

(1984) 01 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 616 of 1982

Om Industries

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) AWC 51 Supp : (1984) 55 STC 374

Hon'ble Judges : R.B. Lal, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Lal, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner prays for quashing the notice of demand dated 15th May, 1981, passed by respondent No. 3 and the appellate order" dated 29th June, 1982, passed by respondent No. 2.

2. The relevant facts leading to this writ petition are these. For the licensing year 1980-81, the petitioner obtained a licence for working a khandsari unit consisting of (two power crushers under) the U.P. Khandsari Sugar Manufacturers Licensing Order, 1967 (briefly the Licensing Order). Thereafter, the petitioner gave an option in form XIII as required under the proviso to Sub-section (1) and Sub-section (1-b) of Section 3 of the I. P. Sugarcane (Purchase Tax) Act, 1961 (briefly the Act), and Rule 13-A of the Rules framed under the Act. In this option, it mentioned that it had two crushers but it would work only one power crusher of the size 11" x 14" with three rollers. Thereafter during the year 1980-81, the petitioner worked only one power crusher. The unit of the petitioner was inspected every month and even more frequently by the Khandsari Inspector and at all times he found that only one power crusher was being run and the other crusher was lying sealed. The Assistant Sugar Commissioner also made an inspection of the unit and found that only one crusher was working and the other

was sealed. The petitioner paid purchase tax on the basis of option in respect of one power crusher which it had worked. The petitioner received a notice/order dated 15th May, 1981, saying that it was liable to pay purchase tax on assumed basis in respect of both the crushers as it had a licence for two crushers. The copy of this order/notice is annexure IV to the petition. Against this order, the petitioner preferred an appeal to the Assistant Sugar Commissioner,- respondent No. 2, but that appeal was dismissed on 22nd June, 1982. Thereafter, a notice was again issued to the petitioner to pay up the purchase tax.

3. In the counter-affidavit, the respondents have not denied the facts asset out in the writ petition. They admitted that in the option in form XIII, the petitioner had made a note that in the year 1980-81 only one power crusher will be worked. It was also not disputed that at the time of inspections by various authorities, the petitioner was found working only one power crusher. The Inspector mentioned in his inspection note that the other power crusher was lying sealed. In the counter-affidavit it was said that since the licence was obtained in respect of two power crushers, the petitioner was liable to pay purchase tax on the basis of assumed purchase in respect of the second power crusher as well. In this connection, reference was made to the Full Bench decision of this Court in *Satish Prakash Ajay Kumar v. Assistant Sugar Commissioner* 1980 UPTC 64 .

4. I have heard the learned counsel for the parties at some length.

5. The facts are not in dispute in this case. The petitioner had obtained licence for working two power crushers under the Licensing Order for the licensing year 1980-81. In the option form XIII, the petitioner mentioned that it had two power crushers but clearly mentioned that it would work only one power crusher of the size of 11" x 14" with three rollers. Thereafter as a fact, the petitioner worked only one power crusher during the year 1980-81, the other crusher remained lying sealed, there is no dispute about the date of the start of the unit comprising one power crusher and also the date on which it was closed down. The purchase tax on the basis of assumed purchase of quantity of sugarcane in respect of one crusher which was actually worked was duly paid and there is no dispute about that tax in this writ petition.

6. The only dispute in this writ petition is whether in the aforesaid circumstances, the petitioner is not liable to pay the purchase tax for the second power crusher which was not worked and which remained lying sealed.

7. In the Licensing Order the expressions "khandsari unit" and "manufacturer" have been defined as under :

Clause (2):

(g) "khandsari unit" means unit engaged or ordinarily engaged in the manufacture of khandsari sugar from sugarcane juice or rab;

Explanation.-The term khandsari unit includes bels and centrifugals, (k)

"manufacturer" means a person who uses a power crusher, bel or centrifugal in the process of manufacture of khandsari sugar and includes a person who prepares rab for conversion into khandsari sugar.

