

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 8276 of 2007

DATE OF DECISION: 31.7.2007

Deputy General Manager (Marketing), the Punjab Mandi Board,
Chandigarh and another

...Petitioners

Versus

M/s Aggarwal Roller Flour Mills, Chanolo (Kurali) and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Ms. Geeta Sharma, Advocate,
for the petitioners.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution is directed against the order dated 6.2.2006 (P-1), passed by the Financial Commissioner (Development) and Principal Secretary to Government of Punjab, Agriculture Department-respondent No. 2, holding that respondent No. 1 firm was not liable to pay market fee in view of the notification dated 11.9.2001 adding Rule 30(13(i) to the Punjab Agricultural Marketing Produce Markets (General) Rules, 1962 (for brevity, 'the Rules'). According to the aforementioned

Rule no market fee is leviable on the produce of wheat and maize if the aforementioned agricultural produce are to be used for processing industries.

The facts which have led to the filing of the instant petition are that respondent No. 1 firm is a Roller Flour Mills and it has purchased 12680 quintals of wheat from Delhi and Hissar, which is obviously outside the State of Punjab. The Market Committee, Kurali, had sent a notice for the assessment in Form 'O' under Rule 31(4) of the Rules to respondent No. 1-firm to produce the account books concerning the purchase of wheat. After examining the record under Rule 35(3), the Market Committee passed an assessment order dated 6.4.2005 recording a recovery of market fee amounting to Rs. 1,68,575/- and Rural Development Fund of the same amount. A penalty of the same amount along with interest amounting to Rs. 51,666/- was also calculated. Respondent No. 1-firm was asked to deposit a sum of Rs. 5,57,391/- and a demand notice dated 6.4.2005 was issued to respondent No. 1-firm. On an appeal filed by respondent No. 1-firm, the Deputy General Manager (M) being the appellate authority, dismissed the appeal vide order dated 9.8.2005 (P-3). On a revision petition filed under Section 42 of the Punjab Agricultural Produce Markets Act, 1961 (for brevity, 'the Act'), the Financial Commissioner and Principal Secretary to Government of Punjab-respondent No. 2 found that the case of respondent No. 1-firm was covered by Rule 30(13)(i) of the Rules as the wheat and maize to be used by a processing industry including the Roller Flour Mills were exempt from payment of market fee and rural development fund.

The view of the Financial Commissioner emerges from the concluding para of the order, which reads as under:-

“ I have duly considered the arguments advanced by the contesting parties and have gone through the record placed on the file. It is an admitted fact by the parties that the petitioner firm is a processing/manufacturing unit. Vide notification dated 11.9.2001 rule 30(13) has been added to the Punjab Agriculture Produce Markets (General) Rules, 1962. This rule has been made to give encouragement to the wheat and maize processing Industries. The petitioner firm has purchased wheat from outside the State of Punjab for processing and paid Market fee there. Now if the market fee and RDF is charged from the processing industries for purchasing wheat from outside the State of Punjab then the notification dated 11.9.2001 would become redundant and the very purpose of the Government to give encouragement to such industries will fail. There is another aspect which also deserves to be mentioned. On the one hand wheat purchased outside the State by a Processing industry is being sought to be subjected to market fees and RDF on the ground that it has been ‘deemed’ to have been bought or sold within the notified market area under Rule 29(7) of the Rules framed under the Act. If this were not so, market fee and RDF would

not be applicable to the transaction made in the notified area. On the other hand, the stand of the respondent is that the Notification dated 11.9.2001, exempting purchase of wheat within the State by Wheat and Maize Processing Industries, is not applicable in this case because the Notification does not exempt wheat which has been bought outside the State. The stand of the respondent is thus contradictory and untenable.

In the light of the above discussions, facts and circumstances of the case Revision Petition is allowed and impugned order dated 9.8.05 and assessment order dated 6.4.2005 are set aside.”

Ms. Geeta Shrama, learned counsel for the petitioners has argued that the exemption envisaged by Rule 30(13) of the Rules is available if the purchases have been made within the State of Punjab and since in the instant case the purchases of agriculture produce like wheat was made from Delhi and Hissar, therefore, respondent No. 1-firm was not entitled to exemption. According to the learned counsel, respondent No. 1-firm is under legal obligation to deposit the market fee and rural development fund as per the assessment order dated 6.4.2005 along with penalty and interest.

We have thoughtfully considered the submission made by the learned counsel and regret our inability to accept the same. It would be appropriate to read Rule 30(13)(i) of the Rules and the same is reproduced as under:-

“30(13)(i) No market fee shall be levied on wheat and Maize purchased by the wheat and maize processing industries for manufacture of products therefrom such as wheat flour and its secondary/tertiary products such as bread, biscuits, paste, noodles etc. starch and its derivatives glutton etc. in the State of Punjab.”

A plain reading of the Rules makes it obvious that no market fee could be levied on wheat and maize, which has been purchased by the wheat and maize processing industry for manufacturing of products such as wheat flour and its secondary products such as bread, biscuits, paste, noodles etc. The notification No. GSR 96/PA, incorporating the aforementioned rule was issued on 11.9.2001 and respondent No. 1-firm had made purchase of wheat from outside the State of Punjab in the year 2003-04.

We are further of the view that the expression ‘*no market fee shall be levied on wheat and maize*’ has to be read in conjunction with the expression ‘*in the State of Punjab*’ because the expression ‘*purchased by the wheat and maize processing industries*’ would not go with the expression ‘*in the State of Punjab*’. Moreover, it is a beneficial rule which has been introduced for a laudable object to encourage the wheat and maize processing industries in the State of Punjab. Therefore, the order passed by the Financial Commissioner does not suffer from any legal infirmity. Moreover, respondent No. 1-firm has paid the market fee at Delhi and Hissar from where it has purchased the wheat stocks as is evident from the finding recorded by the Financial Commissioner in his order. Therefore, respondent No.

1-firm cannot in any case be subjected to payment of double market fee as the same is prohibited by Rule 30(1A) & (1B) of the Rules.

In view of the above, the writ petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

July 31, 2007
Pkapoor

(AJAY KUMAR MITTAL)
JUDGE