

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202 (36 cases)

- 1)

CWP-21741-2018
Date of Decision: 03.10.2023
- M/s J.K. Enterprises

...Petitioner
- Versus
- Union of India and Others

...Respondents
- With
- 2)

CWP-23431-2018
- M/s A.K. Associates

...Petitioner
- Versus
- Union of India and Others

...Respondents
- With
- 3)

CWP-12897-2019
- M/s Chhaju Ram Munni Lal Rice and General Mills and Others

...Petitioners
- Versus
- Union of India and Others

...Respondents
- With
- 4)

CWP-6225-2018
- M/s Shiva Traders

...Petitioner
- Versus
- Union of India and Others

...Respondents

With

5) CWP-23447-2018

M/s Barhma Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

6) CWP-19726-2019

M/s Mahavir Gram Udyog Samiti and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

7) CWP-19254-2019

M/s Shree Maha Lakshmi Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

8) CWP-19085-2019 (O&M)

M/s Friends Rice and General Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

9) CWP-19083-2019

M/s Baba Farid Solvex Private Limited and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

10) CWP-20252-2019

M/s Guru Nanak Industries and Others ...Petitioners

Versus

Union of India and Others ...Petitioner

With

11) CWP-17588-2019

M/s Ram Lal Vijay Kumar and Sons Rice Mills and Others
...Petitioners

Versus

Union of India and Others ...Respondents

With

12) CWP-23460-2018

M/s J.K. Enterprises ...Petitioner

Versus

Union of India and Others ...Respondents

With

13)	CWP-16221-2017
M/s Siria Rice and General Mills and Others	...Petitioners
Versus	
Union of India and Others	...Respondents
With	
14)	CWP-16280-2017
M/s Bhagwati Rice and General Mills and Others	...Petitioners
Versus	
Union of India and Others	...Respondents
With	
15)	CWP-17726-2017
M/s Chamunda Rice Mills and Others	...Petitioners
Versus	
Union of India and Others	...Respondents
With	
16)	CWP-17727-2017
M/s Bhola Shankar Rice & General Mills and Others	...Petitioners
Versus	
Union of India and Others	...Respondents
With	

17) CWP-19953-2017

M/s Mittal Rice & General Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

18) CWP-21778-2019

M/s M.B. Rice and General Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

Versus

19) CWP-22045-2019

M/s Maha Luxmi Rice and General Mills and OthersPetitioners

Versus

Union of India and Others ...Respondents

With

20) CWP-22948-2019

M/s Guru Nank Agro Products and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

21)	CWP-25155-2019
M/s Marar Rice and General Mills and Others	...Petitioners
Versus	
State of Punjab and Others	...Respondents
With	
22)	CWP-25159-2019
M/s Jai Ambey Industries Rice Mills and Others	...Petitioners
Versus	
State of Punjab and Others	...Respondents
With	
23)	CWP-25161-2019
M/s Shiva Rice and General Mills and Others	...Petitioners
Versus	
State of Punjab and Others	...Respondents
With	
24)	CWP-25164-2019
M/s Amba Rice and General Mills and Others	...Petitioners
Versus	
State of Punjab and Others	...Respondents
With	
25)	CWP-25605-2019
M/s Balaji Rice Mills and Others	...Petitioners
Versus	
State of Punjab and Others	...Respondents

With

26)

CWP-27033-2019

M/s Bahia Rice Mills and Others

...Petitioners

Versus

Union of India and Others

...Respondents

With

27)

CWP-27392-2019

M/s Bankey Bihari Rice Mills and Others

...Petitioners

Versus

State of Punjab and Others

...Respondents

With

28)

CWP-27482-2019

M/s Maha Lakshmi Mills and Others

...Petitioners

Versus

State of Punjab and Others

...Respondents

With

29)

CWP-28067-2019

M/s Jindal Rice and General Mills and Others

...Petitioners

Versus

Union of India and Others

...Respondents

With

30) CWP-28083-2019

M/s Guru Nanak Rice Mills Moga and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