8. Clause 3 of the Licensing Order deals with the subject of grant of licence. Sub-clause (1) provides for obtaining a licence for manufacture of khandsari sugar by means of a power crusher, etc. Other sub-clauses of this clause deal with the procedure and other matters which are not relevant for the purpose of the present writ petition. Sub-clause (1) reads thus :

No manufacturer shall, without obtaining from the licensing authority, a licence, in the form prescribed in Schedule I, undertake or carry on any process concerned with the manufacture of khandsari sugar by means of a power crusher, bel or centrifugal :

Provided that no licence shall be given to any person who is minor." One provision of the Licensing Order which needs mention is clause 6 which deals with conditions for suspension or cancellation of licences. Sub-clause I(d) alone is relevant and runs thus :

(d) has not, without adequate reasons worked the power crusher or khandsari unit continuously for a period of more than three months after the licence became effective.

9. The form of licence given in Schedule I of the Licensing Order, inter alia, speaks of power crusher and its size. The licence, thus, is in respect of power crusher.

10. The Licensing Order does not say anything about the liability of owner of a power crusher to pay purchase tax in respect of the crushers for which licence has been granted. The relevant provisions which have been quoted above too do not contain any indication in this behalf. Under clause 6 the licensing authority has been given power to cancel or suspend the licence on the ground that a licensee has not worked the power crusher for a period or more than three months after the licence became effective but that too can be done if adequate reasons do not exist for not working the power crusher within the specified time. A licensee may not be able to work a power crusher after obtaining a licence for some valid reasons and the equitable provision of presence of adequate reasons appears to have been introduced to relieve hardship in such cases, which might otherwise be caused by cancellation or suspension of licence. Clause 6 too does not cast any liability for purchase tax on a licensee in respect of a power crusher which has not been worked. Thus, the position is that there is nothing in the Licensing Order which may cast a liability on the licensee to pay purchase tax under the Act in respect of all those crushers for which licence has been obtained by him for a particular year.

11. Now the position of liability for payment of purchase tax may be examined from the standpoint of the Act. Clause (c) of Section 2 of the Act defines the

term "unit" and reads thus :

(c) "unit" or "gur, rab or khandsari sugar manufacturing unit" means a unit engaged or ordinarily engaged in the manufacture or production of gur, rab or khandsari sugar and which is capable of handling sugarcane juice produced with the aid of a crusher driven by any mechanical power.

12. Sub-sections (1), (1-a) and (1-b) of Section 3 of the Act deal with the payment of purchase tax by a unit and exercise of option by owner of a unit. These sub-sections are as under :

3. Imposition of tax.-(1) There shall be levied, and collected in such manner as may be prescribed a tax on the purchase of sugarcane by the owner of-

(a) a factory at the rate of one rupee and twenty-five paise per quintal of sugarcane and

(b) a unit at the rate of one rupee per quintal :

Provided that in the case of a unit, the tax shall be payable on the quantity of sugarcane actually purchased or, at the option of owner of the unit, on the quantity of sugarcane assumed, in accordance with the provisions of Sub-section (1-a) to have been purchased by him.

(1-a) The State Government may prescribe the quantity of sugarcane which shall be assumed for the purposes of the proviso to Sub-section (1), to have been purchased by the owners of different categories of units having regard to the crushing capacity of the units and other relevant factors.

(1-b) The option referred to in the proviso to Sub-section (1) shall be exercised by the owner of a unit by such date and in such form as may be prescribed and shall relate to the whole of an assessment year. The option once exercised shall be irrevocable for that year.

13. Other sub-sections of Section 3 deal with other matters and are not relevant for the purpose of the present writ petition. Other sections of the Act are also not relevant as they do not relate to creation of liability for payment of purchase tax.

14. The U. P. Sugarcane (Purchase Tax) Rules, 1961, have been framed under the Act. Chapter III of these Rules relates to units. Sub-rule (1) of Rule 13-A deals with exercise of option referred to in the proviso to Sub-section (1) of Section 3 of the Act. The main Sub-rule (1) may be quoted; it was as under at the relevant time :

13-A. Payment of tax by owner exercising option.-(1) The option referred to in proviso to Sub-section (1) of Section 3 of the Act (hereinafter called "the option") shall be exercised by the owner of a unit by way of a declaration in form XIII, which shall be sent under registered cover to the Sugar Commissioner, and the Assessing Officer so as to reach them on or before the 31st January of each year or 15 days before the start of the unit whichever is earlier whereafter no

such declaration shall be accepted. In such declaration the owner shall specify the date from which he decides to start the working of his unit.

