IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-5558-2015 (O&M).
Date of Decision: 08.08.2023.

M/S B.K.M. INDIA PRIVATE LIMITED

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Dinesh Kumar Singla, Advocate, for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab, for respondent No.1.

Mr. Satwant Singh Rangi, Advocate, for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition raises a challenge to the orders dated 16.05.2014 (Annexure P-7) and 21.02.2005 (Annexure P-5) whereby the assessment order dated 11.05.2001 passed by respondent No.3 has been upheld by the Appellate and the Revisional Authorities.

Briefly summarized the facts of the present case are that the petitioner-firm claims to be engaged in the business of commission agent and having been granted license under Section 10 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act of 1961), to deal in purchase, sale, storage and processing of agricultural produce in the notified area of market Jaitu, District Faridkot. The petitioner-firm claims to be regularly paying the market fee and Rural Development Fund (hereinafter referred to as 'RDF') and has been filing the returns in the prescribed proforma. In the year 1999-2000, the petitioner-firm claims to have purchased paddy/rice from Delhi i.e. the market yard situated outside the State of Punjab and also from Tarn Taran which is situated outside the District Faridkot, but within the State of Punjab, after paying the market fee as well RDF. It is averred that despite the deposit of Form K1 showing deposit of market fee and RDF in the Market Yard of Tarn Taran, the Secretary, Market Committe, Faridkot, issued various notices demanding payment of market fee and RDF. Copies of the show-cause notices have been appended with the present petition. It is claimed that even though the requisite Form K1 had been deposited, the respondent No.3 without affording an opportunity to the petitioner assessed the market fee and RDF plus penalty and interest vide order dated 11.05.2001. The Market Committee thereafter initiated recovery proceedings against the petitioner by sending demand notices dated 18.06.2001.

Aggrieved of the aforesaid assessment, the petitioner-firm preferred an appeal before the Appellate Authority, however, vide order dated 21.02.2005, the said appeal was dismissed. A further revision petition was filed by the petitioner before the Court of Secretary Agriculture in exercise of the powers under Section 42 of the Act of 1961 raising a specific ground that the petitioner-firm had already deposited the requisite Form K1 in the office of respondent No.3 establishing that the market fee and RDF in respect of the market committee had been duly deposited. The said revision petition was also dismissed by the Revisional Authority vide order dated 16.05.2014.

Aggrieved thereof the present writ petition has been filed on various grounds including that the respondents have not taken into account the Form K1 and appended as Annexure P-1 with this petition submitted by the petitioner in the office of Secretary Market Committee showing payment of the market fee as well as RDF and that the petitioner was not liable to deposit the same again.

Pursuant to the notice, written statement on behalf of respondents No.2 and 3 had been filed wherein the respondents have averred that the petitioner did not file the correct returns of his sale and purchase of the grains in the notified market area of respondent No.3. Consequently, notices were issued to the petitioner. It is submitted that dispute pertains to the period from 01.04.1999 to 11.08.2000 and with regards to the transactions of sale and purchase of paddy/rice having taken place. It was noticed that there were numerous discrepancies in the bills furnished by the petitioner and after noticing the above said discrepancies and giving due adjustment of the amounts deposited as market fee/RDF, the balance amount was demanded. It is further averred that numerous show-cause notices/reminders were sent to the petitioner but the petitioner chose not to respond to the same or furnish the requisite documents to establish his claim. Demand has been raised only with respect to the sale/purchase of food grains undertaken within the State of Punjab and not with respect to the transactions that took place outside the State of Punjab. The petitioner chose not to deposit the bills and bilties to the respondent Authority before unloading the goods and all other necessary documents relating to the transactions and as per the requirement stipulated in the Rule 29 of the Rules of 1962. The delivery of the goods has taken place within the notified market area of Jaitu and the payment has also been made from Jaitu, however, the requisite documents to substantiate that the transactions took place outside the notified market committee of Jaitu had not been submitted. Consequently, the discrepancy having been noticed, the demand was righty raised. The authorities have considered the matter in first appeal and also in the exercise of revisional jurisdiction and after finding no force in the submissions advanced by the petitioner, the same were dismissed.

Since the emphasis was greatly laid by the petitioner on the Form K-1, appended with the present petition as Annexure P-1, the respondents were also called upon to submit the action taken by them in the context of Annexure P-1.

