

Court No. - 3

Case :- WRIT - C No. - 47105 of 2011

Petitioner :- Baba Global Limited

Respondent :- Director Rajya Krishi Utpadan Mandi Parishad
And Others

Counsel for Petitioner :- Nishit Agrawal, Bharat Ji
Agrawal, Nikhil Agrawal

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

1. Heard Shri Nikhil Agrawal, learned counsel for the petitioner and Shri S.C. Dwivedi, learned counsel appearing for the respondents.

2. This petition has been filed seeking the following relief:

"(a) issue a suitable writ, order or direction in the nature of mandamus commanding the respondent No. 3 to refund the entire amount of Rs. 26,00,000/- along with interest and discharge the security Bond furnished to it in pursuance to the order dated 22.12.2005 passed by this Hon'ble Court in Writ Petition No. 75868 of 2005."

3. The contention of the learned counsel for the petitioner is that earlier, steps were taken by the respondents for recovery of mandi fees and cess under the Uttar Pradesh Krishi Utpadan Mandi Adhinyam, 1964 (hereinafter referred to as the 'Adhinyam, 1964'), which imposition was challenged by means of a Writ-C No. 75868 of 2005 in which petition an interim order dated 22.12.2005 was passed directing stay of the impugned order dated 2.12.2005 on the condition that the petitioner deposit a sum of Rs. 26 Lacs within a period of two weeks and for the balance amount of Rs. 26 Lacs security is furnished, other than cash and bank guarantee, to the satisfaction of the respondent concerned.

4. It is stated by the learned counsel that the amount sought to be charged from the petitioner could not have been imposed for reason, inter alia, that Section 22 of the U.P. Special Economic Zone Development Act, 2002, which came into effect from 7.9.2002 excluded the applicability of the Adhinyam, 1964.

5. Thereafter, by means of an order dated 3.12.2009, the aforesaid Writ-C No. 75868 of 2005 filed by the petitioner was dismissed

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while relegating the petitioner to avail the remedy of revision under Section 25 of the Adhiniyam, 1964.

6. In the revision preferred by the petitioner, by an order dated 5.6.2010, the respondent no. 1- Director held that imposition of mandi fees and development cess is not in accordance with law given the fact that the 'Zafrani Zarda' did not fall within the category of specified agricultural produce as notified under the Adhiniyam, 1964. Accordingly, order dated 2.12.2005, impugned in revision imposing mandi fee and cess and recovery thereof were set aside and it was observed that in case any mandi fee is payable for sale, purchase and storage of tobacco, the same be adjusted in accordance with the rules and steps be taken by the respondents to release the security bond furnished by the revisionist.

7. Further direction was given that in case any wholesale purchase and sale is made by the revisionist in respect of tobacco, mandi fees and development cess may be imposed in accordance with the rules and be recovered.

8. The contention is that the aforesaid order of the revisional authority became final. It is further stated that information by means of the letter dated 21.9.2010 was sought from the petitioner by the respondents regarding the nature of product manufactured from tobacco by the petitioner so that after providing an opportunity of hearing to the petitioner, the matter can be disposed of.

9. By means of letter dated 18.11.2010, the petitioner submitted his reply alongwith all relevant annexures including the details of all purchases made by the petitioner for the relevant period. An affidavit was also furnished on behalf of the petitioner-company in the year 2008.

10. The contention is that despite the revisional court's order and the petitioner being ready and willing to comply with any legal imposition being made by the respondent-authorities, the amount of Rs. 26 Lacs that was deposited in cash as security pursuant to the interim order passed by this Court in the previous writ petition on 22.12.2005, the amount is not being refunded. It is stated that nearly 20 years have passed and still no action has been taken by the respondents to either refund the amount or make any legal imposition/adjustments as ordered by the revisional court and instead they issued repeated notices seeking information without any follow up action.

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11. Learned counsel for the respondent has opposed this petition by drawing attention of this Court to the provisions of Sections 9, 17 and 37 of the Adhiniyam, 1964 to contend that the petitioner is under obligation to comply with the provisions of Adhiniyam, 1964 for payment of license fee and other charges and therefore, the amount that is deposited with the respondents as security is required/liable to be adjusted against the dues of the respondents. It is further stated that indulging in sale, purchase and storage of tobacco in mandi area without procurement of license is a punishable offence under Section 37 of the Adhiniyam, 1964.

12. Having perused the record of this petition, it is evident that after being relegated to the alternative remedy prescribed under the Adhiniyam, 1964, the petitioner preferred the revision before the respondent no. 1, who by its order dated 3/5.6.2010 held that the imposition made against the petitioner by means of the impugned order dated 2.12.2005 as illegal and set aside the same. Despite the direction by the revisional court to the respondents enabling them to recover any amount due to them by way of license fee etc., no steps have been taken by the respondents to do so since 2010. It bears to reason that license fee cannot be imposed retrospectively but from the day of grant of license. Any penalty that may be sought to be imposed for want of license can be imposed in due course after following due procedure which the respondents have failed to do despite passage of so many years.

13. Under the circumstances, the conduct of the respondents of withholding of the security cash amount of Rs. 26 Lacs and not passing an order of discharge of the other securities despite the observation made by the revisional authority, cannot be justified. The respondents have withheld the cash amount of Rs. 26 Lacs and have earned interest on the same at the cost of the petitioner. Under the circumstances, this petition is **allowed** directing the respondents that the cash amount of security of Rs. 26 Lacs be refunded to the petitioner with simple interest at the rate of 9 percent per annum within a period of two weeks from today, and, to take steps within the same period for discharge of the other security furnished to the respondents pursuant to the order dated 2.12.2005 passed by this Court in Writ-C No. 75868 of 2005.

14. It is, however, open to the respondents to proceed against the petitioner in accordance with law if they have any legitimate claim with regard to mandi fees or other charges.

Order Date :- 30.4.2024

A. V. Singh