31) CWP-28090-2019

M/s A.P. Agro Foods Moga and Others ...Petitioner

Versus

Union of India and Others ...Respondents

With

32) CWP-28334-2019

M/s Krishana Rice Mills and Others ...Petitioners

Versus

State of Punjab and Others ...Respondents

With

33) CWP-28608-2019

M/s Guru Nanak Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

34) CWP-29484-2019
M/s Jai Bhagwati Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

With

35) CWP-30804-2019
M/s Vishnu Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

And

36) CWP-19531-2019 (O&M)
M/s Vaishno Rice Mills and Others ...Petitioners

Versus

Union of India and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Daman Dhir, Advocate with
Ms. Poonam Rani, Advocate for the petitioner(s)
(in CWP-16221-2017, CWP-16280-2017, CWP-17726-2017,
CWP-17727-2017, CWP-19953-2017, CWP-6225-2018, CWP-
21741-2018, CWP-23447-2018, CWP-23431-2018, CWP-23460-
2018, CWP-19531-2019, CWP-12897-2019, CWP-17588-2019,
CWP-19083-2019, CWP-19085-2019, CWP-19254-2019, CWP-
19726-2019, CWP-20252-2019, CWP-21778-2019, CWP-22045-
2019, CWP-22948-2019, CWP-25155-2019, CWP-25159-2019,
CWP-25161-2019, CWP-25164-2019, CWP-25605-2019, CWP-
27392-2019, CWP-27482-2019, CWP-28334-2019)

Mr. L.S. Sidhu, Advocate for the petitioner
(in CWP-28608-2019)

Mr. N.S. Gill, Advocate for the petitioner
(in CWP-29484-2019)

Mr. Shiv Kumar and

Mr. Raman Kaplish Advocate and
Mr. Lovedev Singh, for the petitioner
(in CWP-28090-2019, CWP-22948-2019 & CWP-30804-2019)

Mr. Drupad Sangwan, Advocate and
Mr. Gurinder Bhambri, Advocate and
Mr. Sandeep Doon, Advocate and
Mr. Saurabh Changotra, Advocate and
Mr. Vikas Garg, Advocate for the petitioners

Mr. Rose Gupta, Advocate and
Mr. Azad Singh, Advocate and
Mr. Sukhvinder Singh Plaha, Advocate for the petitioner
(in CWP-28067-2019)

Mr. Ashish Rawal, Advocate for Union of India
Mr. Rajesh Garg, Senior Advocate with
Mr. Neha Matharoo, Advocate for Food Corporation of India
Mr. Deepanjay Sharma, DAG, Punjab

Mr. H.S. Dhandi, Advocate for Food Corporation of India
(in CWP-21741-2018, CWP-23431-2018, CWP-12897-2019,
CWP-6225-2018, CWP-23447-2018, CWP-19254-2019, CWP-
19085-2019, CWP-19083-2019, CWP-17588-2019, CWP-23460-
2018, CWP-22948-2019, CWP-25159-2019, CWP-25155-2019,
CWP-25161-2019, CWP-25164-2019, CWP-25605-2019, CWP-
28608-2019, CWP-22045-2019, CWP-28090-2019, CWP-28067-
2019, CWP-28083-2019, CWP-29484-2019, CWP-30804-2019,
CWP-27482-2019, CWP-27033-2019, CWP-27392-2019, CWP-
28334-2019, CWP-21778-2019, CWP-19531-2019)

Ms. Deepali Puri, Advocate for PUNGRAIN
(in CWP-25161-2019, CWP-25164-2019, CWP-27482-2019,
CWP-27033-2019, CWP-28083-2019)

Mr. A.P.S. Mann, Advocate for MARKFED
(in CWP-23460-2018, CWP-6225-2018, CWP-23431-2018,
CWP-23447-2018, CWP-19254-2019, CWP-19085-2019, CWP-
19083-2019, CWP-25159-2019, CWP-16280-2017, CWP-27392-
2019)

