

CASE NO.:
Appeal (civil) 4757-4758 of 2000

PETITIONER:
Ponni Sugars (Erode) Limited

RESPONDENT:
The Deputy Commercial Tax Officer

DATE OF JUDGMENT: 08/11/2005

BENCH:
Ruma Pal & H.K. Sema

JUDGMENT:
J U D G M E N T

RUMA PAL, J.

The appellant has a sugar mill and purchases sugarcane from cane growers. An agreement was entered into between the appellant and the cane growers. In terms of the agreement, the appellant arranges transport of the sugarcane from the fields to the appellant's mill. The question is whether the transport charges are excludible from the taxable turnover of the appellant for the purpose of purchase tax under the Tamil Nadu General Sales Tax Act, 1959?

The assessment years in question are 1987-88 and 1988-89. During this period, the agreement for sale and purchase of sugar which was entered into between the appellant and the cane growers (where the appellant is referred as 'the first party' and the cane growers as 'the second party') provided inter alia:

1) Both the parties agree to act according to the provisions of Madras Sugar Factory Control Rules, 1949, Sugarcane (Control) Order, 1996 and the orders of Tamil Nadu Government Agricultural (Cane) Department and the Director of Sugar/Cane Commissioner of Tamil Nadu

2) The Second Party agrees to sell the entire cane planted/ to be planted in the land specified in the schedule to this agreement to the first party for the control price fixed by the Government from time to time.

3) \005\005\005\005\005\005
4) \005\005\005\005\005\005
5) ..\005\005\005\005\005.

6) The second party agrees to sell and deliver the cane by loading there as per the terms of this agreement to the first party. It is the responsibility of the first party to arrange transportation of the above delivered cane to the factory. However, both the parties agree to follow the orders passed from time to time by the Director of Sugar/Commissioner of Sugar, Tamil Nadu".

The other clauses of the agreement, broadly speaking, related to the appellant's financing of the growth and harvesting of the sugarcane and its control over the cutting and disposal of

the sugarcane.

By an order dated 29th June 1990 the Deputy Commercial Tax Officer held that the transport charges formed part of the taxable turnover of the appellant under the Act and assessed the appellant accordingly for the years in question. The appellant's appeal was dismissed by the Appellate Assistant Commissioner. The matter ultimately reached the Taxation Special Tribunal which held in favour of the Revenue following the decision of the jurisdictional High Court in Chengalvarayan Co-operative Sugar Mills Ltd. V. State of Tamil Nadu, and Thiru Arooran Sugars Ltd. V. Assistant Commissioner of Commercial Taxes both reported in 105 STC 497 (Mad). Aggrieved, the appellant filed a writ petition challenging the order of the Tribunal before the High Court of Madras. The High Court dismissed the writ petition following its decision in Chengalvarayan Co-operatives case.

According to the appellant, the Sugar Cane Control Order, 1966 (hereafter referred to as 'the Control Order') applies and the price fixed under the Control Order was the purchase price for determining the taxable turnover of the appellant. As an alternative case it has been submitted that no amount which was incurred subsequent to the sale or delivery of the sugarcane by the cane growers to the appellant was includable in the taxable turnover. It is the appellant's case that according to the agreement the sale/purchase had taken place on delivery of the sugarcane in the field. Therefore the transport charges which were subsequent to the sale were not includible. Secondly, it is submitted that by the direction of Sugarcane Department of the State Government the sugar mills were required to meet the transport charges for the cane which was brought from beyond 40 kms. distance from the mills. The transport charges for the registered cane would be borne by the cane growers themselves and for the distance beyond 40 kms, the transport charges for the cane would be met by the purchasing sugar mills. Therefore, it is submitted that there was no question of including the transport charges for the transportation of the sugarcane from beyond 40 kms to the appellant's mill paid by the appellant under this directive, in the purchase price. The appellant has also relied upon the orders in assessment proceedings in respect of earlier years whereby the transport charges had been excluded from the taxable turnover of the appellant on a construction of the agreement between the appellants and the cane growers. Reliance has also been placed on the Tribunal's decision dated 24th March, 1995 rejecting the respondent's claim to enhance the purchase price by adding transportation charges. It was pointed out that the Tribunal had referred to a Circular issued by the Board of Revenue on 31st July, 1982, by which the Board of Revenue excluded the transport subsidies paid by the appellants to the lorry owners for transporting sugar cane from areas beyond 40 kms. It is submitted that the Circulars are binding on the Department.

