined a similar presumption raised to be rebuttable. The legal fiction so created was held to be beyond legislative policy. In the case of ***M/s Arihant Udhyog Versus State of Rajasthan and others-AIR 2017 SC 3074,*** Hon'ble the Supreme Court opined that factum of purchase of sale of goods in a market area will depend on their title for the agricultural produce passes. If entire transaction takes place outside the State, market fee will not be payable. While deciding the said matter, the Division Bench had set aside the impugned orders and remitted the matter back to the Secretary for determining afresh to be examined in the light of the material available before it.

9. Similar issue has been raised in the instant case. The case of the petitioner is that the paddy was purchased and weighed outside the market area, hence no fee was leviable, whereas on the other hand, except the

written statement, there is nothing on record to establish that the purchase/weighment was made within the market area. Hence, keeping in view of the judgment rendered in ***M/s Guru Nanak Industries (supra),*** this Court deems it appropriate to set aside the impugned demand notices and remit the matter back to the Secretary, Market Committee concerned for determination afresh to be examined in the light of the material already placed on record or which may be placed on record by the petitioner(s) to establish that the sale or purchase of the agricultural produce had not taken place within the market area.

10. As far as the argument raised by the counsel appearing on behalf of the Market Committee that an assessment order has been made, the same has not been placed on the record nor is challenged in these proceedings. As this Court is setting aside the impugned demand notices and remitting back the matter to be decided afresh, the assessment order is to be kept at abeyance till a decision is taken thereon.

11. The writ petition is disposed of accordingly.

20.05.2022 **(JAISHREE THAKUR)**

sanjeev **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No