Mr. Arav Gupta, Advocate for PUNSUP
(in CWP-19531-2019, CWP-19083-2019, CWP-28067-2019,
CWP-30804-2019, CWP-28083-2019, CWP-28090-2019, CWP-
28334-2019,

Mr. Abhinav Gupta, Advocate for respondent Nos.7 and 12
(in CWP-30804-2019)

Mr. Ajay Gupta, Advocate for
Mr. Gourav Verma, Advocate for respondent No.8 in CWP-
28334-2019 and respondent No.10 in CWP-28608-2019)

Mr. Ravi Dutt Sharma, Advocate for respondent Nos.6 and 7
(in CWP-21741-2018)

Mr. U.M. Khan, Advocate for
Mr. Anupam Singla, Advocate for respondent Nos.5 & 6
(in CWP-17726-2017)

Mr. S.S. Bhinder, Advocate and
Mr. Dilraj Singh Bhinder, Advocate and
Ms. Indira, Advocate for respondent Nos.11, 12 and 16
(in CWP-19254-2019, CWP-17588-2019 & CWP-19083-2019)

Mr. Y.P. Khullar, Advocate
for Punjab State Warehousing Corporation
(in CWP-19083-2019, CWP-19085-2019, CWP-19531-2019,
CWP-22948-2019, CWP-25159-2019, CWP-25161-2019, CWP-
25164-2019, CWP-27033-2019, CWP-27392-2019, CWP-27482-
2019, CWP-28067-2019, CWP-28083-2019, CWP-28090-2019,
CWP-28334-2019, CWP-28608-2019 & CWP-29484-2019)

Mr. Aman Sharma, Advocate and
Mr. Chirag Suri, Advocate for respondent-PUNSUP
(in CWP-23447-2018, CWP-19085-2019, CWP-25605-2019,
CWP-29484-2019)

Mr. T.S. Sidhu, Advocate for respondent No.6-PUNGRAIN
(in CWP-28334-2019)

Mr. Anil Kumar Sharma, Advocate for respondent Nos.5 to 7
(in CWP-16221-2017)

Mr. Abhishek Arora, Advocate for

Mr. Sumit Jain, Advocate for respondent No.10 in CWP-19531-
2019 and respondent No.9 in CWP-17588-2019

Mr. Ankush Aggarwal, Advocate for respondent Nos.7 and 12
(in CWP-19083-2019 & CWP-23447-2018)

Mr. P.I.P. Singh, Advocate for MARKFED
(in CWP-22948-2019, CWP-27482-2019, CWP-25605-2019 and
CWP-28090-2019)

Mr. Dushant Jog, Advocate for
Mr. Tarun Vir Singh Lehal, Advocate for MARKFED
(in CWP-28083-2019, CWP-28067-2019 & CWP-27033-2019)

Mr. M.S. Batth, Advocate for respondent-PUNGRAIN
(in CWP-19531-2019, CWP-19085-2019, CWP-22948-2019,
CWP-25605-2019, CWP-19254-2019, CWP-25155-2019 &
CWP-25159-2019)

Mr. Abhilaksh Gaiind, Advocate for respondent Nos.10 & 15

in CWP-17588-2019, CWP-19254-2019 and for respondent No.11 in CWP-22948-2019, CWP-27033-2019 & CWP-28608-2019 and for respondent No.9 in CWP-27392-2019, CWP-27482-2019 & CWP-25159-2019)

Mr. Birinder Pal, Advocate for respondent No.9
(in CWP-25164-2019)

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, with the consent of parties, all the petitions are disposed of as common issue is involved in all the petitions. For the sake of brevity and convenience, facts are borrowed from *CWP No.21741 of 2018*.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking direction to respondents to settle payment of re-used gunny bags in terms of instructions dated 24.05.2013 for KMS 2006-07 to 2012-13.

