(2008) 12 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11930 of 1993

Om Parkash Ashok Kumar	APPELLANT
Vs	
Punjab State Agricultural Marketing Board, Chandigarh and another	RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Citation : (2009) 1 ICC 531 : (2009) 5 RCR(Civil) 907

Hon'ble Judges : Adarsh Kumar Goel, J and L.N.Mittal, J

Advocate : Mr. R.L. Batta, Senior Advocate with Mr. J.S. Jaggi, Advocate and Mr. Mandeep Kumar Saajan, Advocate. Mr. H. S. Riar, Senior Advocate with Mr. Sameer Sachdeva, Advocate., Advocates for appearing Parties

Judgement

Adarsh Kumar Goel, J. (Oral)

1. This petition seeks quashing of order of assessment dated 17.01.1989, Annexure P9, as affirmed in appeal by order dated 30.07.1993, Annexure P13.

2. Case of the petitioner is that it was a licencee under the provisions of Punjab Agricultural Produce Markets Act, 1961 (for short, "the Act"). Its business premises are situated outside the principal market yard and sub market yard. It was denying liability to pay market fee on the ground that no sale or purchase was conducted in the principal market yard or sub market yard and filed C.W.P. No. 2750 of 1989 in this Court. The issue was decided by Full Bench of this Court in M/s Subhash Chander Kamlesh Kumar v. State of Punjab and others, 1990(2) RRR 227 : AIR 1990 Punjab and Haryana 259, rejecting the plea of the assessee. The writ petition of the petitioner was disposed of in terms of the judgment passed in the case of M/s Subhash Chander (supra).

3. The petitioner received notice dated 14.05.1986, Annexure P1 for producing its accounts. After examining the accounts, a sum of Rs. 34,022.22 was assessed as market fee payable by the petitioner, in addition to composition fee of Rs. 3,400/. The said amounts were paid by the petitioner on 08.07.1986 vide

Annexure P2 and P3. Thereafter, the firm was dissolved. However, subsequently, impugned assessment orders were passed for the assessment year 198384, 198485 and 198586. The petitioner challenges the same on the ground that the matter stood finalized and as amount of market fee due, as assessed, had already been paid, no fresh assessment orders could be passed. The Appellate Authority, however, did not accept this plea.

4. Learned counsel for the petitioner submits that the assessment order was not justified, having regard to the fact that the petitioner had already paid the amount assessed and the composition fee, after which nothing survived.

5. Learned counsel for the Market Committee and the Market Board support the impugned order.

6. We have perused the order of assessment and order of the Appellate Authority. The Appellate Authority observed as under :

"I have considered the above points and do not find force in any of the contentions raised on behalf of the appellant. Under rule 31(4), the Committee has the right to frame assessment against any dealer and the mere fact that some amount had earlier been deposited by the dealer in pursuance of the Board''s directions would not stand in the way of exercise of this right, especially since it is not shown that the amount paid earlier was in any way related to the present transactions. Secondly, no irregularity or infirmity can be detected in the order through which the best judgment assessment was framed and the Committee has taken care to see that all requirements of law have been met with. Finally, it cannot be doubted that a Committee is competent to levy penalty upon any defaulting licencee. In this case, the default of the appellant has been of a very stubborn and persistent nature and I am of the view that the imposition of the maximum penalty was warranted in the circumstances of the case."

7. We are unable to sustain the finding of the Appellate Authority. Annexure P2 is a document showing payment of market fee in pursuance of notice Annexure P1, which was for the period 198384, 198485 and 1985 86 and Annexure P3 is payment of composition fee.

8. The Market Committee, having made the assessment and accepted the market fee along with composition fee, will not be justified in initiating the assessment process again, particularly when the firm was closed.

9. Though counsel for the petitioner has advanced certain alternative submissions with regard to limitation for making assessment, in view of the fact that the accounts were required to be maintained only for two years and impugned process for assessment was started vide notice dated 19.03.1988 Annexure P5, after almost two years after the last assessment. In view of our above decision, we need not go into the said question.

10. In view of above, we allow this petition and quash the impugned order.