An affidavit of Gurdeep Singh Brar, Secretary Market Committee, Jaitu dated 02.05.2022 had been filed wherein it was submitted that so far as Annexure P-1 i.e. the Form K-1 appended with the present petition are concerned, the same were duly received in the office of the Secretary Market Committee Jaitu on 18.10.1999, however, it is evident from a perusal of the same that the same were unsigned and are in respect of purchase of paddy from the firm of M/s Issar Singh Harbans Singh of Tarn Taran, however, the bills and bilties that have been appended along with the above said Annexure at page Nos. 28 to 35 of the writ petition are in respect of rice purchased from firms in New Delhi and none of the said bills is with regard to the sale/purchase from M/s Issar Singh Harbans Singh of Tarn Taran. It is further averred that Form K-1 is to be submitted along with documents for verification of the bills and bilties before unloading of the delivered crops in the areas of concerned market committee, however, the same was never got done by the petitioner-firm despite a period of nearly 05 years when the assessment order was passed.

A query had also been raised to the respondents to seek instructions and to clarify as to whether the assessment pertains only to the procurement that was outside the State of Punjab or in relation to the produce of the Mandi in the State of Punjab.

Learned counsel for respondent No.2 and 3 has referred to the above said affidavit to contend that the market fee/RDF has been assessed only with respect to the procurement that has been done within the State of Punjab and after verification of the documents produced by the petitioner with the office of the Secretary, Market Committee prior to the assessment.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present petition.

The emphasis of the petitioner was solely on the submission of Form K-1 that has been appended with the present petition as Annexure P-1 from pages 28 to 35. The specific case of the respondent Market Committee Marketing Board is that the said Form K-1 is unsigned and the officials of the Market Committee have not countersigned the same. The assessing officer has recorded as under in the final order of assessment and for raising the said demand:-

> *"M/s B.K.M. India Pvt. Limited, Kotakpura road, Jaito was directed vide notice No.889 dated 05.07.2000 (form "A") of this office to produced the record regarding sale and purchase of Agriculture implements for the period from 01.04.1999 to 11.08.2000 at 11.00 AM of 21.01.2000. <u>A licence No.1690-JAT</u>*

has been issued to the Firm under section 10 of the Agriculture Production Mandis Act, 1961. So the firm is bound to comply every order issued under the Act/Rules and the conditions contained in the licences, issued by the committee but the firm has not complied this order. So the show cause notice was issued to the firm vide this office letter No.1231 dated 30.08.2000 on the basis of the figures collected by the committee. The reply to this notice has not been given by the firm. Thereafter, notice No.1303 was again sent to the firm on 15.09.2000 but the firm has not given any reply to the same. Then final show cause notice No.1304 dated 15.09.2000 was issued to the firm. In reply to the same, the firm sought 15 days time to show the record but the firm did not produce the record within the time stipulated due to which, Reminder of show cause notice was issued by this office to the firm bearing No.1741 dated 15.12.2000 but the reply to this notice has not been given by the firm. Therefore, last and final opportunity was given to the firm vide this office letter No.372 dated 29.03.2001. In reply to the same, the details regarding sale and purchase of the agricultural implements have been given by the firm, which are as under :-

1999-2000

Sr.No.	*Item*	*Description*	*Qty.*	*Amount (in Rs.)*
1)	*Paddy*	*Purchased from Local Mandi*	*11163.80 Qtl.*	*57,04,690.55*
2)	*Paddy*	*Purchased from the Mandis of State of Punjab*	*7619.30 Qtl.*	*34,10,051.45*
			18783.10 qtl.	*91,14,742.00*
1)	*Rice*	*Purchased from other States*	*8016.60 qtl.*	*79,19,340.77*
2)	*Rice*	*Transferred*	*5455.64*	*52,16,245.78*

		from Milling Account	*Qtl.*	
			15472.24 qtl.	*1,23,35,586.55*

Details regarding the business for the period from 01.04.2000 to 11.08.2000

	Paddy	*Last remaining*	*10642.45 qtl.*	*55,34,074.00*
		Purchase	*NIL*	*NIL*
	Rice	*Last remaining*	*2011.09 qtl.*	*19,90,979.10*
1)		*Purchased from other states*	*401.88 qtl.*	*2,42,431.45*
2)		*Local purchase (Marked paid)*	*2766.65 qtl.*	*27,31,544.25*
			3168.55 qtl	*29,73,975.68*

