

(1978) 01 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 533/76

Govnd Sugar Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-1978

Acts Referred:

Levy Sugar Price Equalisation Fund Act, 1976 — Section 2, 5, 8

Citation : (1978) 2 ELT 151

Hon'ble Judges : Satish Chandra, J;R.R. Rastogi, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

Satish Chandra, J.—The petitioner is a company which manufactures and sells sugar. In respect of its production of sugar in the season 1970-71, the Government of India on March 26, 1971, issued an order under the Essential Commodities Act, 1955, directing the petitioner company to sell 6,340 quintals of sugar to the Government of Uttar Pradesh or their nominees at the levy price fixed by the Uttar Pradesh allotted portions of this quota of sugar to the District Magistrates of Kanpur and Lucknow. These District Magistrates lifted only 5,044 quintals of levy sugar. The balance 1,296 quintals were left with the petitioner company. On May 7, 1971, the Government of Uttar Pradesh passed an order directing the petitioner to sell the unlimited quantity of levy sugar to nominees of his own choice but at a price not exceeding the price of levy sugar. The order went on to state the excise duty at the rate of 37% would be leviable on this, 1,296 quintals of levy sugar. The petitioner company in accordance with this order sold 1,296 quintals to its own nominees at the fixed price.

2. Since the averments are not clear, we enquired from the learned counsel and he confirmed that the petitioner company charged excise duty at the rate of 37% from the persons to whom it sold this quantity of levy sugar.

3. The Excise Department insisted on the petitioner company depositing the

entire excise duty charged by it. The petitioner states that it under protest paid Rs. 19,491.84 over and above the lawfully chargeable excise duty at the rate of 25% ad valorem.

4. Basti Sugar Mills filed a writ petition against the demand from the Excise Department for paying the difference between 37% and 25% ad valorem. A division Bench of this Court by a Judgment dated May 19, 1971, held that the Sugar was levy. It was sold at the fixed price on which only 25% ad valorem excise duty was lawfully chargeable. The Excise Department could not demand payment of any further additional sum. It restrained the department from levying or collecting from the petitioner the additional excise duty in excess of 25%.

5. On coming to know of this judgment, the petitioner asked the respondents to refund the amount of Rs, 19.491-84P paid by it in excess. This demand was refused. The petitioner went in appeal but failed. He has thereupon come to this court. He prays for the "quashing of the impugned orders refusing for payments of his refund. He also wants a mandamus directing the respondents to make the refund.

6. Learned Counsel for the respondents does not controvert the legal position that only 25% ad valorem duty was chargeable on 1,296 quintals of sugar sold by the petitioner under orders of the State Government. He however, contends that the petitioner himself having charged 37%, unlawfully was not entitled to demand refund of this ill-gotten money.

7. The position is that the sale of 1,2% quintals of sugar was liable to excise duty only at the rate of 25%. The petitioner company was not entitled to charge anything more from the persons to whom it sold. Neither the Excise Department was lawfully entitled to charge or demand anything more. But, in fact, the petitioner company charged from the customers 37 % and had paid the excise duty at the rate of 37% to the Excise Department.

8. The petitioner company sold the sugar to whole-sellers who, in their turn, must have, we can presume, sold it to retailers or consumers after charging not only the price but also the excise duty which they paid to the petitioner company. The equities cannot hence be properly settled over by requiring the petitioner to furnish a list of the whole-sellers to whom he sold because ultimately It is the consumer who has suffered and the petitioner is not in a position to bring forward the consumers to whom this quantity of sugar went.

9. The Excise Department is obviously in the same position. It does not know to whom the sugar was sold by the petitioner company and certainly they are not in a position to identify the actual consumers.

10. The Levy Sugar Price Equalization Fund Act, 1970, was enacted to provide for the establishment, in the interest of the general public, of a fund to ensure that the price of levy sugar may be uniform throughout India and for matters connected there with or incidental thereto. It provides that any excess realization

in respect of levy sugar is to be paid to the Fund created by this Act, called the "Levy Sugar Price Equalization Fund". This Fund is administered by the Central Government. The Act, provides for persons who have paid the excess to lodge claim with the authorities governing the fund and, if their claim is established, they are given refund of the excess realizations under Sections 5 and 8 of the Act. It seems that the excess realization as defined by Section 2(b) of this act does not cover cases of excise duty only which may have been charged or kept by the producer or paid over to the Excise Department. But that is neither here nor there. That is a fund which is meant to reimburse the actual consumers the amount that they may have paid in addition to the lawful charges. If the amount now in question lying in deposit with *he Excise Department is directed to be paid over by them to the Fund, the best possible means of achieving the result that the money may ultimately go to the consumers, can possibly be achieved.

11. The petition is accordingly allowed in part. The respondents are directed to forthwith pay the sum of Rs. 19,491.84 to the Controller, Levy Sugar Price Equalization Fund. The parties may, however, bear their own costs