

(1997) 05 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 1187 of 1983

Champan Sugar Company

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 5(2)
Bihar Finance Act, 1981 — Section 13(1)
Bihar Sales Tax Act, 1944 — Section 12, 13, 13(1), 3
Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 11, 4, 42, 43, 49
Constitution of India, 1950 — Article 247(3)

Citation : (1997) 2 PLJR 604

Hon'ble Judges : P.K. Sarkar, J;N. Pandey, J

Bench : Division Bench

Advocate : Devendra Pd. Sinha, in 1187, Y.V. Giri, Jyoti Sharan and Dhananjay Kumar Dubey, in 1258 and 2403 and K.N. Gupta, Ramesh Kumar Agrawal and S.K. Prasad, in 2225, for the Appellant; Rameshwar Prasad and O.P. Agrawal, for the Respondent

Judgement

N. Pandey, J.—Petitioners in these cases are registered sugar factories under the Companies Act and engaged in manufacture of sugar by vacuum pan process. The raw materials for manufacturing sugar is admittedly sugar cane, which they used to purchase either through cane growers or co-operative societies of the respective areas. In Bihar, with a view to regulate supply and purchase of sugarcane, payment of price etc. Bihar Sugar Cane (Regulation, Supply and Purchase) Act (in short the "Act") has been introduced. u/s 49 of the Act, the State Government is authorised to impose tax not exceeding Rs. 1/- per quintal on the entry of sugarcane in the local area specified by a notification, for consumption and use and sale to a sugar factory situated therein.

2. Earlier, sales tax was being paid by the sugar factories as per the provisions of the Bihar Sales Tax Act. Ultimately, the Bihar Finance Act, 1981, replaced the Bihar Sales Tax Act with effect from 1.4.1981. u/s 4 of the Act, every dealer, who

is liable to pay tax u/s 3 and who purchase goods, on which no sales tax is payable, or has been paid on the sale price of such goods, either consumes such goods in manufacturing of other goods for sale, shall be liable to pay tax on the purchase price of such goods on the same rate on which it would have been livable on sale of such goods at the same rate at which it would have been livable u/s 12. u/s 13, a special rate of tax has been provided on sales by a registered dealer of goods. The State government, therefore, in exercise of its power conferred u/s 13(1) has fixed special rate of tax on industrial raw materials, including sugarcane at the rate of 2 percentum of the taxable turnover with effect from 1.8.1985.

3. Initially, these writ petitions were filed for a sole consideration-whether sugar companies are liable to pay purchases tax and penalty under the provisions of Section 4 on the purchase of sugarcane, which is the main raw material for manufacture of sugar? It was pleaded that Section 4 of the Act was ultra vires to Article 247(3) of the Constitution read with Entry 54 of List II of the 7th Schedule. The other grievance was, if Petitioners are compelled to pay tax under the provisions of Section 4, it would be a case of double taxation since admittedly they have been paying purchase tax as per the provisions of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981.

4. It would be relevant to notice that a similar prayer was made on behalf of the New Sugar Mills, Bihar State Sugar Corporation, M/s Govind Sugar Mills and Sasamusa Sugar Works Limited. A Bench of this Court, after a detailed hearing and considering several authoritative pronouncements of the Apex Court, has by a decision in the case of M/s New India Sugar Mills Ltd. and Anr. v. State of Bihar and Ors. 1996 (2) PLJR 294 held the Petitioners, liable to pay purchase tax u/s 4 of the Bihar Finance Act in addition to the liability to pay entry tax or purchase tax in terms of the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. It has been pointed out that in view of settled harms by different pronouncements of the Apex Court, there can be always two taxes on the same commodity or person on the basis of two different enactments without one law repealing the other, for example Excise Duty and Sales Tax, Cess and Sales tax on raw material or finished product. The plea of the sugar companies regarding legislative competence etc. was rejected. Therefore, having regard to the aforesaid decisions, I do not find any reason to consider the same question and take a different view.

5. Though I have already noticed that at the initial stage, virtually no other grievance was raised, save and except which has already been answered by virtue of the judgment in the case of New India Sugar Mills and Anr. (supra) but later by filing supplementary affidavit or amendment petitions, certain additional points have also been urged, namely, whether purchase of sugarcane from the cane growers a sugar company is liable to pay purchase tax on the amount paid to the cane growers were and above the price fixed under Clauses (3) and 5A of the Sugarcane (Control) Order, 1966 (in short "the Order").

6. It has been contended that having regard to the authoritative pronouncements of the Apex Court including that in the case of *State of T.N. and Others Vs. Kothari Sugars and Chemicals Ltd. and Others*, , assessment of tax can only be made at the statutory minimum price fixed by the Central Government under the provisions of Sugarcane (Control) Order. But in Bihar by different notifications while providing certain incentive etc. to the cane growers, price of sugarcane has been fixed at a much higher rate to that of the minimum price fixed by the Central Government. Therefore, for the purpose of payment of sales tax, it should be the minimum price fixed by the Central Government which can alone be the basis of the assessment and not the price fixed by the State Government.

