

PETITIONER:
RAMESH ENTERPRISES ETC.

Vs.

RESPONDENT:
COFFEE BOARD

DATE OF JUDGMENT 07/12/1990

BENCH:
MISRA, RANGNATH (CJ)
BENCH:
MISRA, RANGNATH (CJ)
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1991 AIR 403 1990 SCR Supl. (3) 495
1991 SCC Supl. (2) 441 JT 1990 (4) 723
1990 SCALE (2) 1245

ACT:

Coffee Act, 1942/Coffee Rules, 1955: Auction sale--Terms and conditions--Clause 10--increase or reduction in duty within 45 days from date of auction--Equally shared by purchasers and Coffee Board--Date of auction----Whether includible within the 45 days.

HEADNOTE:

The appellants, exporters under the provisions of the Coffee Act, 1942 and Coffee Rules, 1955 used to participate in the auction conducted by Respondent Board and purchase coffee for export. The terms and conditions of the auction sale are fixed by the Board. In respect of an auction held on 18.5.1977, some dispute arose on the interpretation of clause 10 of the terms and conditions. As per this clause, any increase or reduction in duty effected within 45 days from the date of the auction inclusive of that date was to be shared equally between the Respondent Board and the auction purchasers, with a view to fixing the reserve price below which the specific lot of coffee was not to be sold at the auction.

When the auction was held on 18.5.1977, the Respondent Board took into consideration the duty which existed till 17.5.1977. However, on 18.5.1977, the date on which the auction was held, there was a reduction in duty. thereafter, the Respondent-Board sent a circular to all the registered exporters demanding refund of the proportionate amount of reduced duty as per clause 10 of the terms and conditions. Accordingly, the exporters including the appellants refunded 50% of the reduction in the duty. After making the payment, the appellants wrote to the Respondent-Board asking for the return of the amount so paid on the ground that since there was already a reduction in duty on the date of the auction, it cannot be said that there was a reduction in duty within 45 days from the date of auction. The Respondent-Board refused to refund the amount, as according to it, the reduction in duty was effected on 18.5.1977 by the authorities and neither the Respondent-Board nor the purchasers were aware of the same at the time of the auction, and that the date of auction was includible within the period of 45 days

mentioned in clause 10.

496

The appellants filed Writ Petitions in the High Court seeking direction to the Respondent-Board to repay the amount paid by them. The Writ Petitions were dismissed by a Single Judge on the ground of maintainability. He also held that since 45 days were to be counted including the day of auction, the Respondent-Board was entitled to proportionate reduction in duty. The Division Bench confirmed the same. Aggrieved, the appellants preferred appeals by special leave.

Dismissing the appeals, this Court,

HELD: 1. An increase or reduction in duty made on the day of auction is also shareable between the parties. The purpose of including the day of auction in the period of 45 days, contrary to the manner of computation of time in the General Clauses Act, is obvious and is brought home more prominently by the present instance itself. [501B-D]

2. Clause 10 of the Terms and Conditions categorically states that any increase or reduction in taxes, duties etc. within 45 days of the auction (inclusive of the day of the auction) shall be shared between the auction purchasers and the Respondent-Board. Neither the Board nor any of the auction purchasers was aware of the reduction in export duty for which a communication was issued on 18th May, 1977 the date of auction itself. The board had fixed the reserve price on the basis of the export-duty which was prevalent till 17th May, 1977, the day prior to the date of auction. The imposts keep on changing and none of the parties has a control either over their variation or over the time of their variation. The dates of auction have necessarily to be fixed in advance. It is to obviate the hardship or to grant the necessary benefit, as the case may be, that purposely the period of 45 days laid down in clause 10 is stipulated to include the day of the auction as well. [500E-H; 501A]

JUDGMENT: