(1994) 10 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7899 of 1994

M/s. Varsha Spinning Mills Ltd. APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Haryana Rural Development Rules, 1987 — Rule 3(12)
Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 30(2)
Punjab Agricultural Produce Markets Act, 1961 — Section 23, 43

Citation : AIR 1995 P&H 195 : (1995) 109 PLR 600

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : O.P. Goyal and Julanawala, for the Appellant; Ms. Ritu Bahri, A.A.G. and Ravi Kapur, for the Respondent

Judgement

M.K. Sodhi, J.—M/s. Varsha Spinning Mills Ltd. (for short, the Company) is a public limited company having a unit at Bawal in District Rewari where it is manufacturing yarn out of cotton gin and other raw materials. It is registered as a dealer under the Haryana General Sales Tax Act-as also under the Punjab Agricultural Produce Markets Act, 1961 as applicable to the State of Haryana (hereinafter called the Act. For manufacturing yarn, the Company is buying cotton gin from three sources, namely, (i) market committees/yards outside the State of Haryana, (ii) from the market committees/yards within the State of Haryana'' other than Rewari and (iii) from the market committee, Rewari. The raw material purchased from the first two sources is brought within the area of market committee/yard of Rewari for processing. In this petition, we are concerned with the raw material which the Company is buying from the market committees within the State of Haryana and brings the same to Rewari. It is common case of the parties that the Company has paid market fee to the committees within the State of Haryana from where the raw material was purchased and it appears that it did not submit Form-LL to the market committee, Rewari within the time prescribed by Rule 30(5) of the Punjab

Agricultural Produce Markets (General) Rules, 1962 (referred to hereinafter as the Rules). The grievance of the Company is that having paid fee to the market committees from where the raw material was purchased, it is not liable to pay market fee again for the second time when the raw material is brought for processing within the limits of market committee, Rewari. This plea is resisted by the market committee, Rewari on the ground that the Company did not give the required certificate in Form-LL only attested by the Secretary of the Committee where fee Mad already been paid within twenty days of the bringing of the agricultural produce within its notified area. What is contended is that the provisions of the proviso to sub-rule (5) of Rule 30 of the Rules framed under the Act were not complied with and, therefore, the Company is not entitled to the exemption which it claims.

2. Under S. 23 of the Act, a committee may, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on agricultural produce bought or sold or brought for processing by dealers in the notified market area at a rate not exceeding three rupees for every one hundred rupees. It is clear that the levy, of market fee is subject to the rules. Sub-rule (5) of Rule 30 of the. Rules which is relevant, reads as under :--

"30(5) -- The agricultural produce brought for processing from within the State and for which market fee has already been paid in any market in the State, shall be exempted from payment of market fee second time;

Provided that the dealer who claims exemption under sub-rule (5) from the payment of the fee leviable on any agricultural produce brought for processing shall make declaration and give certificate to the committee in Form-LL duly attested by the Secretary of the Committee where fee has already been paid within 20 days of the bringing of agricultural produce within the notified market area and complies with the provisions of sub-rule (2)."

A combined reading of S. 23 of the Act and sub-rule (5) of Rule 30 of the Rules makes it clear chat a dealer who brings agricultural produce for processing within the area of a market committee and on which market fee has already been paid in any other market committee in the State, shall be exempted from payment of market fee second time. Of course, the dealer has to make a declaration to this effect and furnish a certificate to the Committee in Form-LL duly attested by the Secretary of the Committee where fee has. already been paid. The proviso to sub-rule, (5) of Rule 30 further requires that this Form-LL should be submitted within 20 days of the bringing of agricultural produce within the notified market area. In the present case, the Company had paid market fee to the market committees within the jurisdiction of which cotton gin was purchased. Thereafter, when the same was brought within the notified market committee/yard of Rewari for processing, it was exempt from payment of market fee but for this it had to produce the certificate in Form-LL within twenty days. It appears that this certificate was not produced within the prescribed period and it is for this reason that the claim of the Company for exemption is being denied.

3. We have heard learned counsellor the parties and in our opinion, the stand of the committee is not tenable. Mere delay in the submission of Form-LL showing that the market fee has already been paid in some other committee within the State of Haryana from where the raw material was purchased cannot deprive the dealer of his substantive right to claim exemption which is granted by sub-rule (5) of Rule 30 of the Rules. The intention underlying this Rule is that a purchaser is not to be made to pay market fee twice and the period of twenty days prescribed by the proviso for producing Form-LL is not to be treated that sacrosanct so as to deprive the purchaser of his right to claim exemption as given by the main provision of the sub-rule. The period of twenty days as prescribed by the proviso is only directory and not mandatory. The Company is, therefore, entitled to the exemption claimed.

4. In Civil Writ Petition 7900 of 1994 the grievances of the Company is that the market committee, Rewari is again charging one per centum fee under the Haryana Rural Development Fund Act, 1986 (for short, the 1986 Act) on the raw material/agricultural produce bought by it within the State and for which the fee had already been paid to the assessing authority of the notified market area from where the raw material was purchased. Under the 1986 Act also, a fee on act valorem basis at the rate of one; per centum oh the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area is levied and under Rule 3(12) of the Haryana Rural Development Rules, 1987, no fee is leviable 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 any notified market area within the State. Again, the dealer who claims exemption from the payment of fee on the ground that the fee has already been paid in another notified area has to make a declaration and furnish a certificate to the assessing authority in Form-E within a week of the day of bringing of agricultural produce within the notified area. The Company has made a specific averment in the petition that it has already paid the Haryana Rural Development Fee to the assessing authority of the notified market area from where the raw material was purchased. There is no rebuttal to this averment. Here also, the Company cannot be deprived of its right to claim exemption merely because Form-E was not furnished; to the assessing authority within the prescribed period of one week of the bringing of the agricultural produce in the notified market area of market committee; Rewari.

5. For the reasons recorded above, both the writ petitions are allowed and the impugned notices requiring the Company to pay second time market fee and Haryana Rural Development fee are quashed. There is no order as to costs.

6. Petitions allowed.