In this way, the business has been done by the firm for the period from 1999-2000 to 11.08.2000 as per the following:-

1)	*Paddy purchased during 1999-2000*	*18783.10 qtl.*	*91,14,742.00*
2)	*Rice purchased*	*8016.60 qtl.*	*70,19,340.00*
3)	*Paddy purchased for the period*	*NIL*	*NIL*

	from 01.04.2000 to 11.08.2000		
	Rice purchased	*3169.53 qtl.*	*29,73,975.68*
			1,91,98,057.68

In the aforesaid purchase, the value of 2766.65 qtl. Rice for the period from 01.04.2000 to 11.08.2000 is Rs.27,31,544.25 and the said has been paid by the market.

In this way, <u>out of total purchase of Rs.1,91,08,057.68, after deduction the value of the rice paid by the market i.e. Rs.27,31,544.25, the remaining purchase amount comes to Rs.1, 63, 76, 513.43. The value of 7619.25 qtl. Purchased by the Firm from Tarn Taran comes to Rs.34,10,051.45, the firm has not fulfilled the conditions of rule 30 (1A) (1- B) regarding the purchase because Bill/GR has been submitted/deposited by the firm to the committee before unloading the goods due to which, the market fee/RDF cannot be waived off/exempted to the firm</u>. So an amount of Rs.3,27,539.26 as a market fee and the same amount of RDF are recoverable from the firm. An amount of Rs.1,14,096/- as market fee and Rs.1,14,096/- as RDF is free to the firm during the aforesaid period. So market fee of Rs. 2,13,434.26 and RDF amounting to Rs.2,13,434.26 are recoverable from the firm. Besides this, in order to recover proper additional fee as a Penalty and 18% interest on the RDF under Rule 31 (10) of the Act, it would be appropriate to assess the amount under Rule 31 (8), (9) and (10) and the demand notice (Form "p" would have been issued under Rule 31(11).

<u>ASSESSMENT ORDER</u>

I, Kulbir Singh, Assessing Authority (Secretary, Market Committee, Jaito) has compared the record on the basis of the *figures mentioned above and also enquired into the record of M/s B.K.M. India Pvt. Limited, Kotakpura road, Jaiton. After comparing with the office record, the assessment is hereby made under Rule 31 of the Act, as per the following:*

DETAILS REGARDING PURCHASE (Sic) DURING 1999-2000

		Amount (In Rs.)
1)	*Purchase value of paddy to be assessed*	*91,14,742.00*
2)	*Total value of rice to be assessed*	*70,19,540.00*

Out of the total paddy purchase as mentioned at Sr. No.1 above, 7610.30 qtl. Paddy has been purchased by the firm from District Tarn Taran. The firm has to submit Form K-1 with the firm but the firm did not verify the paddy from Unloading under Rules 31 (1-A) and (1-B) at the time of purchase of goods nor the bills/GRS have been submitted/deposited by the firm with regard to the purchase of goods. So the market fee and RDF cannot be exempted/waived off to the firm.

DETAILS REGARDING PURCHASE (Sic) FOR THE PERIOD FROM 01.04.2000 TO 11.08.2000

		Amount (in Rs.)
1)	*Purchase value of rice to be assessed*	*2,42,431.43*

So, during the aforesaid period, M/s B.K.M. India Pvt. Limited, Jaito has purchased the Agricultural implements totaling to Rs.1, 63,76,513.43. The market fee @ 2% and RDF @ 2% as prescribed by the government is required to be recovered from *the firm. The total recoverable amount comes to Rs.3,27,530.26. The firm has deposited/submitted the return regarding market fee of Rs.1,14,096/- as well as the RDF of the same amount under Rule 29 (3) and 31(1). In this way, the firm has intentionally submitted the return of less amount of Rs.2,13,434.26 under section 29 (3) an 31 (1). Therefore, Demand notice (Form "p") under Rule 31 (11) is hereby issued to the firm for the recovery of market fee @ Rs.2,13,434.26 and the RDF @ Rs.2,13,434.26 as well. Further, notice under section 31 (9) is hereby issued to recover 50% of the market fee i.e. Rs.1,06,717.13 as Additional fee and the 18% interest on the remaining RDF for the period from 15.09.2000 totaling to Rs.25, 612/-."*