7. There is no dispute that Clause 3 of the Order issued under the Essential Commodities Act, 1955, empowers the Central Government alone to fix the minimum price of sugarcane for each season and different prices are permitted to be fixed with respect to different quantities and quality of sugarcane. Clause 5-A authorises for fixation of additional cane price, above the price fixed under Clause 3. In the case of *Godavari Sugar Mills*, CA11204/1995 it was already noticed by the Apex Court that for the purpose of determining the price of sugarcane for computation of the purchase tax, 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 on the basis of agreement between the purchaser and grower.

8. Mr. Giri, therefore, contended that in absence of agreement between purchaser and grower, the tax can only be imposed on the minimum price fixed under Clause 3 and the additional price in terms of Clause 5-A of the Order. He accordingly urged that this Court should hold that any amount of sales tax, assessed or realised by the authorities at a rate more than the rates, prescribed under Clauses 3 and 5-A is illegal and without jurisdiction.

9. Learned Advocate General on the other hand, replying the submission of the Petitioners, contended that a bare reference to the decision of the Mysore High Court in the case of *Pandavapura Sahakara Sakkare Kharkhane (P) Limited v. State of Mysore* (1973) 32 STC 104, which has also been approved by the Apex Court in the case of *Godavari Sugar Mills* (supra), would indicate that sales tax is required to be assessed on the purchase price, actually paid to the cane growers. In that case, the Central Government had fixed only minimum price of sugarcane and not the maximum price. As per the agreement, growers had agreed to deliver sugarcane at the factory premises. Subsequently as an inducement to the growers to supply more sugarcane, the Assessee promised to pay, in addition to the minimum price, agreed upon regarding the transportation charges etc. the Assessee contended that additional payment made by way of additional charges to the growers were ex gratia payment to give incentive to the grower for regular supply of sugarcane in the factory and, therefore, those amounts did not form part of the purchase price. It was held that because of the conduct of the parties, the original contract was valid by enhancing the price of sugarcane. Therefore,

the additional amount paid by the Assessee could not be regarded as ex gratia payment, since it was directly related to the quantity of sugarcane supplied. Therefore, the aggregate of all amounts including the additional amount paid by the Assessee towards harvesting and transportation charges was assessed as Assessee's taxable turnover.

It has already been noticed that in the case of "Kothari Sugars and Chemicals Ltd. and Ors." also the Apex Court had held that for the purpose of determining price of sugarcane for computation of purchase tax, besides the minimum price fixed under Clause 3 and additional price under Clause 5-A, any higher price paid to the cane growers as per the agreement with a purchaser, tax would be charged on the total purchase price.

10. But to ascertain such requirements, one is required to examine several facts, including relevant records. Therefore, such facts can only be raised by the Assessee for the first time before the assessing authority. It cannot be ignored that up till now Petitioners have been paying purchase tax on the actual price paid to the cane growers. Therefore, it may not be proper for them to raise such questions for the first time before this Court in a writ jurisdiction.

11. The next proposition is no doubt more or less connected with the submission which I have just answered. But to deal with more elaborately, it can be usefully noticed in these words "Whether the State Government has the power to fix purchase price of sugarcane for use and manufacturing of sugar from the cane growers and Co-operative Societies?"

12. It would be apt to notice that a similar question raised on behalf of the Bihar Sugar Mills Association has been recently answered by this Court in the case of Bihar Sugar Mills Association v. The State of Bihar and Anr. 1997 (1) A.R.L.R. 253 : 1997 (1) PLJR 795. In that case, of course a notification of the Cane Commissioner dated 29th November, 1996, was under challenge, whereby and whereunder he had fixed the rate of sugarcane to be purchased by the sugar manufacturing companies in the State of Bihar. On behalf of the State, save and except, the provisions of Sections 42 and 43 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, no other statutory provisions or notification or any order of the Central Government, conferring power on the State Government to add to the price fixed under Clause 3 and 5-A was brought to the notice of the Court to justify the jurisdiction of the Cane Commissioner in fixing such a price. The court had, therefore, no option but to quash the impugned notification. Undisputedly, the ratio laid down in the aforesaid judgment is the full answer of the instant proposition. But in that case, the notification to the Cane Commissioner, dated 29th November, 1996, was under challenge. The transactions to which we are concerned had taken place with effect from the financial years of 1983-84 to 1989-90. Nothing was brought before us to point out that the authority of the Cane Commissioner was ever objected by the Petitioners on or before the date of such transactions. Therefore, taking into consideration all the relevant facts, it would not be proper to apply the effect of

the judgment of the case of Bihar Sugar Mills Association (supra), retrospectively.

13. It was next contended that in view of the notification of the State Government, in exercise of its power conferred by Sub-section (1)(b) of Section 13 of the Bihar Finance Act, 1981, prescribing special rate of purchase tax on purchase of sugarcane which is included in the expression "raw material" only the concessional rate of tax i.e. 2% can be charged and not @ 8%. It is now well settled that concessional rate of tax is applicable to raw materials which is put in manufacturing of the goods. In support of such views, reliance can be placed on a decision of the Apex Court in the case of Tata Engineering and Locomotive Company Limited Vs. State of Bihar and Another, .