3. The petitioner is engaged in the business of milling of rice. The petitioner is primarily dependent upon job work charges. The petitioner is getting raw material i.e. paddy from the State Government Agencies and supplying final product i.e. rice to Food Corporation of India which is a Central Government agency. The petitioner during 2006-07 to 2012-13 received gunny bags for the purpose of packing of paddy as well as rice. The gunny bags can be used more than once. The gunny bags are not purchased by the petitioner whereas supplied by State Agencies. The respondent vide communication dated 15.02.2006 (Annexure P-2) decided to permit re-use of gunny bags for the purpose of packing of rice/paddy. The petitioner in terms of letters issued by respondents used gunny bags more than once during 2006-07 to 2012-13. The respondent, undisputedly, calculated depreciation for first

use @ 40%, however, rate and method of calculation of depreciation with respect to subsequent use of gunny bags was not prescribed. The Central Government vide instructions dated 24.05.2013 issued standing guidelines for the purpose of calculation of depreciation on gunny bags. In the said letter, it was clarified that rate of depreciation for first and second use would be 40% and deprecation would be calculated on the original value i.e. straight-line method. The respondent with respect to KMS 2013-14 calculated depreciation, in case of re-used gunny bags @ 40% of original value, however, with respect to previous years, depreciation was calculated applying written down value method. The depreciation was calculated @ 40% on depreciated value instead of original value. The dispute can be understood with below mentioned example:

Depreciated Value as per instructions dated 23.05.2013		
Sr. No.	Particulars	Rate (in ₹)
1.	Original cost of the Gunny Bag	100/-
2.	Depreciation @ 40% for 1 st use	40/-
3.	Cost of once used Bag (B class)	60/-
4.	Depreciation @ 40% of original value for 2 nd use	40/-
5.	Cost of second used bag (C class)	20/-

Depreciated Value as followed by respondents		
Sr. No.	Particulars	Rate (in ₹)
1.	Original cost of the Gunny Bag	100/-
2.	Depreciation @ 40% for 1 st use	40/-
3.	Cost of once used Bag (B class)	60/-
4.	Depreciation @ 40% for 2 nd use on residual cost i.e. Rs.60/-	24/-
5.	Cost of second used bag (C class)	36/-

4. Learned counsels for the petitioners submit that instructions dated 24.05.2013 are with respect to communication dated 15.02.2006 of the Central Government and the same are standing instructions, thus, in the

absence of subsequent instructions superseding earlier instructions, the respondents are bound by instruction dated 24.05.2013.

5. Mr. Rajesh Garg, Senior Advocate for Food Corporation of India, submits that it is between the State Government, Central Government and millers to determine rate and method of depreciation. It is not business of the Food Corporation of India to determine rate of depreciation. The Food Corporation of India is bound to follow rates as determined by Central Government or State Government. He further submits that parties may be directed to avail alternative remedy of arbitration as provided in the custom policy.

6. Mr. Deepanjay Sharma, learned State counsel as well as learned counsels for the agencies submit that respondent-State has forwarded data to Central Government and it is upto Central Government to determine method of calculation of depreciation. The State is also of the opinion that depreciation should be calculated on straight-line method, however, Central Government vide communication dated 01.11.2013 has informed Food Corporation of India that instructions were issued for prospective use and not retrospective purpose, thus, State is in dilemma to apply method of depreciation. The respondent-State has calculated depreciation @ 40% with respect to re-used gunny bags, however, on account of lack of proper instructions from Central Government, written down value method has been adopted.

7. Vide order dated 28.08.2023, counsel for the respondent-Union of India was asked to get instructions with respect to determination of depreciation. During the course of hearing, Mr. Ashish Rawal, Advocate for

Union of India produced copy of letter dated 29.03.2023 and 17.05.2023. The same are marked as Annexure 'X' and taken on record. Registry is directed to tag at appropriate place. He further submits that as per instructions, Central Government vide letter dated 29.03.2023 has asked Food Corporation of India to supply information and Food Corporation of India vide letter dated 17.05.2023 has supplied partial information, thus, matter is still under consideration.