Learned counsel appearing for the respondent has submitted that the price fixed by the Control Order was only the minimum and that the definition of price in the Control Order allowed for the price to be determined on the basis of the agreement between the seller and the purchaser. It was also submitted that the dispute raised by the appellant has been decided against the assessee and in favour of the Revenue by this Court in E.I.D. Parry (I) Ltd. Vs. Assistant Commissioner of Commercial Taxes; (2000) 2 SCC 321. It is further pointed out that the agreement expressly incorporated the Sugarcane Department directive dated 12th September 1985 which made it clear that the price was to include the transportation charges.

The issue whether the price fixed by the Central

Government under the Control Order was immutable has been decided by a Constitution Bench of this Court in U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills and Anr. (2004) 5 SCC 430. In that decision the definition of "price" in Clause 2(g), as well as clauses 3 and 3(a) of the Control Order were construed to come to the conclusion that the price fixed under the Control Order was the minimum price of sugarcane to be paid by purchasers of sugar for the sugarcane purchased by them. This is the lowest permissible rate. It was contemplated under these provisions that there can be a price other than the minimum price namely, the price agreed to between the purchaser and the sugarcane growers or the sugarcane Growers Cooperative Society. It was said that:- "A whole reading of the 1966 Order would, therefore, show that the Central Government shall fix the minimum price of sugarcane but there can be a price higher than the minimum price which may be in the nature of agreed price between the producer of sugar and the sugarcane-grower or the sugarcane-growers' cooperative society".

In the present case the agreement, the relevant extracts of which have been quoted earlier, clearly envisaged the incorporation of the Circular issued by the Department of Sugar on 12th September, 1985. The Circular says that unlike the previous years it was decided that all the subsidies and incentives that are proposed for 1985 to 1986 planting seasons would be given to the cane growers only when the cane is supplied to the mills. Among the subsidies and incentives which were required to be granted by the sugar mills, the purchasers of sugarcane were required to give a transport subsidy. The Circular was expressly included in the agreement entered into between the appellant and the cane growers. Therefore the transport subsidy formed part of the agreement for the sale of the cane to the appellant. Clause (6) of the agreement did not say that the sale was to take place in the field as contended by the appellant. It merely provided for the method of sale. This is also clear from the conduct of the parties. The appellant has admittedly included the transport charges up to 40 kms. from the mill within the purchase price and has admittedly paid tax thereon. If the sale took place at the field and transportation charges did not have any connection with the cane growers, there was no need either to include the transport charges from the field upto the 40Km. mark in the purchase price or to expressly provide that the transportation charges would be payable by the vendor. Besides the very use of the word "subsidy" in the directive dated 12th September, 1985 which was payable on delivery at the factory gate would also support the view that the transport charges were otherwise bearable by the cane growers.

The Full Bench of the Madras High Court was called upon to resolve a dispute between conflicting decisions of the High Court inter alia as to whether transport subsidies were includible in the purchase turnover of the sugar mills which were purchasing sugarcane under the Tamil Nadu General Sales tax Act, 1959 (referred to hereafter as the Act) in Chengalvarayan Co-operative Sugar Mills Ltd. V. State of Tamil Nadu, (supra). The Court while affirming the view expressed in Kallakurichi Co operative Sugar Mills Ltd. vs. State of Tamil Nadu (1985) 60 STC 113 (Mad.) and overruling the decision in State of Tamil Nadu vs. Madurantakam Cooperative Sugar Mills (1976) 38 STC 73 (Mad.) said. "if subsidy whatever name or nomenclature, it may assume and whether paid or payable prior to or

subsequent to the entering into contract of sale \026 is linked to the supply of sugarcane, such subsidy and expenses incurred for the transportation of the sugarcane to the factory site \026 whether incurred by the grower initially and paid by the sugar mills subsequently or incurred by the sugar mills and shown separately in the invoices \026 by adopting whatever procedure reflecting those amounts in the accounts \026 shall form part of the price includible in the purchase turnover as such transportation alone makes the passing of property in the sugarcane sold by the grower to the assessee-mills complete".