14. Learned Advocate General contended that even if it is assumed that as per the notification u/s 13(1) on purchase of sugarcane, a concessional rate of tax is to be charged but such claim has to be raised at the first instance before the assessing authority. Because to extend the benefit of concessional rate, as required u/s 13(1)(b), an Assessee has to comply with certain statutory requirements as provided under Rule 13 of the Rules. Therefore, unless all such formalities are fulfilled to the satisfaction of the assessing authority, no such claim should be made for the first time before this Court. In support of his contention, he referred to a judgment of the Apex Court, in the case of Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer and Ors. (1965) 16 STC 607. Of course, this has been judgment in a case claiming exemption on furnishing declaration u/s 5(2) of the Bengal Finance (Sales Tax) Act, 1941. The Court held that no dealer can get exemption unless he furnishes a declaration in the prescribed form.

15. He further pointed out that in the case of M/s New India Sugar Mills Limited (supra) also this Court held that before getting benefits of the notification u/s 13(1)(b), Petitioners must fulfil other requirements. Therefore, it was left open to the Petitioners to raise such questions before appropriate authority.

16. It was contended on behalf of the Petitioners since this Court had stayed the operation of the impugned notices issued by the assessing authority as back as in the year 1990-1991, any assessment made during such period in violation of such interim orders is illegal and without jurisdiction. That apart, such assessment orders were passed without any due opportunity to the Petitioners to raise their grievances. Therefore, for the ends of justice, it would be appropriate for this Court to declare those orders illegal and without jurisdiction. It was further pointed out that recently this Court having appreciated that a registered industry u/s 13(1)(b) of the Act is liable to pay. purchase tax over the purchase of sugarcane at the rate of 2% and not at the rate of 8% therefore while disposing of CWJC No. 1194 of 1997 (Riga Sugar Co. Limited v. State of Bihar and Anr.) quashed the assessment order and directed the assessing authority to pass a fresh order.

17. Learned Advocate General, however, contended that there was nothing,

wrong if the assessing authority having noticed the judgment in the case of New India Sugar Mills Ltd. (supra), proceeded to make final assessment since the power of the State Government u/s 4 to levy purchase tax on sugarcane was justified. He contended even otherwise having regard to a judgment of this Court in the case of Conveyor and Ropeway Services v. State of Bihar and Ors. (1996) 100 STC 529, such question should not be raised for the first time before this Court in a writ jurisdiction. The Assessee, therefore, should avail the remedy of statutory appeal instead of making such a prayer before this Court.

18. True it is that in the above mentioned case, this Court had held that after a final order of assessment, the aggrieved party cannot bypass the alternative remedy of appeal, but in the present cases, there is no dispute that as back as in the year 1990 itself, this Court had granted interim stay of further proceedings before the assessing authorities. Therefore, it is quite possible that because of tendency of these cases, Petitioners have not raised even some of the "legitimate grievances which could have been answered by the assessing authority with reference to the relevant materials. Learned Advocate General being faced with such a situation as also the views expressed by this Court in CWJC No. 1194 of 1997 (Riga Sugar Co. Ltd. v. State of Bihar and Anr.), contended that assessing authority may be directed to re-examine the matter to the extent direction was given by this Court in the abovementioned case. He also assured in case Petitioner's units are covered under the notification u/s 13(1)(b) of the Act, naturally they would be liable to pay concessional tax at the rate of 2%. But certainly to get such benefit, they will have to comply with certain mandatory requirements before the assessing authority.

19. Accordingly, I remand all these cases to the assessing authority to consider the rate on which sales/purchase tax s to be paid by the Petitioners on purchase of sugarcane in view of the fact that they are registered units u/s 13(1)(b) of the Act as also in the light of respective notifications issued under that provisions.

20. The Petitioners, are therefore, directed to appear before the assessing authority within a period of three weeks from today so that the assessing authority may finally dispose of the matter positively within three months from the date of their appearance. But subject to payment of admitted dues within three weeks from today, impugned assessment orders shall be kept in abeyance until final decision of the assessing authority and revision of demand, if necessary.

21. With respect to CWJC No. 2225 of 1990, it was next contended that in this case, the assessing officer has also assessed purchase tax on the purchase of sugarcane from the Co-operative Societies He contended that admittedly in view of a notification of the State Government u/s 11 of the Act, no purchase tax can be charged on the purchase of sugarcane from the co-operative societies. Therefore, he made a prayer for grant of exemption with regard to such turnover which are based on the purchase made from the cooperative societies. In my view, these grievances of the Petitioner are quite justified. Therefore, since the

case has been remanded back to the assessing authority, for fresh consideration, such question can very well be appreciated by the same authority at that stage.

22. With the aforesaid directions/observations, these writ applications are thus disposed of But in the circumstances of the cases, there shall be no order as to costs.

P.K. Sarkar, J.

I agree.