

Before Rajiv Sharma & Harinder Singh Sidhu, JJ.

**M/S KARTARPUR COLD STORAGE AND ICE FACTORY,
KARTARPUR, DISTRICT JALANDHAR—Petitioner**

versus

**ASSESSING AUTHORITY-CUM-SECRETARY, MARKET
COMMITTEE, JALANDHAR AND OTHERS—Respondents**

L.P.A. No.1515 of 2019

January 31, 2020

*Punjab Agricultural Produce Markets (General) Rule, 1962—
Rl. 31(9)—Levy of market fee and penalty—Case of appellant that its
licence was only for storage of agriculture produce and it had made
no sale or purchase of agricultural produce so market fee and penalty
wrongly imposed—Held, Rule 31, it does not appear that imposition
of penalty is mandatory and also does not appear that penalty
provided is minimum penalty that may be imposed—Therefore,
imposition of penalty are quashed —Assessing Authority may decide
question with regard to imposition of penalty after giving opportunity
of hearing to appellant.*

*Held that, on a plain reading of the Rule it does not appear that
the imposition of the penalty is mandatory. Further, it also does not
appear that the penalty provided is the minimum penalty that may be
imposed. However, we express no final opinion on these issues as those
issues were not specifically raised.*

(Para 10)

*Held that, accordingly, the impugned orders to the extent of
imposition of penalty are quashed. The Assessing Authority may
decide the question with regard to the imposition of penalty after giving
opportunity of hearing to the appellant.*

(Para 11)

Sanjay Ghalawat, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

(1) This Letters Patent Appeal has been filed against the judgment dated 16.10.2018 in CWP No.15110 of 2014 titled 'M/s Kartarpur Cold Storage and Ice Factory vs. Assessing Authority-cum-Secretary, Market Committee, Jalandhar and others', whereby, the writ

petition filed by the appellant was dismissed.

(2) The appellant had filed the writ petition for quashing orders dated 01.01.2009 (P-5) passed by the Assessing Authority-cum-Secretary, Market Committee, Jalandhar, whereby, market fee of Rs.27,52,510/- has been assessed and levied on the appellant under Rule 31 (9) of the Punjab Agricultural Produce Markets (General) Rule, 1962 (for short 'the 1962 Rules'). It also impugned the orders dated 25.03.2010 & 28.10.2013 (Annexures P-6 & P-8), whereby, the appeal and revision filed by the appellant against the aforesaid order, have been dismissed.

(3) The appellant firm set up a cold storage on GT Road Kartarpur in the notified market area of Market Committee, Jalandhar City. It was issued a licence on 01.04.2003 which was valid upto 31.03.2013. Its case was that the licence had been granted only for conducting business of storage. On 10.11.2008 the Assessing Authority of Market Committee, Jalandhar issued assessment notice in Form 'O' under Rule 31(4) of the 1962 Rules for making assessment for the period from 01.04.2006 to 04.06.2008. It issued a demand notice dated 09.01.2009 directing the appellant to pay Rs.27,52,510/- as market fee and penalty. The appellant submitted his reply dated 22.01.2009 raising different objections namely that there was no compliance of the Market Committee Rules and the Act; that no prior notice had been received which is mandatory before making any assessment; that the appellant had not been given any personal hearing or opportunity; that the appellant had not done any trading or business from 08.02.2008 to 01.05.2008; that there was no sale or purchase of goods, hence, market fee was not chargeable. Assessment order dated 01.01.2009 was passed. The appeal and revision of the appellant there against having been dismissed it filed the writ petition, which has also been dismissed vide the impugned order.

(4) It was the case of the appellant before the Ld. Single Judge that its licence dated 01.04.2003 was only for storage of agriculture produce and it had made no sale or purchase of agricultural produce so the market fee and penalty had been wrongly imposed.

