

Haryana State Agriculture Marketing Boards and Others

Vs

Shree Ganesh Rice and General Mills and Another

Civil Appeal No. 6081 of 1998

(S. Saghir Ahmed, M. Srinivasan JJ)

04.12.1998

JUDGMENT

SRINIVASAN, J. -

1. Leave granted.

2. The first respondent, a dealer under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as "the Act") purchased paddy from areas outside the jurisdiction of the Market Committee, Karnal between 8-12-1996 and 1-1-1997 amounting to Rs. 5,94,630.35 for processing. It submitted a return in Form M under Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as "the Rules") on 17-3-1997 setting out the details of the purchases. Column 7 in the Form provides for stating whether fee was leviable and if not, why. In the return filed by the first respondent as aforesaid in Form M, the said column was left blank. The Market Committee, Karnal issued Memo No. 241 dated 18-3-1997 to the first respondent, pointing out the delay in filing the report and informing it that a fee of Rs. 11,892.60 was payable on the purchase and the same may be deposited within a week and in case of default, action will be taken. On 27-3-1997, another memo was issued along with a certified copy of Rule 30(5) of the Rules, pointing out that the first respondent had not given necessary information and declaration in time and as such was liable to pay the fee claimed already.

3. The first respondent sent a reply on 4-4-1997 claiming exemption from payment on the ground that the fee had been paid at the place of purchase and it was not payable a second time. The Market Committee sent notices on 8-4-1997 and 28-4-1997 rejecting the stand of the first respondent and reiterating that the relevant Rules were not complied with and the requisite forms were not filed. The Market Committee forwarded the papers to the Assistant Collector Grade II, Karnal (the 4th petitioner herein) for recovery of the fee as arrears of land revenue and the latter issued notice dated 10-6-1997 to the first respondent treating it as a "defaulter".

4. The first respondent filed a writ petition in the High Court for quashing proceedings including the levy of market fee. The High Court proceeded on the footing that the first respondent had paid the fee at the place where the purchase was made and there was only a delay in complying with the Rules. The High Court held that mere delay will not enable the Market Committee to levy fee for a second time even though it may be entitled to levy a penalty. Consequently, the High Court allowed the writ petition holding that the levy of market fee was without jurisdiction. Aggrieved by the said judgment, the appellants have preferred this appeal by special leave.

5. Rule 30 of the Rules provides that no market fee shall be levied on the sale or purchase of any

agricultural produce in respect of which such fee is already paid in the notified market area in which the said produce was manufactured or extracted. Sub-rules (3) to (5) are relevant in this case. They read as follows :

"30. (3) The dealer who claims exemption from the payment of market fee leviable on any agricultural produce manufactured or extracted from the agricultural produce in respect of which the market fee has already been paid in another notified market area, shall make declaration and give certificate to the committee in Form LL, where the fee has already been paid within twenty days of the day of bringing of agricultural produce within the notified market area. Form LL shall be prepared in quadruplicate form, the booklets duly attested and issued by the Secretary of the Committee against the payment fixed by the Committee. It will be the duty of the dealer claiming exemption from the market fee under this sub-rule to send the original copy of Form LL to the Committee within whose market area the agricultural produce is brought. The second copy shall be sent to the Office of the Committee within whose market area such agricultural produce was bought, and the third and fourth copies shall be retained by the dealer-purchaser and the dealer-seller, respectively and the same shall be kept as a part of their accounts maintained in respect of market fees.

(4) It shall be the duty of the dealer claiming exemption from market fee under sub-rules (3) and (5) to produce a copy of the R/R, forwarding note, bilty or challan, as the case may be, duly signed by him or his authorised agent in the Office of the Committee from whose market area the agricultural produce is brought before it is unloaded, the second copy in the Office of the Committee within whose market area the agricultural produce is brought before it is unloaded and the third copy to be retained by him :

Provided that if no such copy of R/R, forwarding note, bilty or challan is produced in the Office of the Committee concerned, no claim for exemption shall be entertained.

(5) The agricultural produce brought for processing from within the State 'or from outside the State' and for which market fee has already been paid in any market in the State 'or outside 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 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 twenty days of the bringing of agricultural produce within the notified market area and complies with the provisions of sub-rule (2)."

6. Under the above Rule, three conditions are required to be satisfied for the purpose of claiming exemption by a dealer :

A. The dealer should have paid the market fee already in a market area.

B. The dealer shall make a declaration and give certificate to the Committee in Form LL where the

fee has already been paid.

C. Such Form shall be filed within 20 days of the date of bringing the agricultural produce within the notified market area.

7. Unless all the above conditions are fulfilled, it is not possible for the Market Committee to accept a mere statement that market fee had already been paid and the dealer was not liable to pay it again. Compliance with the Rule is not a mere technical formality. In the present case, the first respondent did not admittedly file Form LL with the Market Committee. It filed Form M only after the prescribed time-limit. Even in that Form, as pointed out already, column 7 was not filled up. In such circumstances, the stand taken by the Market Committee that the first respondent was liable to pay market fee was correct.

8. The High Court has unfortunately overlooked the fact that the first respondent had not filed Form LL and made a declaration or given a certificate as required by the Rule, but instead filed only Form M and that too leaving column 7 blank. The High Court has proceeded on the footing that there was only a delay in filing the required declaration. Hence the judgment of the High Court is not sustainable and the appeal is to be allowed. But learned counsel for the first respondent points out rightly that in the memo issued by the Market Committee on 18-3-1997, it was not pointed out that the first respondent ought to file Form LL containing a declaration and a certificate. Nor was the attention of the first respondent drawn to Rule 30. It is also submitted by learned counsel that the market fee was actually paid when the produce was purchased. According to him, all the relevant receipts for payment of market fee in the area are readily available with the first respondent.

9. In the circumstances, we are of the opinion that the first respondent's right to claim exemption from payment of market fee in Karnal shall not be defeated as it is stated to have been paid already actually in the area where the produce was purchased. The first respondent is also willing to file the declaration and certificate in Form LL. Mr K. T. S. Tulsi, learned Senior Counsel for the appellants, has submitted that if the declaration and certificate in Form LL are filed within 2 weeks from this date, the Market Committee would not insist upon compliance with the period of limitation prescribed in the Rule in view of the defect in the memo dated 18-3-1997 and consider the question whether the fee had been paid already and the first respondent is entitled to exemption.

10. Hence, we direct the first respondent to file the declaration and certificate in Form LL with the Marketing Committee, Karnal within a period of two weeks from this date and the latter shall on such filing of the declaration and certificate, grant the exemption to the first respondent from payment of market fee if the other conditions in the Rule are satisfied irrespective of the period of limitation prescribed in the Rule. This appeal is disposed of with the above directions.