

PETITIONER:
STATE OF TAMIL NADU & ORS.

Vs.

RESPONDENT:
KOTHARI SUGARS & CHEMICALS LTD. ETC.

DATE OF JUDGMENT: 08/02/1996

BENCH:
J.S. VERMA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CIVIL APPEAL NOS. 10733-10735 OF 1995
State of Tamil Nadu & Ors.
V.
Kothari Sugars & Chemicals Ltd. etc.

W I T H
CIVIL APPEAL NO. 11213 OF 1995
State of Tamil Nadu & Ors.
V.
E.I.D. Parry (India) Ltd., Madras

W I T H
CIVIL APPEAL NOS. 11605-11608 OF 1995
Tungabhadra Sugar Works & Anr.
V.
State of Karnataka & Ors.

W I T H
CIVIL APPEAL NO.11211 OF 1995
State of Tamil Nadu & Ors.
V.
M/s.Kothari Sugar & Chemicals Ltd.

W I T H
CIVIL APPEAL NO.11214 OF 1995
Godavari Sugar Mills
V.
State of Karnataka & Ors.

A N D
CIVIL APPEAL NO.11212 OF 1995
State of Tamil Nadu & Anr.
V.
Tvl Cauvery Sugars & Chemicals

J U D G M E N T

J.S. VERMA, J.

The question for decision is : Whether for the purchase of sugar-cane from the cane growers, a purchaser is liable to pay purchase tax under the State Sales Tax Act on the amount paid by the purchaser to the cane grower over and above the price fixed under Clauses 3 and 5-A of the Sugar cane (Control) Order, 1966 ?

Clause 3 of the Control Order issued under the Essential Commodities Act, 1955 empowers the Central

Government to fix the minimum price for sugar-cane for each season and different prices are permitted to be fixed for different areas or different quantities or varieties of sugar-cane. Since 1.10.1974 pursuant to the acceptance of Bhargava Commission Report, the Central Government introduced Clause 5-A in the Sugar-cane (Control) Order, 1966, the material part of which is as under ;

"5-A. ADDITIONAL PRICE FOR
SUGARCANE PURCHASED ON OR AFTER 1ST
OCTOBER, 1974

(1) Where a producer of sugar or his agent purchases sugarcane, from a sugarcane grower during each sugar year, he shall, in addition to the minimum sugarcane price fixed under clause (3) pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule annexed to this Order.

(2) The Central Government or the State Government, as the case may be, may authorise any person or authority, as it thinks fit, for the purpose of determining the additional price payable by a producer of sugar under sub-clause (1) and the person or authority, as the case may be, who determines the additional price, shall intimate the same in writing to the producer of sugar and sugarcane grower connected with the supply of sugarcane to such Producer of sugar.

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In Tamil Nadu, the State Government duly exercised its power by appointing the Director of Sugar and Cane Commissioner, who, by order dated 2.7.1983 determined the "additional cane price" under Clause 5-A at Rs.28.15 per MT for the respondent i.e. Thiru Arroran Sugars Ltd., making the final statutory cane price as per the Control Order at Rs.179.55 per MT, the "minimum cane price" fixed by the Central Government being Rs.151.40 per MT. There is no dispute that this additional price fixed under Clause 5-A attracts purchase tax which has already been paid. However, the dispute is with regard to the claim of the State Government for payment of purchase tax on the excess amount paid by the purchaser in addition to the aggregate of the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A by the Central Government.

The occasion for payment by the purchaser of the amount in excess of the aggregate of the minimum cane price and the additional cane price so fixed, arises on account of an Order of the State Government dated 15.11.1980 purporting to fix a higher revised minimum cane price and directing the sugar factories in Tamil Nadu to pay that price to the cane growers. Pursuant to the direction, each sugar factory was directed to make that payment and in compliance thereof this sugar factory paid the excess amount as an "Advance" described as under :

" being advance payment towards
cane supply during 1980-81 Season,
against probable additional cane
price under Section 5A of the

Sugarcane (Control) Order, 1966."

This amount paid as "advance" by the sugar factory for purchase of sugar-cane in anticipation of fixation of the additional cane price under Clause 5-A was Rs.52.40 per MT. Accordingly, on fixation of the additional cane price at Rs.28.15 per MT, the excess amount of advance came to (Rs.52.40 per MT minus Rs.28.15 per MT) Rs. 24.25 per MT. While the sugar factory claims that this excess amount of Rs.24.25 per MT paid by it to the cane grower is towards advance and liable to adjustment or refund, even if it remains with the cane grower, it cannot form part of the price of sugar-cane which cannot exceed the aggregate of the minimum cane price fixed under clause 3 and the additional cane price fixed under Clause 5-A. This is the common stand of all sugar factories, as purchasers of sugarcane from the growers.

