
(2001) 08 PAT CK 0053
In the Patna High Court
Case No : M.J.C. No. 2298 of 2000

Hari Nagar Sugar Mills Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0053

Judgement

1. This M.J.C. application has been filed by the Petitioners for refund of Rs. 15,00,000/- (Rupees fifteen lacs) which has been deposited by them before the Registrar of this Court in pursuance of interim order dated 16.12.1993 passed in C.W.J.C. No. 12364 of 1992 and other batch cases which were disposed of on 20.1.1994.

2. The claim of the Petitioners for refund of the money has been contested by the Bihar Agricultural Marketing Board (hereinafter referred to as the "Board"). According to the Board, that money cannot be refunded to the Petitioners and the same has to be paid to the Board.

3. In view of the aforesaid controversy, it is necessary to state briefly the facts leading to filing of the present MJC application. The controversy arose as to whether the Sugar factories engaged in purchasing sugarcane and selling sugar and sugar molasses are liable to pay market fee under the provisions of the Bihar Agricultural Produce Markets Act (hereinafter referred to as the "Act"). This Court in the case of The Belsund Sugar Co. Ltd. and Another Vs. The State of Bihar and Others, held that the sugar factories engaged in purchasing sugarcane and selling sugar and sugar molasses are liable to pay market fee under the Act. The said judgment was challenged before the Supreme Court.

4. The Petitioners filed Title Suit No. 84/77 for restraining the Board from realizing market fee and an order of injunction was passed and ultimately the said title suit was decreed. However, the said judgment was set aside in appeal and the judgment of the appellate court was upheld by this Court in Second Appeal No. 516 of 1993. The said judgment was also upheld by the Supreme

Court in S.L.P.

5. The State Government by notification deleted Sugar from the commodity to which the Act is applicable. Later on, the said notification was revived and this Court held that by reviving the notification the commodity cannot be treated to have attracted the provisions of the Act. Thereafter the Act was again amend and Section 4B was inserted deleting the earlier notification from which sugar was deleted from the commodity.

6. Thereafter the Petitioners and others challenged the aforesaid provisions of the Act. While the writ applications were pending in this Court, it was brought to the notice of the Court that other sugar mills are paying market fee to some extent but the Petitioners are not paying the market fee. Thereafter the counsel for the Petitioners submitted that if this Court directs then the Petitioners will deposit some amount of market fee in this Court subject to further orders of this Court. According to the Board, more than Rs. 40 lacs was due as market fee after the insertion of provision of Section 4B in the Act, whereas according to the counsel for the Petitioners only Rs. 15 to 16 lacs were due. This Court by the impugned order having taken note of the submissions of the parties, ordered the Petitioners to pay Rs. 15 lacs subject to further order of this Court before the Registrar.

7. Finally, this Court upheld the amended provisions (Section 4B of the Act) against which appeals were also filed before the Supreme Court by the Petitioners and others.

8. The Constitution Bench of the Supreme Court decided the appeal filed by Belsund Sugar Co. Ltd. as well as Petitioners and others vide judgment dated 10th August, 1999 which is reported in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,* . It has been held by the Supreme Court that the provisions of the Act is not applicable in the case of Sugar factories engaged in purchasing sugarcane and selling sugar and molasses. However, the Apex Court held that the operation of the judgment will be prospective and not retrospective. In other words, market fee paid in the past will not be refunded and market fee not collected in the past shall not be collected hereafter. In this connection, it is relevant to quote paragraphs 111, 112 and 113 of the said judgment which run as follows:

111. As a result of our conclusion on the findings of the aforesaid two contentions, the appeals and other writ petition in the sugar group matters will be required to be allowed and the impugned judgment of the High Court in all these matters will have to be set aside. However, the further question that survives is as to what relief can be given to the Appellants and the writ Petitioners in this sugar group of matters. It is obvious that during the pendency of these proceedings no interim relief was given to the Appellants and the writ Petitioners. Therefore, they must have paid the market fee on the transaction concerned all these years. In the common course of events, they would have

passed on the burden of market fee on the purchasers and the ultimate consumers of sugar and molasses produced by the sugar factories by utilizing sugarcane as raw material.

