IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5528-2003
Date of Decision:- 11.10.2023

M/s Ram Phool Ashok Kumar ….Petitioner

vs.

State of Haryana and others ...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashish Pannu, Advocate
For the petitioner

Mr. Sharan Sethi, Addl.A.G. Haryana
for respondent No. 1.

Mr. Paramveer Singh Dhull, Advocate
for respondent No. 2 AND 3

Ritu Bahri, J.

1. Petitioner has filed the present writ petition under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari, seeking quashing of orders dated 10.08.2001 (P-1), 24.09.2002 (P-2) and 19.02.2003 (P-3) raising demand of market fee on the agricultural produce bought for the purpose of process, for which the market fee had already been paid at the place of purchase of agriculture produce and LL form has been deposited with the Market Committee within time.

2. The facts, in brief, are that the petitioner is engaged in the business of processing of ground nut, graM etc. The petitioner is purchasing ground nut from outside the State of Harvana including Rajasthan. The petitioner then brought the

agricultural produce within the market Committee, Gohana for processing namely roasting the SAMO and therefore, it was sold. The petitioner submits Form H and LL Forms alongwith it showing that petitioner is not liable to pay market fee on the ground as the same is exempted under Rule 38 (15) of the Punjab Agricultural Produce Market (General) Rules, 1962 (for short 'Rules 1962').

3. The petitioner was levied market fee for Rs.26,180.24, for the year 1995-1996 and equal amount of penalty was levied on the petitioner. Petitioner then filed a writ petition in this Hon'ble High Court, challenging the levy of market fee on the agricultural produce. The Hon'ble High Court was pleased to order to file appeal before the Chief Administrator, Market Committee for the redressal of its grievance. Petitioner then filed appeal before the Chief Administrator, Haryana State Agricultural Market Board, Panchkula and the same was disposed of by the Chief Administrator vide order dated 8.11.1996 and remanded the case to the Market Committee for fresh adjudication. The petitioner had represented before the Market Committee and brought to their notice that no market fee was leviable on agriculture produce, brought for processing within the State from outside the state of Haryana for processing. The Administrator, Market Committee, Gohana, after hearing the petitioner, levied the market fee of Rs.26,180.24 and penalty was waived off, saying that roasting of ground nut does not fall within the definition of processing. The petitioner then deposited the aforesaid market fee of Rs.26,188.24, levied by the Administrator, Market Committee, Gohana. The copy of order dated 10.08.2001 is attached as Annexure P-1.

4. Feeling aggrieved, the petitioner filed an appeal before the Chief Administrator against the order of Administrator, Market Committee, Gohana. The learned Chief Administrator, vide order dated 24.09.2002 (P-2) dismissed the appeal while holding that he was convinced that the groundnut brought by the firm

was not processed, as no oil or groundnut cake(khal) was extracted, but it was parched and sold. The case was thus held not to be covered under Rule 38(5) of the Rules, 1962.

5. The Market Committee, Gohana after the decision of Chief Administrator, HSAMB again levied the market fee for the subsequent period, claiming that the petitioner is liable to pay market fee on 19.02.2003 (P-3). The copy of license is annexed as Annexure P-4. Hence the present writ petition.

6. On notice of the writ petition, written statement has been filed on behalf of respondent Nos. 2 and 3 stating therein that petitioner is liable to pay the market fee in accordance with Punjab Agricultural Produce Market Act, 1961 and the Rules framed thereunder. It is admitted that the petitioner purchased the ground nut from outside the State of Haryana i.e Rajasthan. The petitioner has submitted 'M' return and 'LL' Form in time but exemption is to be granted on submission of LL Form for the produce brought for processing but roasting is not covered under processing as after roasting ground-nut, it still remains ground nut. Petitioner is liable to pay market fee on ground-nut as market fee is leviable on shelled/unshelled and roasted ground-nut.

7. Heard.

8. The short point for consideration before this Court is that whether the Market Fee can be charged on ground nut, which is purchased from Rajasthan by the petitioner.

9. The present writ petition was admitted on 18.08.2003 and the recovery of the balance amount due to the Market Committee was ordered to be stayed, subject to the condition that if the writ petition is dismissed then the petitioner shall have to pay balance amount with interest at the rate of 15% per annum counted from the date the amount became payable.