It is evident from a perusal of the aforesaid order that the petitioner was well aware of the assessment proceedings initiated against him and had sought time to produce the record. Numerous show-cause notices/reminders including final opportunity had been granted to the petitioner to establish his claim and also to establish that no market fee/RDF was recoverable from the petitioner. It was specifically noticed that the petitioner was not only to submit Form K-1 with the respondents but also had to submit supporting documents to verify the paddy as per the applicable rules which was not done. The bills/GRS were also not submitted by the petitioner before unloading of the paddy. Noticing the aforesaid glaring discrepancies, the assessment was done. Appellate Authority also noticed the said submissions advanced by the petitioner and has approved the assessment made by the assessing authority and after noticing that the petitioner-firm never cooperated with the Assessing Authority and did not furnish the requisite documents as were essential to prove its case. It was also noticed that provisions of Rule 29 (i) and (ii) were not complied with and the petitioner-firm did not deposit the bills and bilties with the respondent-Market Committee before unloading of the agricultural produce, hence, the petitioner-firm was held not entitled to any exemptions on the said transactions.

Even at the stage of dealing with the revision preferred by the petitioner, the Revisional Authority examined the entire issue thoroughly and returned a finding that the petitioner-firm had chosen to be in default of the mandate of Rule 29 of the Rules of 1962 and that despite being granted several opportunities, it did not comply with the provisions as stipulated in the above said Rule. The notices were given by adopting a proper procedure under Rule 31 of the Rules of 1962 and it was recorded that the notice was given in clear terms on Form "O" dated 05.07.2000. Subsequent reminders and opportunities were also given to the petitioner-firm. There was no satisfactory explanation as to why the needful was not done.

Relevant Rule 29 and 30 of the Rules 1962 are extracted as under:-

"29. Levy and collection of fees on the sale and purchase of agricultural produce. - Sec. 23 & 43(2) (1) Under section 23 a committee shall levy

(i) fees on the agricultural produce bought or sold by a licensee; and

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee;

in the notified market area at the rate fixed by the Board from time to time.

Provided that [no fee shall be levied on the agricultural produce bought or sold in respect of which fee has already been paid in the same or other notified market area within the State.] A list of such fees shall be exhibited in some conspicuous place at the office of the Committee concerned:

Provided further that the dealer who claims exemption from the payment of fee levied on any agricultural produce on the ground that the fee has already been paid by him in another notified market area, shall make declaration and give certificate to that effect in Form 'KK' within a period of thirty days of the transaction of agricultural produce in question to the Committee from where the exemption is claimed.

The certificate in Form 'KK' shall be prepared in quadruplicate from the book-let, duly attested and issued by the Secretary of the concerned committee or its authorized officer, against the payment, fixed by the committee. <u>It shall be the duty of the dealer, claiming exemption from the payment of fee to send the original copy of Form 'KK' to the Committee within whose market area the agricultural produce is bought. The second copy shall be sent to the office of the Committee within whose market area such agricultural produce is bought and the third copy shall be retained by the dealer, who purchased the agricultural produce and the fourth copy shall be retained by the dealer who sold the agricultural produce and the same shall be kept as a part of their accounts, maintained in respect of payment of the fee. The certificate referred to above presented after the aforesaid period of thirty days, shall not be entertained and no exemption from payment of fee shall be granted to the dealer</u>:

Provided further that the dealer claiming exemption from the payment of fee under sub-rule (1), shall also produce a copy of the railway receipt, forwarding note, bill, bilty or challan, as the case may be, duly signed by him or his authorized agent in the office of the Committee where the agricultural produce is bought before it is loaded the second copy shall be produced by the said dealer in the office of the Committee, within whose market area the agricultural produce is brought before it is unloaded and the third copy shall be retained by him. In case no such copy is produced by the dealer in the office of concerned Committee, no claim for exemption shall be entertained;

xxx xxx xxx

(2) The responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee.

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*30. **Exemption from payment of fees**- Sections 23 and 43 (2) (vii). - (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). The dealer who claims exemption from payment of market fee levied on any agricultural produce manufactured or extracted from the agricultural produce in respect in respect of which the market fee has already been paid in another notified market area shall make declaration and give certificate in Form K-1 to the

Committee from where exemption is claimed and a copy of the same shall be delivered to the Committee to which the fee has already been paid. The counterfoil shall be retained by the dealer. The book containing K-1 forms shall be got attested by the dealer from the Secretary of the concerned Market Committee or his authorised Officer before giving the requisite certificate. The dealer shall produce the certificate within a period of thirty days from the date of trans- action to the Committee from where exemption is claimed. The certificate presented after the aforesaid period of thirty days shall not be entertained and no exemption from payment of fee shall be granted to the dealer.