Provided | | Not quoted Provided |

15. Other sub-rules of Rule 13-A are not relevant for the present purpose.

16. Form XIII refers to a unit comprising power crusher or bels or both.

17. Schedule I lays down average monthly assumed purchase of sugarcane in quintals according to the size of power crusher and its being hydraulic or non-hydraulic. Note (c) to the Schedule says that the specifications given in the chart relate to a unit comprising one power crusher only. Notes (d) and (e) to the Schedule provide how quantity of assumed purchase of sugarcane will be computed where a unit comprises more than one power crusher of the same or different categories.

18. A "unit" may comprise one or more power crushers. The definition of the term "unit" has nothing in it to indicate that a unit shall comprise all the power crushers for which licence has been obtained by the owner under the Licensing Order. Sub-sections (1), (1-a) and (1-b) of Section 3 and Rule 13-A too do not provide that owner of a unit shall have to exercise his option taking his unit as comprising all the power crushers for which licence has been obtained by him under the Licensing Order. There is no bar in these provisions to run the unit with only one power crusher and exercise option in regard to such a unit even though the licence may have been obtained for working two or more power crushers under the Licensing Order. Thus it can be said that the size of the unit and exercise of option is not necessarily related to the number of power crushers for which licence has been obtained under the Licensing Order. Mere physical presence of a number of power crushers in the premises of the "unit" too cannot be decisive of the number of power crushers which would be comprised in a unit for purposes of the option. After obtaining a licence, the owner may decide to work his unit with lesser number of power crushers and let the remaining power crushers lie idle. Failure of an owner to work all the power crushers for which he has obtained licence will only expose him to the penalty of cancellation or suspension of licence, if he is unable to furnish adequate reason for not working the power crushers within the specified period. Thus, in every case, it will be a question of fact as to how many power crushers are included in a unit for purposes of the option, and the Act. The declaration in form XIII will show the number of crusher/crushers comprised in the unit in respect of which option has been exercised. That should ordinarily be conclusive. It is only in respect of the unit mentioned in Form XIII that purchase tax should be calculated on the basis of assumed purchase of sugarcane.

19. In the instant case, the copy of the option in form XIII is on the record. It shows that in the prescribed particulars of both the power crushers were mentioned but it was clearly mentioned by adding a note that only one power crusher will be worked. From this option, it is clear that the petitioner intended to

work a unit comprising one power crusher only and was exercising its option in respect of that unit. Merely because another power crusher was present in the premises of the unit and licence had been obtained in regard to it as well, it could not be said that the petitioner had included the second power crusher in the unit which it sought to work and that option was also exercised in regard to that power crusher. If the petitioner had failed to work the second power crusher in contravention of the provisions of the Licensing Order, it ran the risk of cancellation or suspension of the licence but certainly it could not incur liability for, purchase tax in respect of that crusher when it was not worked and was not included in the option. It is also significant to note that the authorities concerned did not reject the option nor they indicated that the option will be treated for a unit comprising two power crushers. The inspection notes show that the second power crusher was sealed and it could not be actually worked.

20. The authorities concerned misread the Full Bench decision in Satish Prakash Ajay Kumar's case 1980 UPTC 64. The, facts of that case were entirely different. There the unit consisted of three power crushers and the owner of the unit had given option in respect of the unit consisting of three power crushers. After working all the power crushers for some time the owner closed one power crusher. After some more time, the owner closed a second power crusher. Thus, only one power crusher was worked till the unit was finally closed. In such state of affairs, the Full Bench held that the option was irrevocable in respect of the year in question as also in respect of the number of power crushers. The option was in respect of the entire unit which consisted of more than one crusher. The point which has arisen for consideration in the present writ petition was not before the Full Bench. Nothing in the Full Bench decision goes counter to the view taken by me in the present case. The decision is distinguishable.

21. For the above reasons, the demand of purchase tax in respect of the second crusher which was not included in the unit for the purpose of exercising the option and which was not worked in fact as well, is legally untenable. The orders of the assessing officer and the appellate authority, therefore, deserve to be quashed.

22. The writ petition is allowed. The demand notice dated 15th May, 1981, of the assessing officer and the order of the appellate authority (respondent No. 2) dated 29th June, 1982, are quashed. The petitioner shall get costs of this writ petition.