This view was affirmed by this Court in E.I.D. Parry's case (supra). One of the questions which this Court had to consider was whether the transport subsidy paid by the sugar mills to third party lorry owners for transporting sugar cane pursuant to the State Government's direction can be aggregated with the price of sugar cane and included in the turnover of the mills under the Act. This Court noted that in respect of sugarcane grown in reserved areas, the occupier of the factory is required to enter into an agreement with the sugarcane grower to purchase sugarcane in the form prescribed under the Madras Sugar Factories Control Act 1949 and the Rules framed thereunder. It was found that the prescribed form of agreement disclosed that sugarcane had to be delivered by the grower at the factory premises. After considering earlier authorities, this Court upheld the view of the Full Bench of the Madras High Court and concluded:-

"What transpires from the above case-law is that the amounts paid by way of consideration by the purchaser to the seller of goods in pursuance of the contract of sale can legitimately be regarded as purchase price while calculating the turnover for the purposes of sales tax legislation. What can legitimately be brought to sales tax or purchase tax is the aggregation of the consideration for the transfer of property. All the payments should have been made pursuant to the contract of sale and not dehors it. Any amount paid as ex gratia payment or as an advance cannot be the component of the purchase price and therefore cannot legitimately be included in the turnover of the purchasing dealer. Whether one of the components of the purchase price goes to the coffers of the seller or not will not cease to be so if it is necessary for completing the same. Thus the total amount of consideration for the purchase of goods would include the price strictly so called and also other amounts which are payable by the purchaser or which represent the expenses required for completing the sale as the seller would ordinarily include all of them in the price at which he would sell his goods. But if the sale price is fixed statutorily then the only obligation of the purchaser under the agreement would be to pay that price only and no other amount can be included in the purchase price even if the same is paid by the purchaser to the seller. (Emphasis supplied)

The appellant has relied on the last line of the quoted

paragraph to contend that it showed that the statutory price fixed would be the only price includible in the taxable turnover of the purchasing sugar mill. This is not what the Court meant. In the preceding sentence it has been made clear that the total amount of consideration not only included the price but also other amounts which represent the expenses required for completing the sale. This is clear from the paragraph 21 of the judgment where this Court said:-

"For the same reasons we hold that the transport subsidy was a part of the consideration for which sugarcane was sold by the sugarcane-growers to the appellants. Though the agreements between the parties provided for delivery by the sugarcane-growers at the factory gate and though the transport charges paid by the appellants were not to the sugarcane-growers but to third-party lorry-owners, they were made for securing regular supply of sugarcane as per the requirements. Though payments were made at the instance of the Government of Tamil Nadu they also became a part of the implied agreement between the appellants and the sugarcane-growers. They were not post-sale expenses. Those amounts were paid to ensure scheduled delivery of sugarcane. The sale of sugarcane became complete only thereafter. Those payments can be regarded either as payments made on behalf of the sugarcane-growers or payments made in modification or variation of the earlier agreements entered into by the sugarcane-growers for selling sugarcane. In either case they could legitimately be regarded as the components of the sale price as the sellers would have otherwise included those amounts in the sale price." (Emphasis added)

It is of significance this view was expressed despite the fact that the State Governments directive was not incorporated in that particular agreement for purchase of sugar cane. The principles would therefore a fortiori be applicable to the present case where the directive formed part of the agreement. The issue raised by the appellant before us has thus been answered in the negative by this Court in E.I.D. Parry which view we respectfully adopt.

The decision relied upon by the appellants namely Commissioner of Sales Tax, U.P. Vs. M/s. Rai Bharat Das & Bros., 1989 (1) SCC 143 does not support the appellant. In fact the Court found in that case that the costs of freight or delivery were included in the sale price.

The assessment orders of the Department in respect of the earlier years also relied on by the appellants were based on the earlier decision of the High Court in State of Tamil Nadu vs. Madhurantakam Cooperative Sugar Mills (supra) which was specifically overruled by the Full Bench in Chengalvarayan's case.

The findings of the Tribunal sought to be relied upon by the appellant related to a previous stage of proceedings. The order of the Special Taxation Tribunal which was passed on an enhancement petition filed by the respondents and which was the subject matter of the writ petition before the High Court, had held against the assessee following the decision of the Full Bench of the Madras High Court in Chengalvarayan Co-operative Sugar Mills Ltd. V. State of Tamil Nadu (supra) which was affirmed by this Court in E.I.D. Parry's case.

The appellants then said that the decision of this Court in EID Parry (supra) was limited to the facts of that case and that this has been held by the Karnataka High Court in Ugar Sugar Works Ltd. vs. Deputy Commission of Commercial Taxes (2005) 139 STC 413. According to the Karnataka High Court, the decision in EID Parry did not lay down any principle but was confined to the facts of that case. It is unnecessary for us to consider whether the Karnataka High Court was correct in its interpretation of the decision in EID Parry because we are of the view that even on the basis of the opinion expressed in Ugar Sugar Works Ltd. (supra), EID Parry cannot be factually distinguished from the present case, as we have found as a matter of fact that the transport subsidy formed part of the consideration for the purchase of the sugar cane by the appellant from the sugar cane growers.

In the circumstances aforesaid we are of the view that the appeals must be and are hereby dismissed with costs.