The purchasers filed writ petitions challenging the demand by the State Government of purchase tax on the above excess amount of Rs.24.25 per MT. They contested the demand on the ground that it could not form a part of the sale price of cane sugar which had been statutorily fixed under Clauses 3 and 5-A of the Control Order. The Madras High Court rejected the contention of the State Government and allowed the writ petitions of the assesseees. Hence, these appeals by way of special leave by the State of Tamil Nadu.

On a perusal of the relevant provisions of the Sugar-cane (Control) Order, 1966, particularly Clauses 3 and 5-A therein, it is clear that the total price of sugar-cane fixed thereunder is the aggregate of the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A. Thus, unless there be an agreement between the grower and the purchaser for purchase of the sugar-cane at a higher price, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under Clauses 3 and 5-A. In other words, under the Statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugar-cane at an amount higher than the minimum cane price fixed under Clause 3 and the additional cane Price fixed under Clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under Clause 5-A cannot form part of the price of cane sugar.

In these matters there is admittedly no statutory basis since the 'State advice' to the purchasers to pay a certain amount in addition to the minimum cane price fixed under Clause 3, in anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount paid as advance under the State advice also does not have any contractual basis since this was not paid as a result of an agreement between the grower and the purchaser. The amount of advance was paid in anticipation of fixation of the additional cane price under Clause 5-A which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance then the purchaser would have to pay the deficit amount. Similarly, when the amount of advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact whether the refund was actually made or not. For the purpose of determining the price of sugar-cane for computation of the purchase tax, the only significant amount is the aggregate of the minimum price fixed under Clause 3 and the additional cane price fixed under Clause 5-A, unless

a higher price is paid to the grower by agreement between the purchaser and grower.

It was argued by learned counsel for the State that the higher price inclusive of the excess amount included in the advance paid on State advice is deemed to have been paid by an agreement between the grower and the purchaser and, therefore, the entire amount would be the price of sugar-cane. This is a question of fact in each case. It is true that if in a given case it is found as a fact on the basis of evidence that the purchaser had agreed with the grower to pay the higher price described as 'advance' including the amount in excess of the additional price fixed under Clause 5-A then in that case the entire amount would be the price of sugar-cane. However, there is no such basis found in the present case wherein the excess amount forming part of the advance was paid only under compulsion on the direction contained in the 'State advice'. It is significant that a provision for adjustment is clearly made in sub-clause (6) of Clause 5-A. This provision supports the view we have taken. The decision of the Madras High Court which is reported in Thiru Arooran Sugars Ltd. Vs. Deputy Commercial Tax Officer Mannargudi & Ors., 1988 (71) STC 444 is, therefore, upheld and the appeals against the decision of the Madras High Court are, therefore, dismissed.

In the connected matters arising out of the judgment of the Karnataka High Court, similar writ petitions filed by the purchasers of sugar-cane were dismissed. The two decisions of the Karnataka High Court which require reference are Pandavapura Sahakara Sakkare Kharkhane (P) Ltd. v. State of Mysore, 1973 (32) STC 104 and Tungabhadra Sugar Works Ltd. v. State of Karnataka & Ors., 1994 (93) STC 561. In Pandavapura it was found proved as a fact that the substance of the transaction between the purchaser and the cane growers was for payment of the enhanced price for the sugar-cane supplied and the amount paid in excess of the statutory price was paid under the contract and not either as ex-gratia payment or towards advance. In that situation the entire amount paid was treated as the price. In our opinion, the nature of contract in that case being such, the entire amount paid had to be treated as price of the sugar-cane supplied since the Statute does not prohibit an agreement between the grower and the purchaser for payment of a higher price for the sugar-cane by the purchaser. In the later decision in Tungabhadra also it is noticed that there is no prohibition against the parties agreeing for the payment of a higher price of the sugar-cane. In that situation no doubt the entire amount paid has to be treated as the price of the sugar-cane. However, as indicated earlier, for treating the entire amount paid by the purchaser as the price of sugar-cane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugar-cane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as the aggregate of the price fixation under Clauses 3 and 5-A of the Control Order. Unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under Clause 3 and the additional price fixed under Clause 5-A, as a part of the amount paid as advance prior to fixation of the additional price under Clause 5-A, cannot be treated automatically as a part of the total price of sugarcane. In matters arising out of decisions of the Karnataka High Court, this aspect has not been adverted to and the writ petitions have been dismissed without going into this question. The Karnataka matters

have, therefore, to be remitted to the High Court for a fresh decision on the above basis.

As a result of the aforesaid decision, the appeals of the State of Tamil Nadu (Civil Appeal Nos. 10733-10735, 11083-11141, 11211, 11212 and 11213 of 1995) against the judgment of the Madras High Court are dismissed. The appeals against the decision of the Karnataka High Court by the sugar factories (Civil Appeal Nos. 11605-11608 and 11214 of 1995) are allowed. The matters are remitted to the Karnataka High Court for a fresh decision in accordance with law in the manner indicated after hearing both sides.

JUDIS