(5) The Ld. Single Judge negated the contention of the appellant by referring extensively to the findings in impugned orders as under:

“After hearing learned counsel for the parties, present

petition deserves to be dismissed. A perusal of the order dated 01.01.2009 (Annexure P-5) shows that as per enquiry report dated 10.06.2008, from the outgoing register of the petitioner firm, it was found that it was indulged in the sales of apple and oranges to the outer States. It was also found that the firm purchased 2609 boxes of apple, price of which came to Rs.10,43,600/- at the rate of Rs.400/- as per market rate, 2966 boxes of orange, price of which came to Rs.14,83,000/- at the rate of Rs.500/-. Except this, the firm purchased 7325 quintal onion, price of which came to Rs.87,90,000/- at the rate of Rs.1200/- per quintal. In this way, the firm had done purchase of Rs.1,13,16,600/- from 08.02.2008 to 01.05.2008. It was also observed that basmati had also been purchased by the said firm, record pertaining to which was not available. The firm was not cooperating in the assessment proceedings. Thereafter, amount of Rs.2,26,332/- as market fees and Rs.2,26,332/- as RDF was found to be recoverable from the firm on the work worth Rs.1,13,16,600/- and penalty of 10 times as per Rule 31 (9) of the Punjab Agricultural Produce Market (General) Rules, 1962 was imposed, which came to Rs.22,63,320/-.

Relevant Rule 31 (9) is reproduced as under:-

“31 (9) In addition to the fee or additional fee levied or determined under sub-rule (3) or sub-rule (7), the assessing authority may recover from the defaulter penalty ten times of the fee or additional fee fund due to be payable.”

Argument of learned counsel for the petitioner that the market fee has been imposed without verification, is liable to be rejected. As per details given above, the only transaction, which reflected sale purchase of agricultural produce had been made part of the assessment order. In between transactions of storage of agricultural produce have been left out. Evidence with regard to purchase of market goods was made out from the register of the firm. Another fact, which goes against the petitioner is that one of the partners of petitioner firm namely Kanwar Charanjit Singh was issued a separate licence No.4151 on 13.02.2009 for sale and purchase of agricultural produce and before issuance of this licence, the said firm did not have any licence for sale and purchase of agricultural produce.

Receipts (Annexures P10 and P-11) in respect of Kanwar Charanjit Singh cannot be of any help to the petitioner as even these receipts have been issued after the date of checking i.e. 04.06.2008. Moreover, record of purchase and sale of agricultural produce is reflected in the order dated 01.01.2009 (Annexure P5). Moreover, as per provisions of the Punjab Agricultural Produce Markets Act, 1961, a penalty can be levied by the Secretary, Market Committee irrespective of the fact, whether the business of buying and selling of the agricultural produce is satisfied in the licence or not. In the present case, at the time of checking of petitioner firm on 04.06.2008 and even while filing its reply dated 22.01.2009 (Annexure P-4), no evidence was led by the petitioner to show that person(s), who had deposited the agricultural produce in its godown, had paid the market fee and had given copy of form 'K'. Hence, the petitioner cannot claim exemption under Section 29 of the above said Act.”

(6) The Ld. Single Judge held that the impugned orders did not suffer from any illegality or perversity, warranting interference.

(7) We fully agree with the findings of the Ld. Single Judge regarding the market fee and the RDF recoverable from the appellant firm. To that extent the appeal is dismissed.

(8) However, we feel that the authorities have not bestowed proper consideration while imposing the penalty on the appellant.

(9) The penalty of ten times the fee found due has been imposed in terms of Rule 31 (9) of the Rules which is as under:

“ In addition to the fee or additional fee levied or determined under sub-rule (3) or sub-rule (7), the assessing authority may recover from the defaulter penalty ten times of the fee or additional fee fund due to be payable.”

(10) On a plain reading of the Rule it does not appear that the imposition of the penalty is mandatory. Further, it also does not appear that the penalty provided is the minimum penalty that may be imposed. However, we express no final opinion on these issues as those issues were not specifically raised.

(11) Accordingly, the impugned orders to the extent of

imposition of penalty are quashed. The Assessing Authority may decide the question with regard to the imposition of penalty after giving opportunity of hearing to the appellant.

(12) The appeal is accordingly disposed of.

Ritambhra Rishi