8. The matter is pending before this Court since 2018 and Union of India is one of the respondents. The matter relates to KMS 2006-07 to 2012-13. There seems no reason to keep the matter pending for indefinite period. All the respondents are making correspondence with each other but none of them seems to be interested to resolve the issue. The Court is forced to proceed on the basis of available record.

9. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

10. Learned counsel for Food Corporation of India has submitted that there was an arbitration clause in the agreement, thus, parties may be relegated to remedy of arbitration. This Court for more than one reason does not find any substance in the argument of the Food Corporation of India. Food Corporation of India was not party to the agreement. It is a pure dispute of policy which cannot be decided by an Arbitrator. All the millers are affected and it would be travesty of justice, if all the millers are relegated to Arbitration. It would simply multiply the litigation. Finally, the method of depreciation would come from Central Government. In such circumstances,

this Court finds that it would not be in the fitness of things and interest of justice, if parties are relegated to remedy of arbitration.

11. From the perusal of record, it comes out that it was Central Government which decided to permit re-use of gunny bags. The letter dated 15.02.2006 issued by Central Government reads as:

“NO. 15 (8)/ 2004-py.III

*Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution*

*Krishi Bhavan, New Delhi-11001
Dated the 15th February, 2006*

*The Secretary (Food)
Government of Andhra Pradesh, Bihar, Chhattisgarh,
Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra,
Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand,
West Bengal and UT of Chandigarh.*

*Sub: Procurement of paddy and coarse grains in once used
gunny bags- policy for*

Sir,

There have been several representations from the state government to allow use of once used gunny bags by state agencies for procurement of paddy (for CMR) and coarse grains. This matter has been considered in detail in this ministry of paddy and coarse grains in once used gunny bags in KMS 2005- 06 as per the specifications indicated below:-

Specifications of once used gunny bags

"Gunnies in question should be free from any mildew/fungal growth, cuts, holes or tears, sun fading, etc. grains should not be repaired ones. The weight of the 50 kg bags should not be less than 500 gms."

The procurement of paddy and coarse grains may be made in once used gunny bags, conforming to the specifications given in para 1 in the following manner:-

2.1 Paddy - Procurement of paddy may be made in new and once used gunny bags in 50:50 ratio. The officers of the state agencies will be responsible to check the quality of the once used gunny being used for procurement of paddy. CMR will be delivered only in the new bags

while further disposal of the once used bags (which have been used the second time for procurement of paddy) will be decided by the State Government.

2.2 Coarse grains :- *the procurement of coarse grains may be made by the state agencies in once used gunnies. The FCI officers will be responsible to check the quality of the gunny bags at the time of delivery of coarse grains to FIC by the state agency.*

3. *The costing sheets for the use of once used bags for purchase of paddy and coarse grains by state agencies will be issued separately and proposals for the same may be sent by the state GOVTS. To this Department for consideration, meanwhile, the state Governments may utilize the above option judiciously savings in the cost of gunny bags.”*

12. In terms of afore-stated letter, time to time instructions permitting re-use of gunny bags were issued. The petitioners re-used gunny bags. The Central Government vide letter dated 24.05.2013 (Annexure P-9) resolved the issue. The letter dated 24.05.2013 specifically states that Government has decided to issue standing guidelines in this regard. In the guidelines, it was provided that rate of depreciation for the first as well as second use would be 40% and depreciation would be calculated on original value, meaning thereby, depreciation would be calculated applying straight line method. The relevant extracts of the letter dated 24.05.2013 reads as:-

“NO. 15 (2)/ 2013-Py.III

*Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution*

*Krishi Bhavan, New Delhi
Dated the 24th May, 2013*

To

*1. The Secretary (Food)
Government of Andhra Pradesh, Bihar, Chhattisgarh,
Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra,
Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh,
Uttaranchal, West Bengal*

2. CMD, FCI, New Delhi

Sub: Guidelines for use of Paddy release jute bags which have been used only once for procurement of wheat & rice.

