

(1977) 07 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 634, 653, 654, 655, 657, 662, 663, 665, 666, 668, 669, 671, 672, 673, 675, 677, 678, 679, 690, 700, 704, 707, 708, 710, 711, 712, 714, 717, 722, 731, 733, 743, 751, 752 and 772 of 1976 and 30, 31, 35 and 68 of 1977

Mokha Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-07-1977

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17(4), 18

Citation : (1977) AWC 594

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.S.P. Singh, J.—The points raised in there petitions are similar and as such it would be convenient to dispose them of by a common judgment. The Petitioners carry on the business of manufacturing Khandsari sugar and hold licences under the U.P. Khandsari Manufacturing Order 1967. The Assistant Sugar Commissioner issued notices to the Petitioners demanding varying amounts relating to arrears of purchase tax, interest thereon, penalty and commission and directed the Petitioners to deposit the same or else their licenses would be cancelled. These demands and the proposed order of cancellation have been challenged by the Petitioners in these petitions. We are informed that the licenses of the Petitioners have not been cancelled, and as such we need not go into the controversy as to whether the licences can be cancelled on the ground of the Petitioners being in default in payment of the dues. Counsel for the Petitioners have stated that so far as the purchase tax and the interest thereon is concerned, payment thereof has already been made by the Petitioners. Thus it is not necessary to go into the validity of these demands. We are now left only with the legality of the demand

for penalty and commission. The demand for commission has been made u/s 18 of the U.P. Sugarcane Regulation of Supply and Purchase Act 1953 while the penalty has been demanded u/s 3(4) read with Rule 17 of that Act. Counsel for the Petitioners contended that no demand for penalty could have been made without an opportunity being afforded to the petitioners. The provision for imposition of penalty is contained in Section 3(4) and Rule 17 of the Sugarcane Purchase Tax Act. These provisions may be profitably extracted at this juncture.

Section 3(4): Where any tax payable under this Act or interest thereon, or both, as the case may be, remains unpaid for a period exceeding fifteen days beyond the date prescribed for payment thereof, the person liable to pay the same shall, in addition to the amount of arrears of tax and interest thereon, be also liable to pay, by way of penalty, a further sum, not exceeding ten percentum of the total sum payable, calculated at such rates as may be prescribed.

Rule 17(1): The amount of interest due on the arrears of tax under Sub-section (3) of Section 3 of the Act shall be payable on the first day of the calendar month next following the calendar month in respect of which such interest is due. A treasury chalan of the amount deposited shall be forwarded to the Assessing Officer along with Form VII or VII-A as the case may be.

(2) Where any tax payable under the Act or interest thereon or both remained unpaid for any period exceeding fifteen days beyond the date prescribed for payment under these rules, the person liable to pay the same shall, in addition to the amount due as tax or interest or both pay by way of penalty, a further sum at the rate mentioned below:

(a) 5% of the total sum payable, if default does not exceed three months:

(b) 8 per cent of the total sum payable, if the period of default exceeds 3 months but does not exceed six months:

(c) any such rate which is more than 8 per cent and not more than 10 per cent of the total sum payable, as may be fixed by the Collecting Authority if the period of default exceeds six months.

A perusal of Section 3(4) discloses that the liability to penalty arises in case the tax or interest payable under the Act remains unpaid beyond the date on which it has to be paid. In the present case it is not disputed that the Petitioners were in default, and as such they became liable to payment of penalty under this provision. It is however contended that the mere fact that the Petitioners incurred that liability would not absolve the officer concerned from issuing a notice to the Petitioners and hearing their objections if any before making the demand for penalty. There is clear indication in the Act by way of Section 3(5), that the demand of penalty must be preceded by an order imposing penalty. This is so, because an appeal has been provided u/s 3(5) of the Act against an order of penalty. Thus, a demand unsupported by an order of penalty cannot be sustained. Further Rule 17 of the rules, indicates that a discretion is conferred

on the concerned authority to impose a penalty varying between 8% to 10% in case the period of default exceeds six months, as in the present case. Thus, so far as the present Petitioners are concerned it was incumbent on the authorities to have issued a notice and given them an appropriate opportunity for filing objections before demanding the impugned penalty. It also does not appear that any order of penalty was passed before the impugned demand was made. Thus the demand for penalty suffers from two vices:

1. lack of an order imposing penalty.
2. lack of opportunity to the Petitioners before making the demand.

There is also controversy as to the scope of objections a defaulter can make against the imposition of penalty. On behalf of Petitioners, it was urged that it is open to a defaulter to show that no penalty at all should be imposed, while on behalf of the State it was contended that once a person is in default, the Assessing Officer is bound to impose a penalty in accordance with the rates laid down under Rule 17(2). It is not necessary in the present case to go into this aspect of the controversy, for the penalty imposed in the present case is in excess of 8% as the default is over six months, and the cases fall in the category of cases set out in Rule 17(2)(c). Inasmuch as under Rule 17(2)(c), a discretion is conferred on the Assessing Officer to vary the penalty between 8% to 10%, it was incumbent on him to have heard the Petitioners before making the impugned demand. Further, as has been noticed earlier, the impugned demand cannot be sustained, inasmuch as no order of penalty has been passed. This introduces a serious defect in the demand, for it deprives the Petitioners of their right of appeal which is conferred by Section 3(5) of the Act.

2. So far as the demand for commission is concerned, that amount is payable either to the Cane Growers Cooperative Society or to the Council, depending as to whether purchase has been made through the Society or directly from the cane growers. In case of default in payment of commission the Cane Commissioner has to, in view of Section 17(4) of the Act, recover it through Collector after issuing a certificate regarding the arrears. There is no provision for making the demand direct from the licensee and threatening him with cancellation of his license in the event of default. This part of demand too cannot also be sustained.

3. The petition is accordingly partly allowed, and the impugned order in so far as it raises a demand for penalty and commission against the Petitioner, the proposed action of cancellation of the licence in default of payment is quashed. It will be open to the Respondent to proceed to realise these amounts in accordance with the law, and in the light of observations made in our judgment.

4. Costs on parties.