(2015) 03 RAJ CK 0136

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2442/2002 and Stay Application No. 2217/2002

Shishram and Party APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0136

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mahendra Goyal, Counsel, for the Appellant; Sudeep Mathur for Inderjeet Singh, Additional Advocate General and Manju Joshi, Additional Government Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mohammad Rafiq, J.—This writ petition has been filed M/s Shishram and Party, which is a partnership firm, challenging the order dated 12.03.2001 passed by the Director, Agricultural Marketing Board, Jaipur, whereby the appeal filed by petitioner against demand notice dated 03.07.1999 raised by Krishi Upaj Mandi Samiti, Barmer has been dismissed. The petitioner was issued a license by the excise department for sale and purchase of ''doda post'' (poppy straw) for the year 1995-96 in Barmer region. In order to facilitate the agriculturist to secure better and adequate prices for their produce and to regulate the market, the Rajasthan Agricultural Produce Markets Act, 1961 (for short, ''the Act of 1961'') has been enacted. Section 4 of the Act of 1961 provides that the State Government may by notification declare any area to be market area for the purpose of the Act and it further provides that no sale/purchase of any agricultural produce shall take place outside the notified market area. Section 17 of the Act of 1961 lays down that the market committee shall collect the market fees from the licencees on agricultural produce bought or sale by them in the market area at the rate as may specify by the State Government. Rule 58 of the Rules of 1963 provides that cess shall be leviable on agricultural produce bought and sold in the market area.

2. The petitioner deposited the entire mandi fee with the Mandi Samiti, Barmer on the sale and purchase made in the mandi yard, Barmer of the ''doda post'' for the year 1995-96. The petitioner received demand notice dated 03.06.1997 from the Krishi Upaj Mandi Samiti, Barmer, calling upon the petitioner to pay mandi fee of Rs. 3,24,701/-, which has been calculated on the amount of licence fee, excise duty, conveyance charges, octroi and other expenses. Petitioner filed reply to the notice and disputed the demand notice issued on the basis of report of inspection carried out by the Deputy Director (Survey and Vigilance) of the respondent department. The petitioner, while replying to the notice, has disputed the correctness of the enquiry report. The Krishi Upaj Mandi Samiti, Barmer, vide order dated 27.08.1997, required the petitioner firm to put in appearance before the Director, Agricultural Marketing Board, Rajasthan, Jaipur. The petitioner challenged the aforesaid notice by filing appeal before the Director, Agricultural Marketing Board, Rajasthan, Jaipur. The appeal, however, has been dismissed.

3. Learned counsel for the petitioner argued that no transaction was carried out by the petitioner firm in the Market Area of the Krishi Upaj Mandi Samiti, Barmer. It was no where mentioned in the reply that any transaction was carried out by the petitioner firm in the Balotara Krishi Upaj Mandi Samiti. There was not a single transaction involving the petitioner as buyer or seller in the area of Krishi Upaj Mandi Samiti, Balotara. Learned counsel has referred to the inspection report, which is placed on record as Annexure R3/6 dated 07.03.1996, and contended that therein total 32 transactions have been enlisted and none of them pertains to transaction made at Balotara. Besides, learned counsel submitted that the appellate authority has overlooked the statutory provisions under which the licence fee paid by the petitioner firm to the excise department could not have been taken into consideration for the purpose of assessment of mandi fee. The mandi fee in the present case has been paid on the basis of licence fee and excise duty paid by the petitioner firm, whereas, according to the provisions of the Act of 1961, the mandi fee was payable on the sale/purchase price in the mandi yard. There is no legal sanction for computation of mandi fee in the manner in which the respondents have done. None of these arguments have been considered by the appellate authority, which has dismissed the appeal by a non-speaking order. Moreover the findings recorded by the appellate authority are vague and uncertain. The remand order is passed without application of mind and therefore the same is liable to be set aside.

4. Shri Sudeep Mathur, brief holder of Shri Inderjeet Singh, learned Additional Advocate General, and Smt. Manju Joshi, learned Additional Government Counsel appearing for respondents, opposed the writ petition and submitted that the demand notice was rightly issued against the petitioner firm because under Section 34(2) of the Act of 1961, the petitioner firm was required to deposit the entire mandi fee, which the petitioner firm did not deposit in the office of Krishi Upaj Mandi Samiti, Barmer. The petitioner firm did not pay the due amount of

mandi samiti either at Barmer or at Balotara. The petitioner firm was issued the notice dated 20.12.2001 to deposit certain benefits which was followed by another notice dated 19.02.2002. It is argued that the impugned order does not suffer from any infirmity and the writ petition may be dismissed.

5. Perusal of the order passed by the appellate authority indicates that it has given its decision in the light of the report of inspection carried out by the Deputy Director (Survey and Vigilance) of the respondent department. The report indeed does not show any transaction of Krishi Upaj Mandi Samiti, Balotara. This argument was specifically raised by the petitioner firm but has not been dealt with by the appellate authority. The appellate authority has merely stated that it was the obligation of the petitioner firm to deposit the mandi fee for any commodity from outside the mandi yard at Barmer whereas neither fee was deposited at Barmer nor at Balotara. It has been mentioned that as per information, the Secretary, Krishi Upaj Mandi Samiti, Balotara has issued ''No Objection Certificate'' to the petitioner firm for import of ''doda post'' from Balotara Krishi Upaj Mandi Samiti, but there is no such correspondence finding in the enquiry made by the Deputy Director nor any such transaction of Balotara has been mentioned. Besides aforesaid argument of the petitioner firm that mandi fee has been calculated on the basis of sale/purchase price in the mandi yard and not on the basis of report of inspection carried out by the Deputy Director, has not been dealt with by the appellate authority. In the circumstances, therefore, the matter requires reconsideration by the appellate authority to render specific finding on all these arguments.

6. The writ petition is partly allowed. The order passed by the appellate authority is set aside and the matter is remanded back to the appellate authority to consider and decide the specific issues raised by the petitioner, especially whether the amount of mandi fee could be included in the value of overall transaction for the purpose of arriving at the licence fee paid to the department and also whether petitioner imported any such commodity at the area covered by Balotara with reference to particular transaction.

7. The appeal be decided by the appellate authority within a period of four months from the date copy of this order is produced before the appellate authority.

8. This also disposes of stay application.