112. Shri Shanti Bhushan, learned Senior Counsel for the Appellants in this connection submitted that accepting the principle of unjust enrichment we may reserve liberty to the Appellants to show before the authorities whether they have in fact passed on the burden of the impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they have not passed on the burden then they may be treated to be entitled to get refund of all the appropriate amounts of market fee not passed on. In our view it is not possible to accept this contention as years have rolled by since the impugned market fees have been levied by the different Market Committees in the State of Bihar. In the normal course of events, no prudent businessman/manufacturer would ever bear the burden of such compulsory fee or tax to be paid from his own pocket. Even otherwise reserving such liberty would create unnecessary complication and may give rise to a spate of avoidable litigations in the hierarchy of proceedings. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise our powers under Article 142 of the Constitution of India that the present decision will have only a prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced there from by utilizing this purchased sugarcane by these factories will not be subjected to the levy of market fee u/s 27 of the Market Act by the Market Committees concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees.

113. However, one rider has to be added to this direction. If any of the Market Committees has been restrained from recovering market fee from the writ Petitioners in the High Court or if any of the writ Petitioners in the High Court has, as an Appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions. In other words, market fee paid in the past shall not be refunded. Similarly market fees not collected in the past also shall not be collected hereafter. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be allowed in the aforesaid terms.

9. From conjoint reading of the aforesaid three paragraphs, it appears that with

regard to the past transaction where market fee has been collected, the same shall not be refunded to the sugar companies. However, in case of transaction taken place subsequent to the judgment, no market fee can be collected by the Board. It is also clear that in cases where Board has been restrained from recovering market fee after the judgment, the Board cannot now recover the amount.

10. learned Counsel appearing for the Petitioners submitted that the amount was deposited in stay matter and in that view of the matter, the amount cannot be said to have been deposited/collected as market fee prior to the judgment of the Apex Court and as such the said amount has to be ordered to be refunded to the Petitioners.

11. learned Counsel appearing for the Board, on the other hand, submitted that that amount was deposited towards market fee and as such the said amount cannot be refunded to the Petitioners.

12. The only question for consideration is as to whether that amount will be treated to have been levied and collected as market fee prior to the delivery of the judgment of the Supreme Court. If that would be treated as such, the Petitioner would not be entitled for refund otherwise the Petitioner would be entitled for refund.

13. At the relevant time, when the interim order was passed, according to the decision of this Court as well as according to the amended provisions of Section 4B of the Act, the sugar factories were liable to pay market fee on the transaction of purchase of sugarcane and sale of sugar and molasses. Other sugar factories were paying market fee whereas the Petitioner was not paying market fee because of the stay order. This Court taking into consideration the aforesaid aspects and the statements made by the learned Counsel of the parties as noted above, directed the Petitioners to deposit the aforesaid amount which amounts to payment of part of the market fee during the pendency of the case.

14. In the case of M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, the question for consideration was as to whether in case of judgment which has prospective operation the amount collected/deposited pursuant to interim order would be retained by the State or not. Dealing with the said matter, in para 38 of the judgment it was held that if any amount is deposited pursuant to interim order, that amount would be retained by the State. The relevant statement in the said paragraph of the judgment is as follows:

38. The principle of prospective overruling is too well enshrined in our jurisprudence for it to be disturbed. Therefore, by reason of the decision in second Synthetics case (AIR 1950 SC 1927) what has actually happened is collection and non-collection of vend fee prior to 25th October, 1989 is left untouched. However, the Court in the second Synthetics case did not specifically deal with the question of deposits made pursuant to interim orders of Courts. The word used there was "realisation". It might have been arguable that the

"deposits" were not "realisations" in the sense the word has been used in taxation statutes in general and the U.P. Excise Act, 1910 in particular. However, the interim orders passed by the High Court show that deposits were made of vend fee and the purchase tax. Although these "deposits" were to be kept in a separate account, nevertheless in the circumstances of this case, it would be mere sophistry to hold that the monies so deposited were not "realisations" for the purposes of the U.R Excise Act. Therefore, what was deposited by the Appellants with the State would remain with it notwithstanding, the interim orders which required the State to keep it in a separate account but, at the same time, what has not been collected by the State cannot be realised by it, even in those cases where a bank guarantee had been furnished.

15. It is not the, case of the Petitioners that at the relevant tjme the Market Committee was not collecting market fee from the consumers etc. On the other hand, the other sugar factories in Bihar were depositing market fee according to the relevant provisions. This Court having taken note of this fact directed the Petitioners to deposit the aforesaid amount while granting stay. The said amount will be treated to have been collected and deposited towards market fee prior to the date of judgment rendered by the Apex Court in the aforesaid case. The decision in the case of M/s. Somaiya Organics (India) Ltd. (supra) is fully applicable and as such the said amount cannot be refunded to the Petitioner, on the other hand, the same has to be paid to the Board.

16. In the result, this MJC application filed by the Petitioners is dismissed.