(2014) 07 P&H CK 0477

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 17491 of 2013 (O&M)

JP Sortex Pvt. Ltd. APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 07 P&H CK 0477

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Sameer Sachdeva, Advocate for the Appellant; Rupam Aggarwal, DAG and Amit Kundra, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Petitioner has approached this Court by way of instant writ petition filed under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned notices/orders/action of the respondents as initiated as per Annexure P-1 to P-6 dated 23.01.2013, 22.02.2013, 27.02.2013, 21.03.2013, 26.03.2013 & 21.05.2013 respectively whereby the petition was asked to deposit market fees qua paddy/rice bought from outside the State of Punjab.

2. The petitioner-company purchased paddy/rice not only from within notified market area of Ferozepur Cantt but also from different parts of Punjab as also from other States like Uttar Pradesh. The petitioner-company converts the paddy/rice purchased into export quality rice and exports the bulk of it to foreign countries by transporting the refined rice produced from Ferozepur Cantt to the exporters outside the State of Punjab. Rice purchased from different shellers located in Punjab is also exported abroad by the petitioner in addition to the rice produced by the petitioner. With respect to the purchases of rice from State of Punjab, the petitioner-company is regularly and honestly paying the due fees and there is absolutely no dispute with regard to those purchases. The rice/paddy

purchased in the instant case is from pucca artias/commission outside the State of Punjab where the petitioner is not a licensee. The market fee and RDF has already been paid on its paddy/rice from which the instant rice has been made, as is apparent from K-2 and specimen is Annexure P-9. As per Annexure P-9, the market fee and RDF has been paid to the Commission Agents. The documents pertaining to purchase of paddy/rice from UP including photocopies of sale bills, challan form and good receipt, transportation bill paid by the petitioner in UP relating to transaction made during 2012-13 have already been produced time and again before the respondents. Vide memo/circular dated 10.06.1994 (P-10) issued by State on the subject of levy of market fee and RDF in respect of paddy/ rice brought into the State for export purposes staying the imposition of market fee and RDF on such agricultural produce which was not produced in State of Punjab and was brought to the mandis of Punjab for export outside the country. Respondent No. 2 issued circular dated 01.07.2003 stating that there is no provision in the rules or the bye laws which empowers any market committee of Punjab State to levy of market fee upon the purchases/sales made outside the State of Punjab (P-11).

3. Section 29(7) of Punjab Agriculture Produce Markets (General) Rules 1962 (for short ''the Rules'') reads as under:-

29. Levy and collection of fees on the sale and purchase of agricultural produce

1-6 xx xx

xx xx

7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area-

(a) If the agreement of sale or purchase thereof is entered into in the said area; or

(b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

(d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

Section 23 of the Punjab agricultural produce markets Act 1961 reads under:-

23. Levy of fees- 1[A committee shall subject to such rules as may be made by State Government in this behalf, levy on ad-valorem basis-

(i) Fees on the agricultural produce bought or sold be a licensee in the notified market area at a rate not exceeding two rupees for every one hundred; and

(ii) Also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees.]

Provided that-

(a) No fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) A fee shall be leviable on the parties to a transaction in which delivery actually made.

4. The clear reading of the above said Rules and Act shows that the purpose of calculation of fee, agricultural produce shall be deemed to have been bought or sold in a notified market area. The case of the petitioner is that the paddy has been bought from UP and after making necessary market fee and RDF through pucca artias/commission and the requisite form K-2 has been given to the respondents. The Commission Agents in UP have already collected market fee, as shown in K-2 form which have been submitted by the petitioner before the respondents.

5. Reference at this stage can be made to a Division Bench judgment of this Court in CWP No. 2291 of 2007 titled as Punjab State Agricultural Market Board and others vs. State of Punjab and others, decided on 20.02.2007 (P-15) whereby the Punjab State Marketing Board had challenged order dated 03.04.2006 wherein it was held that the paddy which was purchased from outside the State of Punjab and brought within the notified market area of Market Committee, Amritsar, were not subject to levy of market fee. This Court dismissed the petition and held that no fee is levied in respect of transaction in which delivery of the agriculture produce brought was sold is not actually made.

6. This judgment has been challenged in Hon''ble the Supreme Court vide SLP No. 15437 of 2007 and the same has been dismissed and the review filed by respondent No. 2 was also dismissed.

7. Learned counsel for the respondents has placed on record Annexure R-1 which further clarified that no market fee shall be levied on paddy brought from outside State of Punjab provided that the proof of making payment market fee in the State from which paddy has been imported along with the purchase bill, documents relating to transportation and form k-2 is furnished by the dealer to the concerned committee within a period of 30 days from the date of transaction.

8. The case of the petitioner is thus fully covered in view of Annexure R-1 and judgment passed by this court (P-15).

9. Accordingly, the writ petition is allowed and impugned notices/orders/action of the respondents as initiated as per Annexure P-1 to P-6 dated 23.01.2013, 22.02.2013, 27.02.2013, 21.03.2013, 26.03.2013 & 21.05.2013 respectively are set aside. A direction is given to the respondents to examine the form K-2

submitted by the petitioner, in accordance with Annexure R-1.