Sir,

In view of frequent requests received from State Procurement agencies to allow use of paddy released jute bags which have been used only once due to shortage of jute bags, Government has decided to issue standing guidelines in this regard. Guidelines approved by competent authority for use of paddy released jute bags which have been used only once for procurement of wheat, rice and coarse grains are enclosed alongwith this letter.

Encl: as stated above

Yours faithfully

Sd/-
(N.K. Mouriya)
Director, (Movt.)
Tel. No.23382709”

“Guidelines For Use of Paddy Released Jute bags which have been Used Only Once

XXXX XXXX XXXX XXXX

iii) Compliance with the quality specifications finalized in consultation with BIS for Kharif Marketing Season 2005-06 and issued vide letter no.15(8)/2004-PY III dated 15.2.2006 for such once used jute bags will be the responsibility of the procuring Agency/State Government.

XXXX XXXX XXXX XXXX

vi) The costing of such bags for the above mentioned uses may be done as follows:

- a) **Procurement of coarse Grains/Wheat** The entire residual cost i.e. 60% of the original cost (since 40% of the cost has been paid for the first use of bag.)
- b) **Procurement of paddy:** The cost will be lower of the following two alternatives:- (i) 40% of the original cost as depreciation charge for second use of the bag. The bag will thereafter be retained at the remaining 20% of its original cost by the procuring agency for its further use/disposal; (ii) the difference between the 60% residual cost of the bag reduced by the realization, if any from its sale/disposal after second use may be considered.”

13. From the perusal of above-cited letter, it is quite evident that Central Government by a conscious decision has determined rate as well as method to calculate depreciation. Neither Food Corporation of India nor Union of India nor State Government is denying the fact that rate of depreciation at the time of re-use of gunny bags would be 40%, however, the respondents at their own have evolved method of calculation of depreciation on re-used gunny bags.

14. The Central Government vide letter dated 04.02.2016 has modified rate of depreciation though there is no change in the method of calculation. As per aforesaid letter, depreciation for the first use would be 38% and for the second use it would be 38% on the original cost. The relevant extracts of the letter dated 04.02.2016 reads as:-

“ Subject: “Guidelines for use of Paddy released Jute bags which have been used only once” for procurement of wheat, coarsegrains & Paddy-regarding amendment in gunny depreciation.

Sir,

I am directed to refer to the “guidelines for use of Paddy released Jute bags which have been used only once” for procurement of wheat, coarsegrains issued vide this Department’s letter No.15(2)/2013-Py.III dated 24.05.2013 and amendment in gunny depreciation @38% of the cost of new gunny bags from existing gunny depreciation of 40%, issued vide this Department’s letter No.192(3)/2014-FC.A/Cs dated 18.12.2015.

2. Consequent upon the aforesaid amendment in gunny depreciation, the provisions contained in paras vi(a) and vi(b) of existing guideline issued vide this Department’s letter No.15(2)/2013-Py.III dated 24.05.2013, have been amended to that extent only which is as under:-

	Existing provisions	Amended provisions
Para vi(a)	<u>Procurement of Coarse grains/Wheat: The entire residual cost i.e. 60% of the original cost (since</u>	<u>Procurement of Coarse grains/Wheat: The entire residual cost i.e. 62% of the original cost (since</u>

	<i>40% of the cost has been paid for the first use of bag)</i>	<i>38% of the cost has been paid for the first use of bag)</i>
<i>Para vi(b)</i>	<i><u>Procurement of Paddy:</u> The cost will be lower of the following two alternatives: (i) 40% of the original cost as depreciation charge for second use of the bag. The bag will thereafter be retained at the remaining 20% of its original cost by the procuring agency for its further use/disposal; (ii) the difference between 60% residual cost of the bag reduced by realization, if any form its sale/disposal after second use may be considered.</i>	<i><u>Procurement of Paddy:</u> The cost will be lower of the following two alternatives: (i) 38% of the original cost as depreciation charge for second use of the bag. The bag will thereafter be retained at the remaining 24% of its original cost by the procuring agency for its further use/disposal; (ii) the difference between 62% residual cost of the bag reduced by realization, if any form its sale/disposal after second use may be considered.</i>

3. The remaining terms and conditions as provided in guidelines issued vide this Department’s letter No.15(2)/2013-Py.III dated 24.05.2013 will remain unchanged.”

