(2015) 08 P&H CK 0216

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 26455, 27180, 27336, 27642, 27747, 27995 and 27801 of 2013

Budh Ram Lalit Kumar — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:
Punjab Agricultural Produce Markets Act, 1961 — Section 42

Citation : (2015) 180 PLR 452 : (2016) 1 RCR(Civil) 69

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : P.K. Goklaney, for the Appellant; V. Ramswaroop, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of seven writ petitions bearing CWP Nos. 26455, 27180, 27336, 27642, 27747, 27995 and 27801 of 2013 as all are inter-connected. However, the facts are being extracted from CWP No. 26455 of 2013. In brief, the petitioner-firm was doing the business of Commission Agent in the year 1999-2000 in the Market Committee, Abohar. By way of demand notice dated 11.09.2001, it was asked to pay an amount of Rs. 1,74,068/- as market fee, Rs. 1,74,068/- as Rural Development Fee (RDF), Rs. 1,74,068/- as penalty and interest of Rs. 51,505/- @ 18% per annum, total amounting to Rs. 5,73,709/-, by the Secretary, Market Committee, Abohar on the basis of the assessment order passed by him. The petitioner challenged the assessment order by way of an appeal filed under Section 31(13) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules), which was dismissed by the Deputy General Manager (Marketing), Punjab Mandi Board, Chandigarh, on 25.10.2004. He further challenged that order by way of revision petition filed under Section 42 of the Punjab Agricultural Produce Markets Produce Act, 1961 (hereinafter referred to as the Act), but it was dismissed by the Secretary, Department of Agriculture, Punjab, Chandigarh, on 25.09.2013. The petitioner has. thus, challenged the aforesaid orders, inter alia, on the ground that the petitioner purchased the agricultural produce from the licensee firms of Market Committee, Bathinda as well as Market Committee, Jalalabad (W). It is alleged that the State of Punjab had amended Rule 29(1) of the Rules and notified the same on 04.09.1998, for payment of market fee once in the State. Thus, the market fee and RDF, once paid by the seller firms at Bathinda as well as Jalalabad (W), were not liable to be paid by the petitioner to the Market Committee, Abohar.

2. According to the procedure laid down in the amended Rule 29(1) of the Rules, fee on agricultural produce, bought or sold, by the licensee was to be paid in the notified market area and no fee is to be paid 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. The licensee dealer who claims exemption from payment of fee has to make a declaration and give certificate to that effect in form ''KK'' within a period of sixty days of the transaction of agricultural produce in question to the Committee from where the exemption is claimed. The certificate in form ''KK'' has to be prepared in quadruplicate from the booklet, duly attested and issued by the Secretary of concerned committee or its authorized officer, against the payment, fixed by the committee. It is 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 the agricultural produce is bought. The second copy is to be sent to the office of the committee within whose market area such agricultural produce is brought and the third copy is to be retained by the dealer who purchased the agricultural produce and the fourth copy is to be retained by the dealer who sold the agricultural produce and the same has to be kept as a part of their accounts, maintained in respect of payment of the fee. In case the dealer fails to present the certificate, referred to above, within a period of sixty days, then the Assessing Authority shall impose penalty equal to the amount of ten per cent of market fee for the next month, twenty per cent of the market fee for further next month, thirty per cent of the market fee for further next month, forty per cent of the market fee for further next month and fifty per cent of the market fee for the subsequent next month. If the dealer fails to submit the aforesaid certificate within the stipulated period, then the penalty equal to the amount of the market fee due, is to be imposed upon him. It is also provided that the dealer claiming exemption from the payment of fee shall also produce a copy of the 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 has to be produced by the said dealer to 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 can be entertained. It is also provided that the responsibility of paying

the fee, as above, is of the buyer and if he is not a licensee then the seller who may realize the same from the buyer. Such fee is leviable as soon as an agricultural produce is bought or sold by a licensee.

3. In the present case, the petitioner has admitted to have purchased the agricultural produce from respondent Nos. 4 to 6, who are the licensee firms of their respective market committees and the petitioner submitted the ''KK'' forms to the Market Committee, Abohar, which were handed over to it by respondent Nos. 4 to 6 and were also submitted by them to their respective Market Committees and also certified that the KK forms are genuine. It is alleged that the petitioner had paid the market fee and RDF to the seller firms and since it had already paid the market fee and RDF, therefore, it was not liable to be burdened again and again for the said payment.

4. Counsel for the petitioner has submitted that the KK forms submitted by it to the Market Committee, Abohar, have not been treated to be genuine on the ground that the seller firms at Bathinda and Jalalabad (W) are considered as bogus firms. It is submitted that if the seller firms are allegedly bogus, then an inquiry should have been made to ascertain their genuineness and has referred to an order passed in the case of M/s. Sunder Mal Hari Chand v. The Secretary, Punjab Mandi Board, Chandigarh and another, Revision Petition No. S/198/05/ M-1 dated 12.11.2010.

5. On the other hand, counsel for the respondents has submitted that exemption from payment of market fee and RDF depends upon the entry made in column No. 6 of the KK form, which is submitted by the petitioner being purchaser of the agricultural produce and alleged to have paid the market fee and RDF to the sellers at Bathinda and Jalalabad (W), but the KK form submitted by the petitioner is without receipt number, date and amount of the market fee and RDF, which is alleged to have been paid by him to its seller. It is also submitted that there is no record available with the Department of Food & Civil Supplies, Bathinda and the Department of Sales Tax, Bathinda regarding all these sale and purchase made by the petitioner and the seller firms. Moreover, as per the Food & Civil Supplies Department, Bathinda, these firms have not submitted any stock report regarding sale or purchase. It is also submitted that the petitioner-firm, in connivance with respondent Nos. 4 to 6, has done bogus billing and KK forms have been wrongly got verified by the petitioner-firm from the concerned Market Committee, in connivance with its employees. Insofar as the order relied upon by counsel for the petitioner is concerned, it is submitted that the said order is not applicable to the facts and circumstances of the present case.

6. I have heard learned counsel for the parties and perused the available record.

7. After assessment of the market fee, RDF, penalty and interest payable by the petitioner, the appeal and revision filed under the Rules and Act have been dismissed by the competent authorities on the ground that the petitioner has failed to bring on record any evidence to the effect that it had paid the market

fee and RDF to the seller firms in order to seek exemption from paying the same to its Market Committee at Abohar. It is a matter of fact which has to be ascertained from the documents on record, which is apparent from KK form, appended as Annexure P-4, in which the entry in regard to the manner in which the market fee and RDF, alleged to have been paid, is conspicuously absent and according to the amended Rule 29(1) of the Rules, even if the market fee and RDF is to be paid once either at the time of purchase or the sale, the exemption can be sought only on the basis of entry in the KK form by the firm who had paid the market fee and RDF to the other party and the other party had deposited it with the Market Committee.

8. There is no evidence in the entire petition of the payment of market fee and RDF by the petitioner-firm either itself to the Market Committee, Abohar or by its sellers to the Market Committees of Bathinda or Jalalabad (W).

9. Thus, in view thereof, there is no scope for interference in the well considered order(s) passed by the competent authorities while dismissing the appeal(s) and revision(s) filed by the petitioner(s). Consequently, all the writ petitions are hereby dismissed being denuded of any merit, though without any order as to costs.