

(2007) 04 AHC CK 0177

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23103 of 1992

Kesar Enterprises Ltd., Bareilly

APPELLANT

Vs

Cane Commissioner, U.P., Lucknow & Ors.

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 15

Citation : (2007) 04 AHC CK 0177

Hon'ble Judges : R.P. Misra, J and Shishir Kumar, J

Final Decision : Allowed

Judgement

1. The writ petition has been filed for quashing the recovery certificate dated 2651992 (Annexure 1 to the writ petition) and further a writ in the nature of mandamus directing the respondents from levying and recovering any purchase tax on the consumption of sugarcane obtained by the petitioner from its own Farm attached to the Factory.

2. The question involved in the present writ petition for consideration before this Court is that whether there can be a liability upon a person for payment of purchase tax under the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (hereinafter referred as to "Act, 1953"), in case the owner of the sugarcane has consumed the sugarcane for manufacturing the sugar in his Factory.

3. The petitioner was earlier known as M/s. Kesar Sugar Works Limited. In the year 1984 the name was changed as M/s. Kesar Enterprises Limited and the same has been registered under the Indian Companies Act. The dispute of the purchase tax sought to be recovered by the respondents relates to the years 1986-87 and 1987-88. A recovery certificate was issued against the petitioner which was received in the 1st week of June, 1992 for recovery of certain amount as purchase tax. The Sugarcane Commissioner and Cane Inspector, Bareilly have issued a certificate dated 44 1992, certifying that no purchase tax was due against the petitioner for the year 1991-92 and for the earlier years, a certificate

to that effect has been annexed as Annexure3 to the writ petition. The recovery certificate issued against the petitioner goes to show that period mentioned in the said certificate is 4 to 5 years ago, on the basis that the petitioner had crushed certain quantity of sugarcane mentioned therein in order to manufacture sugar out of it. It appears that the Cane Commissioner was of the opinion that certain quantity of sugarcane had been consumed by the petitioner without payment of purchase tax.

4. The petitioner further submits that from the date of manufacturing of sugar, the petitioner had never paid purchase tax with respect to the sugarcane grown by the petitioner in its own farm, which is attached to the factory. The Farm of the petitioner, which spans over a large area is a part of the factory and in law, petitioner is entitled to grow the sugarcane for the purpose of manufacturing the sugar but inspite of the aforesaid fact, the respondents issued a letter for payment of purchase tax. The petitioner is not member of any Cane Society and he cannot be compelled to become a member of the Cane Society through which the farmers used to supply their sugarcane. In such a situation the petitioner submits that in view of the provision of law, if the petitioner consumes sugarcane owned and grown in his own farm and has been used for manufacturing the sugar, no Authority is empowered to charge the purchase tax. When the recovery certificate was issued, the petitioner submitted a representation to the District Magistrate, Bareilly as well as Sugarcane Commissioner to this effect. The petitioner was required to furnish the detail about the private farm of the factory. The petitioner submitted its reply on 6101989. In his reply, it has clearly been stated that the sugarcane which has been grown and consumed by the petitioner was of his personal farm attached to the factory, therefore, no purchase tax can be levied upon the petitioner.

5. Inspite of the aforesaid fact and submissions of the relevant document, a recovery certificate has been issued. Feeling aggrieved by the aforesaid recovery, the petitioner has filed the present writ petition. The writ petition was admitted and an interim order was granted by this Court on 2561992 and respondents were directed to file a counteraffidavit.

6. Learned Counsel for the petitioner submits that the State Government has framed U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 for regulation of sugarcane. Section 12 of the aforesaid Act, provides that the Cane Commissioner by an order require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of quantity of cane, which will be required by the factory during the crushing seasons, Rule 22 of the aforesaid Act provides that the Cane Commissioner while determining the quantity of cane in reserving an area or assigning an area to the factory will be determined by him, Rule 22 of the Act is being reproduced below :

?22. In reserving an area for or assigning an area to a factory or determining the quantity of cane to be purchased from an area by a factory, under Section 15,

the Cane Commissioner may take into consideration

- (a) the distance of the area from the factory,
- (b) facilities for transport of cane from the area,
- (c) the quantity of cane supplied from the area to the factory in previous year,
- (d) previous reservation and assignment orders,
- (e) the quantity of cane to be crushed in factory,
- (f) the arrangements made by the factory in previous years for payment of cess, cane price and commission,
- (g) the views of the Canegrowers' Cooperative Society of the area,
- (h) efforts made by the factory in developing the reserved or assigned area.]]?

