IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8548-2008
Date of decision:- 08.02.2023

M/s Amar Flour Mills ....Petitioner

vs.

State of Punjab and others ...Respondents

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

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Alankar Narula, AAG, Punjab

Mr. Sanjeev Sharma, Advocate
for respondent Nos. 2 and 3.

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Ritu Bahri, J. (Oral)

The present petition has been filed seeking a writ of certiorari for quashing of order dated 29.05.2007 (P-2) and notice dated 25.04.2008 (P-4) issued by respondent no. 3

Brief facts of the case are that petitioner-unit is engaged in the processing of agriculture products such like wheat, maze etc. for manufacturing wheat flour and its secondary products. The petitioner unit got registered as small scale unit with the Director of Industries, Punjab. As per certificate issued by the Directorate of Industries, the unit is producing wheat flour, mill atta, suzi and bran etc. (The Petitioner unit also obtained license in Form-B from the concerned Secretary of Respondent Market Committee which is valid. As per the license, a dealer as defined under the Punjab Agricultural Produce markets Act, 1961 (hereinafter referred as the

'Act 1961') is authorized to purchase, sale, store and to do its processing).

The petitioner/mill had been purchasing wheat from the state of Punjab and outside the state of Punjab to meet its requirements for producing the finish goods, since inception. The registration of the unit was necessary earlier but no license was thereafter required for running the processing unit in the State of Punjab to install and run flour mill.

The Petitioner was purchasing wheat from the area of Market Committee, Banur and its surroundings and from outside the state of Punjab as well. Thereafter, the wheat purchased is taken to the mill premises for processing the same for manufacturing wheat flour and its secondary products.

The petitioner-Unit is governed by the provisions of Act 1961, the dealers and licensees are defined in Section 2 (f) and 2 (hh) respectively. The State of Punjab for the implementation of the provisions of the Act framed the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short 'Rules 1962'). Rule 29 of Rules 1962 speaks about the levy and collection of fees on sale and purchase of market produce whereas Rule 30 speaks about the exemption for payment of fees. Rule 30 of Rules 1962 reads as under:-

"30. Exemption from payment of fees. (1) 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 such fee has already been. paid in the same notified market area or in any other notified market area within the state.

(1-A) XXXXX

(1-B) XXXXX

(2) The dealer concerned in the sale or purchase of any quantity of agricultural produce from which he manufactures or extracts any other agricultural produce shall maintain in Form L true and correct accounts of the sale or purchase, as the case may be, of the said agricultural produce and of any agricultural produce manufactured or extracted from it. (3) to (12) XXXXX

(13) (i) No market fee shall be levied on wheat and maize purchased by the wheat and maize processing industries for manufacture of products therefrom such as wheat flour and its secondary /territory products such as bread, biscuits, pasta, noodles etc. starch and its delvalives; gluten etc. in the State of Punjab;

(ii) & (iii) XXXXXX"

Vide notification dated 11.09.2001, Sub Rule 13 was added (P-1). After issuance of the notification dated 11.09.2001, respondent No. 2 had written letter dated 18.09.2001 to all the Market Committees in the State of Punjab informing them that the Government had decided not to levy any market fee on wheat and maize which were to be used by processing units in the State of Punjab.

Despite the above notification dated 11.09.2001, the Market Committee sent a notice dated 29.05.2007 demanding necessary market fees and RDF to the Market Committee, Banur under Rule 29 (3) and 29 (7) of Rules 1962 within seven days from the date of purchase of wheat as firm had purchased 1500 quintals wheat from M/s Rama Traders, Delhi on 24.05.2007 (P-2). Thereafter, the petitioner was issued assessment notice dated 25.04.2008 (P-4). Hence the present writ petition.

The grievance of the petitioners is that in view of Rule 30 (13) of Rules 1962, the petitioner company was exempted from payment of market fees for purchase of wheat irrespective of the fact that whether it is purchased from the State of Punjab or outside the State of Punjab. Further the similar relief has been given to M/s Ready Bakes Pvt. Ltd Humayunpur, Tehsil Dera Bassi, vide order dated 12.12.2005 (P-3/1).

Learned counsel for the petitioner states that the matter of recovery of market fee came up before this Court in ***CWP NO. 6-2006 titled as Market Committee, Hoshiarpur vs. Mangat Ram Kalia and others, decided on 17.08.2006 (P-5)*** wherein it was held that no market fee would be charged by the Market committee from processing units on purchase of wheat and flour, in view of Rule 30 (13) of Ruls 1962.

Reference has further been made to order dated 11.12.2007 titled as Ganesh Roller Flour Mills vs. State of Punjab and others wherein similar issue came up for consideration and the department withdrew the impugned notices.

On notice, a written statement has been filed by respondent Nos. 2 and 3 whereby the department denied passing of order dated 12.12.2005 for want of knowledge. It has been stated that the facts of that case are totally different from the facts of the present case. Similar is the reply given in respect of judgment dated 17.08.2006.

Heard learned counsel for the parties at length.

Similar issue came up for consideration before this Court in a case of ***Deputy General Manager, Punjab Mandi Board and anr. vs. M/s Aggarwal Roller Flour Mills and anr***, 2007 (4) RCR (Civil) 298 whereby this Court examined Rule 30 (13) in detail and it was held that Market Fee cannot be levied on purchase of wheat and maize within the State of Punjab and from other States as well. In para No. 5, it has been observed as under:-

"5. We are further of the view that the expression 'no market fee shall be levied on wheat and maize' has to be read in conjunction with the expression 'in the State of Punjab' because the expression 'purchased by the wheat and maize processing industries' would not go with the expression 'in the State of Punjab'. Moreover, it is a beneficial rule which has been introduced for a laudable object to encourage the wheat and maize processing industries in the State of Punjab. Therefore, the order passed by the Financial Commissioner does not suffer from any legal infirmity. Moreover, respondent No. 1 - firm has paid the market fee at Delhi and Hissar from where it has purchased the wheat stocks as is evident from the finding recorded by the Financial Commissioner in his order. Therefore, respondent No. 1 - firm cannot in any case be subjected to payment of double market fee as the same is prohibited by Rule 30(1A) & (1B) of the Rules."

The ratio of the above judgment is directly applicable to the facts of the present case. Further no SLP has been filed by the department till date and the judgment has thus attained finality.

Learned counsel for the respondent has not been able to cite any law contrary to the above.

In view of the above factual position, the writ petition is allowed. Order dated 29.05.2007 (P-2) and notice dated 25.04.2008 are set aside accordingly.

(RITU BAHRI)
JUDGE

08.02.2023
G Arora

(MANISHA BATRA)
JUDGE

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