10. Learned counsel for the respondent has referred to a Division Bench judgment of this Court in a case of ***M/s Bindra Feed Mills, Farakpur vs. State of Haryana***, 1994 (1) R.R.R. 131 wherein this Court was examining a case of levy of Market Fee. In para No. 16 and 17, it has been observed as under:-

> *16. The perusal of Section 23 of the Act which is a charging Section read with Section 2(nn) of the Act, the incidents of levy of market fee is firstly the fee is charged on the agricultural produce only. Secondly, it would be charged and if any of the incident with respect to agricultural produce happens i.e. either it is bought or sold or the dealer brings it in the notified market fee for the purpose of processing.*
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> *17. The levy of market fee on the agricultural produce brought for processing cannot be understood in its dictionary meaning inasmuch as the legislature in its wisdom has given a deeming meaning to the word processing Le. giving of treatment or a series of treatments to the agricultural produce with an intention to make it fit for human consumption. It further enlarged its meaning that though processing cannot be equated with manufacturing, however, if manufacturing takes place out of an agricultural produce it would be deemed to be processing of an agricultural produce. By no stretch of interpretation by reading the scheme of the Act, it can be assumed that manufactured goods out of agricultural produce must be an agricultural produce, before market fees can be levied on it. The instance of levy of market fee is not an event of manufacturing. The event for levy of market fee is the agricultural produce brought for processing by a dealer or licensee and not by a consumer. Thus, in our considered view, it is not a manufactured article on which market fee is levied. It is the agricultural produce brought to the notified market area on which market fee is levied."*

11. Reference has further been made to Division Bench judgment of this Court in case of ***National Cooperative Consumer Federation Ltd vs. Market Committee, Bhiwani and others***, passed in CWP No. 13234-1991, decided on 09.08.1996 wherein similar issue was examined that whether the Market Fee

could be levied second time, in view of mandate of Rule 30 (5) of the Punjab Agricultural Produce Market (General) Rules, 1962. In this case, the petitioner purchased the whole gram from the Market area of Charkhi Dadri, Market Committee in Bhiwani District and paid the market fee at the time of purchase. The writ petition was allowed and the operative part of the judgment reads as under:-

> *"We are of the view that the petitions deserve to succeed. Rule 30(5) of the Rules clearly envisages that the agricultural produce brought for processing from a place within the State for which the market fee has already been paid in any of the Market Committee in the State, shall be exempt from payment of market fee for the second time. The word 'shall' in our opinion is mandatory. The mandate of the Rule is that once market fee has been paid by a licensee or dealer at any place within the State, such a person would under no circumstances be required to pay it second time. Had the Legislature intended to levy market fee second time; there was no obstacle in its way to make a provision to the effect that if a person does not produce the exemption certificate in form 'LL', he would be required to pay the market fee once over again. Although it is laid down in the proviso that exemption certificate in form 'LL' is to be produced within a period of ten days from the receipt of the goods, yet it does not lay down in explicit terms that a licensee would be required to pay the market fee again in case such an exemption certificate is not produced. In the absence of such a provision; the only harmonious construction which can be placed on the Rule and proviso is that a licensee cannot be burdened with the payment of market fee again if the same has already been paid in any market area within the State but such a licenses would be liable to pay the penalty under the Act. This is what was precisely held by a Division Bench of this Court in* ***Civil Writ Petition No. 2963 of 1991 M/s Anand Canvass Mills Pvt. Ltd. vs. State of Haryana and others decided on 5.5.1993*** *while interpreting Rule 30(5) of the Rules, it was further held by the Division Bench in the aforesaid case that the market fee could not be*

levied second time on the same agricultural produce. A fine of Is. 500/- was imposed by the Division Bench in the aforesaid case. Following the afore-mentioned judgment, we hereby impose a fine of Rs. 500/-. It can further be safely held that the compliance of the proviso is not mandatory and is only directory and that the licences can submit the form LL after the expiry of the period prescribed in the proviso. The petitioners were all the time wanting to submit form LL and for this purpose had been addressing several letters.

The principle that a licensee or dealer is not to pay the market fee second time can be deduced from a perusal of Rule 30(1) of the Rules! It has been laid down that no market fee would be levied second time if it has already been paid. Rule 30(1) of the Rules clearly lays down that no market fee shall be levied on the sale or purchase of any agricultural produce manufactured or extracted from the agricultural produce in respect of which/ has already been paid in the notified market area where it was so manufactured or extracted: The only obligation upon such a dealer who claims exemption from the payment of market fee is to make a declaration and give certificate in the entire form LL. A combined reading of Rule30(1) & (5) of the Rules clearly indicates that a dealer or a licensee is not required to pay the market fee second time where he has purchased the agricultural produce for the purposes of manufacturing, extraction or for the purposes of processing."

12. The ratio of the above mentioned judgments is directly applicable to the facts of the present case, as in the present case, the petitioner has already produced the LL Form and after making payment of the market fee for agricultural produce brought from within the State, petitioner was not required to pay the fee second time.

13. Further the petitioner has been granted I license (P-4) in which it has been mentioned that category I is a 5 (1) of the Act and this license has been specifically granted to the petitioner for Bhunai Karna (processing). The respondent could not levy the market fee on presumption that the petitioner was

not doing the business of process. If the petitioner would not have been doing the business of Bhunai Karna (processing) then he would have been given the license of category II or III.

14. Accordingly, the writ petition is allowed and orders dated 10.08.2001 (P-1), 24.09.2002 (P-2) and 19.02.2003 (P-3) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.10.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No