

(1983) 11 KAR CK 0023
In the Karnataka High Court
Case No : S.T.R.P. No"s. 22 and 23 of 1980

India Sugars and Refineries Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-11-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (v)

Citation : (1984) 56 STC 145

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—These two revision petitions by the common dealer are directed against the orders made by the Karnataka Appellate Tribunal, Bangalore, made in S.T.A. Nos. 52 of 1977 and 1026 of 1977 respectively on 25th October, 1979.

2. The common question raised in these petitions is, whether the amount paid by the dealer to growers of sugarcane, in terms of bonus, freight or lorry charges, would form part of the purchase turnover liable to tax under the Karnataka Sales Tax Act, 1957 ("the Act").

3. The dealer is a company engaged in the manufacture of sugar. For the years 1969-70 and 1971-72 the company entered into agreements with the growers for purchase of sugarcane at the minimum purchase price fixed by the Central Government under the Sugarcane (Control) Order. Subsequently, there was some dispute between the company and the sugarcane growers as to the price payable for sugarcane. The dispute relating to the year 1969-70 was referred to an arbitrator, who made the award dated 30th October, 1970, directing that the company must pay Rs. 3 per metric ton as bonus and out of that Rs. 1.50 per metric ton should be paid before December, 1970, and the remaining Rs. 1.50 per metric ton should be paid before September, 1971. The award was accepted

by the company with a view to have good relations with the sugarcane growers. Payment was accordingly made to the respective sugarcane growers.

4. For the year 1971-72 the company itself agreed to pay Rs. 3.74 per metric ton as freight or lorry charges to the suppliers. That payment was made somewhere in August, 1972. The company took up the contention before the assessing authority that the said extra payment made could not form part of the purchase turnover liable to be taxed. But the assessing authority rejected that claim and so too by the Deputy Commissioner of Commercial Taxes (Appeals) and also by the Appellate Tribunal.

5. Section 2(1)(v) of the Act defines "turnover" to mean the aggregate amount for which goods are bought or sold or supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or deferred payment or other valuable consideration. Sri S. P. Bhat, the counsel for the petitioner, contended that the payments made by the company either as bonus, freight or lorry charges were not under the contract for sale entered into by the company with the sugarcane growers. According to him, subsequent payments made have no relation to the purchases made and they were independent of the contract for sale, since they were more or less ex gratia payments for the purchase of maintaining good relationship with the sugarcane growers.

6. We do not think that any date of payment under a contract of sale would be relevant for the purpose of considering whether that payment should form part of the turnover or not. In a transaction of sale or purchase delivery of goods may be made on one day and the price may be paid on another day. The real question to be examined is whether the payments made subsequent to the purchases were in the nature of ex gratia payments or towards the price of sugarcane purchase. On the facts found the payments made for both the years in question were directly connected with the sugarcane purchased. They were not lump sum payments to each sugarcane grower. For the year 1969-70 the payment required to be made was described as bonus, but it was directly related to per metric ton of sugarcane supplied. Similar was the nature of payments made for the year 1971-72 although they were described as freight and lorry charges.

7. Similar question came up for consideration before this Court in *Pandavapura Sahakara Sakkare Kharkhane Pvt. Ltd. v. State of Mysore* [1973] 32 STC 104. There also originally the assessee agreed to pay the minimum sugarcane price payable to the sugarcane growers. Subsequently at the instance of the latter, the original agreement was varied by agreeing to pay an extra sum, viz., 4 paise per quintal. This Court observed in that case that the aggregate of all amounts including the additional amounts paid by the assessee towards harvesting and transportation charges should be included in the assessee's turnover.

8. We do not find any distinguishing facts in the present case to take a different view from the one taken in the above case. That view also finds support from the

decision of the Madras High Court in North Arcot District Co-operative Sugar Mills Ltd. v. State of Tamil Nadu [1977] 40 STC 430.

9. It seems to us that the extra payments made by the company to the sugarcane growers cannot be said to be voluntary or unilateral for the purpose of maintaining good relationship of the sugarcane growers. The sugarcane growers were disputing the adequacy of the price payable by the company for the sugarcane supplied by them for the year 1969-70. That dispute was terminated by the award of the arbitrator. For the year 1971-72 the company agreed to pay the extra payment to the sugarcane growers at the rate of Rs. 3.74 per metric ton. These payments so far as the growers are concerned would be the price for their sugarcane and not for any other work. They received extra price over and above the minimum price fixed by the Central Government. Such payments, in our opinion, cannot escape the turnover as defined u/s 2(1)(v) of the Act since they form part of the aggregate amount for which the goods were purchased.

10. In the result, these petitions fail and are dismissed. In the circumstances, we make no order as to costs.