7. The further submissions made on behalf of the petitioner is that as the petitioner has consumed the sugar cane sown in the farm of the petitioner, therefore, on the said quantity consumed for manufacturing the sugar, no purchase tax can be levied, as such the order of recovery is bad in law. Reliance have been placed upon the judgment of this Court in Civil Misc. Writ Petition No. 4534 of 1995, Kichha Sugar Co. Ltd. v. State of U.P. In support of the aforesaid decision, it has been submitted that the 'cane grower' has been defined in Section 2(e) of the Act, 1953, which means that a person who cultivate cane either by himself or by members of his family or by hired labourer and who is not a member of Cane Growers Cooperative Society. It is, therefore, obvious that he will not be entitled for payment of purchase tax. Reliance has been placed upon paragraph 5 of the aforesaid judgment, which is being quoted herein below :

5. The order passed by the Cane Commissioner on November 9, 1994 also mentions that in continuation of the order passed by the State Government, Baheri Sugar Factory will be entitled to carry on research work for improvement of the quality of seed of sugarcane in Khurpiya Farm. The appellate authority has held that the Baheri Sugar Mill is entitled to the fruits of the research work carried on in its Khurpiya Farm and also to the improved quality of sugar cane produced by it. Subrule (g) and (High Court, Allahabad) of Rule 22 of the Rules lay emphasis upon the views of the Cane Growers Cooperative Society of the area and efforts made by the factory in developing the reserved area for assigned area. The order passed by the appellate authority satisfies the requirement of subrule (g) and (High Court, Allahabad) of Rule 22 of the Rules inasmuch as it is not disputed that Baheri Sugar Mill being the owner of Khurpiya Farm is the cane grower and it has made efforts for developing the area by carrying on research and producing better quality of seed of sugar cane. Thus, the order passed by the appellate authority cannot be assailed on the ground that it is not in accordance with Rule 22 of the Rules.?

8. Another decision relied upon by the learned Counsel for the petitioner is 1986

UPTC 846, Mohd. Akil & Ors. v. Assistant Sugar Commissioner cum Appellate Authority. The relevant portion of the said judgment is being reproduced below :

2. Then the question is whether the crushing capacity was rightly determined at the rate of 60 quintals per day. No material has been given by the petitioner to controvert this finding of the assessing officer which was affirmed by the appellate authority. This was determined looking to the size and the handicaps, the petitioner suffered from. Therefore, the order of the assessing officer that the petitioner crushed 60 quintals per day, has to be sustained. The petitioner is entitled to the allowance of 185 quintals representing his own sugarcane. The balance quantity, therefore, remain roughly at 900 quintals on which the petitioner is liable to pay tax.

9. In support of the aforesaid contention, learned Counsel for the petitioner states that he is not liable for payment of any tax.

10. Counteraffidavit has been filed by the respondents. Learned Counsel for the respondents stated in paragraph 3 of the counter affidavit that the petitioner has not paid the purchase tax upon the sugarcane grown in his own farm. Paragraph 3 of the counter affidavit is being reproduced below :

11. We have heard Sri Vipin Sinha, learned Counsel for the petitioner and Sri Vishnu Pratap, learned Standing Counsel for respondents and perused the record.

12. From perusal of the certificate dated 441992, issued by the Assistant Sugarcane Commissioner and the Cane Inspector clearly goes to show that no purchase tax is due against the petitioner for the year 199192 and for the earlier years also. The petitioner has also filed a copy of Khatauni, which also shows that the petitioner is the owner of a large area of the land adjacent to the factory of the petitioner and the petitioner has grown the sugarcane crop, which has been utilized for the purpose of manufacturing the sugar in the factory of the petitioner. The respondents have also not denied this fact impliedly in paragraph 3 of the counteraffidavit. The respondents have admitted the fact that the petitioner has consumed the sugarcane of his own farm but only this fact has been stated that the petitioner has not paid the purchase tax and has also not paid the commission to the Cane Growers Cooperative Society.

13. It may be noticed that while considering the provisions of the Act and the position of a cane grower, the Apex Court in Tika Ramji v. State of U.P., AIR 1956 SC 676, has observed as follows in paragraph 50 of the report :

Just as he is not bound to become a member of a Canegrowers" Cooperative Society, he equally not bound to offer his sugar cane for sale to the occupier of a factory even if he happens to be a cane grower within the area reserved for that factory. His freedom in that behalf is absolutely unrestricted and we do not see how it can be urged that the provisions of the impugned Act and the notification dated 2791954 are violative of his fundamental right under Article 19(1)(c) of the Constitution.

14. From perusal of Rule 22 of the Act, it is also clear that no reserving area or assigning area to the factory or determining the quantity of the cane to be purchased from an area by a factory. Meaning thereby the sugarcane has to be purchased from the area assigned to the petitioner, the liability of the factory will be to pay purchase tax but if certain quantity of cane, which has been crushed in the factory has been sown in the field owned by the factory, no purchase tax can be levied under the Rules.

15. In view of the aforesaid facts and the admitted position, the petitioner will not be liable for payment of purchase tax demanded from the petitioner. The respondents cannot compel the petitioner that inspite of this fact, if the sugar cane has been sown on the farm of the relevant factory, the supply can only be made through the Cooperative Cane Society and there will be a liability of the purchase tax. The said action of the respondents is totally against the provisions of the Act and Rules.

16. In view of the aforesaid facts and circumstances of the case, the writ petition is allowed the order dated 26th May, 1992 (Annexure1 to the writ petition) passed by the respondent No. 1 is hereby quashed. A writ of mandamus is issued to the respondent No.1 not to realise any amount from the petitioner on the basis of order dated 26th May, 1992.

17. No order as to costs.