15. The respondents have extended depreciation for second use of gunny bags @ 40%, however, written down value method has been adopted instead of straight-line method. By instructions dated 04.02.2016, the Central Government has reduced rate of depreciation from 40% to 38%, however, method of calculation of depreciation has kept unchanged i.e. straight line method. It means the opinion and stand of the Central Government is constant with respect to method of calculating depreciation.

16. Learned counsel for respondents claim that vide letter dated 01.11.2013, the Central Government has informed the Food Corporation of India that guidelines/instructions were prospective and are not having retrospective effect. The letter dated 01.11.2013 reads as:-

“NO. 15 (2)/ 2013-Py.III

*Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution*

*Krishi Bhawan, New Delhi
Dated the 1st November, 2013*

To

*The Asstt. General Manager (Procurement)
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi- 110001
Sub: Framing of policy for use of released (once used) and
other old jute bags.*

Sir,

*I am directed to refer to your letter
No.Proc.III/1(2)/2012-13/259 dated 17/18.10.2013 on the
above mentioned subject and to state that the
guidelines/instructions were issued for prospective use and not
for retrospective effect and as such the same does not apply to
the payments made/settled before the issue of the instructions.*

Yours faithfully

*Sd/- K.K. Guite
Under Secretary to the Govt. of India
Tel. No.2338448”*

17. From the perusal of above quoted letter, it appears that an officer of the Central Government without appreciating instruction dated 24.05.2013, in true perspective had issued aforesaid letter. In the instruction dated 24.05.2013, it is specifically mentioned “*Government has decided to issue standing guidelines in this regard.*” In the instructions, there is reference of letter dated 15.02.2006 of Central Government which is foundation of re-use of gunny bags. The guidelines do not talk of a particular year whereas guidelines have prescribed rate as well as method to calculate depreciation. The Government at any stage may form an opinion that gunny bags would not be re-used because it is prerogative of the Government, however, the method

of depreciation once consciously decided cannot be re-called unless and until another method is declared and is duly supported with some material. The Central Government has categorically specified rate and method of depreciation. None of the respondent is disputing rate, however, dispute is confined to method of calculation of depreciation. The instructions are standing instructions and based upon letter dated 15.02.2006 which was foundation of re-use of gunny bags. The Central Government had issued standing instructions, thus, it seems highly unreasonable to say that these are prospective in nature whereas instructions are with respect to letter dated 15.02.2006. The instructions cleared the clouds which had sprawled since 2006-07. It is settled law that clarificatory instructions are retrospective in nature unless specifically provided otherwise letter dated 01.11.2013 is contrary to instructions, thus, needs to be ignored specifically when Government despite expiry of 10 years has not come out with a different rate or method of calculation of depreciation.

18. From the perusal of communication dated 01.11.2013 followed by letter dated 04.12.2016 and stand of State Government as well its agencies, this Court is of the considered opinion that Central Government has consciously decided that the rate as well as method of calculation of depreciation in case of re-use of gunny bags. The rate of depreciation for first and second use is 40% of original value means straight-line method would be followed. The Central Government has not declared any other method with respect to KMS 2006-07 to 2012-13 and instructions dated 24.05.2013 were issued considering letter dated 15.02.2006 which at the first instance permitted the millers to re-use gunny bags. In the absence of instructions, in

supersession of instructions 24.05.2013 despite expiry of 10 years, it would be just, fair and reasonable, if the respondents are directed to decide claim of the petitioners in the wake of instructions dated 24.05.2013.

19. The Central Government is at liberty to prescribe any other method with respect to financial years in question. The petitioners would also be at liberty to assail the method of calculation of depreciation, if any, contrary to instructions dated 24.05.2013 is prescribed by the Central Government.

20. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

03.10.2023
Mohit Kumar

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