

(1996) 07 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1266 of 1990

Deepak Agrawal

APPELLANT

Vs

Deputy Sugar Cane Commissioner & Co.

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 — Rule 13A(1), 13A(2)

Citation : (1996) 07 AHC CK 0042

Hon'ble Judges : R.K.Gulati, J

Judgement

R.K. Gulati, J.—The short question which arises for consideration is, as to when does the working of a crushing Unit commence whether with reference to the date when the sugarcane is purchased for the first time by Unit Holder in a given season or from the date the Crusher is put to operation and the sugarcane is crushed. The assessing authority as well the appellate authority has taken the view that the Unit commences working from the date the sugarcane is purchased and the contention to the contrary, which was the case of the petitioned, was repelled. This controversy is no longer res integra and has been adjudicated upon by a Division Bench of this Court in Raj Kumar Agarwal Moradabad v. Assessing Officer, Bilari and another, 1974 UPTC 449.

2. In this view of the matter, it is not necessary either to set out the facts or the relevant provisions in detail which have bearing on the dispute. However, for a better understanding of the case few undisputed facts may be noticed. The petitioner is running a khandsari Unit in village Pipalia post office Uttamnagar, District Nainital. For the crushing season 198990, the petitioner opted to pay the sugarcane purchase tax on assumed basis under the relevant provisions of U. P. Sugarcane (purchase tax) Act, 1961 and in terms of Rule 13A of the U. P. Sugarcane (purchase Tax) Rules, 1961 (hereinafter referred to as "the Rules").

3. Subrule (1) of Rule 13A of the rules enjoins upon the owner of a Unit, who has opted for assessment to sugarcane purchases tax on assumed basis to exercise that option by filing the declaration in the "prescribed form which shall be sent

under registered cover to the Sugar Commissioner and the assessing officer so as to reach them on or before the date specified in that Rule or fifteen days before the start of the Unit whichever is earlier. That Rule further provides that in such declaration the owner shall specify the date from which he decides to start working of the Unit. There is no dispute that the petitioner in the instant case, had submitted a declaration in the prescribed form in which he intimated 29101989 as the date for starting the crusher. It appears that the Unit of the petitioner was inspected on 27101989 and it was found that the Unit had not been put to operation. No sugarcane had been crushed but certain quantity of sugarcane on that date had been purchased. It is also not in dispute that the Unit started cursing on 29101989, the date which was intimated in the declaration.

4. Rule (2) of Rule 13A of the Rules prescribes the quantity of sugarcane for the purchase of which the owner shall be liable to tax. It says that where the owner of a Unit exercises the option the quantity of sugarcane on the purchases of which he shall be liable to pay tax, shall be assumed on monthly basis accordingly to the specification laid down to Schedule I. This Rule also deals with the calculation of tax for a month or a part of month and in varying situation. The first proviso attached to subrule (2) of Rule 13A makes a provision in respect of the quantity of sugarcane for the purposes of payment of tax in respect of the first month of the working of the Unit. It says that in the first month of the working of the Unit in any assessment year, the quantity of sugarcane for the purposes of payment of tax, shall be assumed from the date specified in the declaration made under subrule (1) are changed under the first and the second proviso to that subrule as the case may be.

5. As the respondents entertained the view that the working of a unit starts on the date the sugarcane is purchased without anything more, they assessed the petitioner to purchase tax for the entire month of October, 1989 and for that purpose placed reliance on the first proviso to Rule 13A read with third proviso to subrule (2) of the Rules. The first proviso to subrule (1) of Rule 13A of the Rules reads as under:

"Provided that where the owner decides to start the working of his unit from any date earlier than the date specified under this subrule he shall, before the starts the working of his unit, give intimation to this effect, in writing and under registered cover at least one week before the date from which he decides to start the working of his unit, to the Sugar Commissioner and the Assessing Officer.?"

6. The Provisions contained in the third Proviso to subrule (2) of rule 13A stipulates that where the owner of an unit is found to have started the working of its unit before the date specified or change under subrule (1) the quantity of sugarcane for the Purposes of payment of tax shall be assumed for the whole of such month.

7. The assessment proceeds on the basis that as on notice was given under the

aforesaid proviso and the petitioner had started the working of the Unit before the date specified or changed under sub rule (1), he was liable to pay purchase tax for the assumed quantity of sugarcane for the whole month of October, 1989.

8. It has been observed earlier that a similar situation had arisen in the case of Raj Kumar Agarwal (*supra*). In that case this Court held as under:

?functioning of the Unit starts not when the owner purchases sugarcane but when he starts crushing sugarcane for manufacturing gur, rab or Khandsari sugar, viewed in this light the date to be specified in the declaration for the commencement of the working of the unit necessarily means the date on which the unit starts crushing sugarcane for manufacturing gur, rab or khandsari sugar. The activity of purchasing sugarcane by the owner of a unit, and activity, which is carried on with the object of working the unit does not by itself result in the functioning of the unit. It is possible to visualize a situation where even if after purchasing sugarcane the owner may not commence the working of the unit and may dispose it of in some other manner. Accordingly, merely because he petitioner made purchase of sugarcane on 24th November, 1972, it cannot be said that his unit started working on that date. The date of start of the working on that date. The date of start of the working of the unit would be the date on which it actually started crushing sugarcane.?

9. It is apparent that the view taken by the respondents is not in consonance with the law laid down by this court and thus, the impugned orders cannot be sustained. The impugned orders cannot be sustained. The view taken by the respondents that the Unit of the petitioners had started working on 27101989 when he had only made purchases of sugarcane, is not a correct view which in law, could be upheld, as the petitioner's Unit started crushing on 29101989, the date which the petitioner had specified in his declaration, the provisions contained in the first proviso to subrule (1) of Rule 13A of the Rules, or those contained in the third proviso to subrule (2) of Rule 13a had no application on the facts of the case. The petitioner could only be assessed on the assumed quantity of purchase of sugarcane as stipulated in the first proviso to subrule (2) of Rule 13A of the Rules. The impugned assessment order which imposes the purchase tax liability upon the assessee otherwise than in accordance with the above provisions, is bad in law and so also the order of the appellate Authority which has upheld the assessment. The order of assessment dated 2551990 and the appellate order dated 2881990, are accordingly set aside with the direction to the assessing authority, Rudrapur, Nainital, the second respondent to make a fresh assessment in the light of the observations made above and in accordance with law.

10. In the result, result, the writ petition succeeds in part and is allowed accordingly. There shall be no order as to costs.