(1-B). A dealer claiming exemption from the payment of fee under sub-rule (1), shall produce a copy of the railway receipt, forwarding note, bill, bilty or challan, as the case may be, duly signed by him or his authorised agent, in the office of the Committee where the agricultural produce is bought before is loaded, the second copy shall be produced by the said dealer in the office of the Committee within whose market area the agricultural produce is bought before it is unloaded and the third copy shall be retained by him. In case no such copy is produced by the dealer in the office of concerned committee, no claim for exemption shall be entertained.

(2) The dealer concerned in the sale or purchase of any quantity of agricultural produce 306 Punjab Agricultural Produce Markets (General) Rules, 1962 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.*

It has been specifically provided in the Rules of 1962 that for claiming exemption from payment of fee under the rules, the dealer has to produce copies of the railway receipts, forwarding, bilties or challan as the case may be, duly signed by him or his authorised agent, in the office of the Committee where the agriculture produce is bought before it is loaded and should also be produced in the office of the Committee within whose market area the agriculture produce is brought before it is unloaded. No such mandate had been followed by the petitioner and the requisite compliance having not been done the case of the petitioner would not fall within the proviso of the exemptions and he would not be entitled to claim exemption from the payment of the assessment of market fee/RDF.

Learned counsel for the petitioner has also placed reliance on the judgment of Hon'ble Supreme Court in ***Haryana State Agriculture Marketing Boards and Others Vs. Sh. Ganesh Rice and General Mills and another reported as AIR 1999 SC 378*** and has also relied on the judgment passed by the Division bench of this Hon'ble Court in the matter of ***The Punjab State Agricultural Marketing Board and another Vs. State of Punjab, reported as 2007 (4) RCR (Civil) 614***.

In so far as the judgment in the matter of **Ganesh Rice Mills (supra**) is concerned, it relates to delayed submission of the requisite forms. The present case does not fall in the category of delayed submissions of Forms rather a specific finding has been recorded by the respondents that the requisite compliance had not been done at all and the bills and bilties submitted along with the Form K-1 (which such form is also disputed) since the same has not been signed by the Secretary of Market Committee, Jaitan) do not corroborate the claim of the petitioner. Emphasis was laid on a stamping done on the top of the said form as a token of deposit which is incorrect since the stamp is rather a diary number of submission of the said form and not a verification by the Secretary of the notified Market Committee with regard to execution/attestation of Form K-1 as a token of deposit of Fee. The column is lying blank and unstamped.

In so far as reference to the Division Bench judgment of this Court in the matter of ***The Punjab State Agricultural Marketing Board and another*** (supra) is concerned, the said judgment also does not come to the aid of the petitioner. It has been held in para No.3 thereof that the revisional authority recorded a categorical finding of fact that no KK Form was issued by the selling Authority and after noticing that there was a disputed question of fact that had arisen and it was held that the writ Court would not interfere in such a finding of fact. The above said judgment rather rules against the petitioner.

In view of the reasons recorded above and noticing that a detailed order has been passed by the Authority(ies) below after taking note of the documents submitted by the petitioner-firm as also the specific affidavit filed with regard to Annexure P-1 that had been relied upon by the petitioner and finding the same to be not substantiated and supported or established in terms of the relevant statutory rules, I find that the order passed by the Assessing Authority or the subsequent orders do not suffer from any illegality; impropriety; or mis-appreciation of evidence. The submissions of the petitioner-firm and all the factual aspects have been noticed and considered in appeal as well as the revision by the concerned Appellate and Revisional Authority. No ground emerges in the present case on the basis whereof it can be said that the concurrent findings recorded by the Authorities below suffer from the vice of illegalities, improprieties or abuse of authority or mis-appreciation of evidence.

Accordingly, the present writ petition is dismissed. The orders dated 16.05.2014 (Annexure P-7) and 21.02.2005 (Annexure P-5) whereby the assessment order dated 11.05.2001 passed by respondent No.1 has been upheld are affirmed.

August 08, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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