
(1990) 03 MAD CK 0058

In the Madras High Court

Case No : Tax Case (Revision) No's. 664 to 666 of 1986

Perambalur Sugar Mills Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Citation : (1990) 03 MAD CK 0058

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—These three revisions, arising out of a common order, are filed by the assessee, namely, Perambalur Sugar Mills Ltd. represented by its Chairman and Managing Director, Madras, challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A. Nos. 48, 671 and 49 of 1985, respectively. The assessment order is in respect of three assessment years 1980-81, 1981-82 and 1982-83. The value of the disputed turnover is Rs. 7,07,878, Rs. 14,48,903 and Rs. 15,55,878, respectively for the three assessment years.

2. The short facts which are necessary for the disposal of these revisions are as follows : The assessee contended that the transport charges paid to the third-party lorry owners for transporting sugarcane from the fields of sugarcane growers to the assessee's factory premises are eligible for exemption of tax under rule 6(c) of the Tamil Nadu General Sales Tax Rules, 1959, and the same should not be treated as purchase turnover for the purpose of assessment under the Tamil Nadu General Sales Tax Act, relying on the observations made in the judgment of the Madras High Court in the case in State of Tamil Nadu v. Madurantakam Co-operative Sugar Mills [1976] 38 STC 238. The Appellate Tribunal relied on the decision of this Court reported in Kallakurichi Co-operative Sugar Mills Limited v. State of Tamil Nadu [1985] 60 STC 113 and dismissed the appeals. Aggrieved by the same, these revisions are filed.

3. The learned counsel appearing for the assessee/revision-petitioner, Mr. S.

Jagadeesan, mainly contended that the transport charges paid to the third-party lorry owners for transporting sugarcane from the field to the assessee's factory premises are eligible for exemption, that the said finding of the Tribunal is in conflict with the decision of the Madras High Court reported in [1976] 38 STC 238 (State of Tamil Nadu v. Madurantakam Co-operative Sugar Mills) and that hence the finding is to be set aside and the revisions are to be allowed. The learned counsel took us through both the decisions cited above. For proper appreciation of the contentions of the revision-petitioner and the two judgments of this Court cited above, it is worthwhile to set out the relevant facts involved in these revisions. It is the admitted case of both the parties that the purchase price of sugarcane was fixed by a tripartite committee constituted for this purpose and they have fixed the sugarcane price per metric tonne of sugarcane supplied to various sugar factories in this State. In the said order, no provision has been made for deduction in the price of sugarcane sold towards transport charges. But there is a stipulation that the sugarcane growers should supply their sugarcane at the factory site of the mills. It is clear that the price fixed per metric tonne supplied is the price fixed for delivery at the factory site. Admittedly sugarcane is taxable at 12 per cent at the stage of first purchase within the State under entry 62 of the First Schedule. It is also not in dispute that the transport charges paid to the third party lorry owners for transporting sugarcane from the field to the factory site of the petitioners were deducted from the purchase price payable to the growers by the petitioner as per the tripartite agreement. The only contention raised by the assessee is that according to the original agreement, sugarcane is delivered at the factory premises by ryots. The scheme regarding transport charges is as per order of the Managing Director in D2/30558/81 dated November 17, 1981 and another letter dated December 5, 1981, if the sugar factory is at a distance exceeding 40 km, the sugar factory paid the transport freight charges, to induce the farmers at distant places to bring cane to the factory. The said freight charge is borne by the assessee and paid to the cane growers by virtue of the special arrangement. They should not be treated as purchase price and assessable to tax relying on [1976] 38 STC 238 (State of Tamil Nadu v. Madurantakam Co-operative Sugar Mills). In 19851 60 STC 113 (Kallakuruchi Co-operative Sugar Mills Limited v. State of Tamil Nadu), a Division Bench of this Court considered the earlier judgment in [1976] 38 STC 238 (State of Tamil Nadu v. Madurantakam Co-operative Sugar Mills). After considering the mode of fixation of sugarcane price and the contract entered into between the mill or factory and the sugarcane growers and the relevant sugar control orders, the Division Bench held.

"..... In the agreements also, the sugarcane grower had agreed to bring the sugarcane and deliver it at the mill or factory premises in accordance with a date schedule fixed by the mills. There is no clause either in the application for registration or in the agreements to indicate that the sugarcane growers could deliver the sugarcane at a place other than the mill or factory premises and receive reduced prices. The provisions in the application for registration and also

the agreement thus clearly establish that the sugarcane grower is responsible for the delivery of the sugarcane in the mill premises. It is true that the mills or factories maintain a fleet of lorries at their disposal and send such lorries to the growers for facilitating delivery. But there is nothing to indicate that there was any departure from the terms of the contract relating to delivery. The sending of lorries by the mills or factories was only to help or facilitate the sugarcane growers to engage and load the lorries at appropriate times in order that the quality of the sugarcane may not deteriorate and also to ensure a steady inflow of sugarcane into the mills or factories depending upon their crushing schedule. There is nothing to show that the sugarcane growers sold the sugarcane and the petitioners purchased it in the fields as claimed by them It is thus seen that the contractual obligation of the sugarcane grower for delivering the sugarcane at the mill or factory premises had not been departed from or varied even in practice. The method adopted for transporting sugarcane had been devised only to enable the sugarcane growers to arrange for the speedy transport of sugarcane to the mills, as otherwise, they would be obliged to be on the look out for stray lorries outside. In that view, the mills or the factories have merely helped or assisted the sugarcane growers by keeping certain lorries at their disposal and providing them to the sugarcane growers and recovering the transport charges from the sugarcane growers at the time of the payment of purchase price for the sugarcane. It has earlier been pointed out that there is no provision in the contract for the payment of any reduced amount other than the statutory price. The billing practice also accords with the contract and the actual practice regarding transport. It is seen that in respect of supplies effected by a sugarcane grower, the bill is prepared for the gross amount of the purchase price in accordance with the statutory price fixed by the Government. Any additional sugarcane price allowed to the sugarcane grower is subsequently given credit to separately. From the price of sugarcane so arrived at, lorry charges, share money, recovery of loan (principal and interest, etc.) are deducted and the net amount payable is arrived at. The bill is passed for the gross amount and the net amount. This also indicates that at all times, the mills or the factories recognised only the statutory price as the purchase price of sugarcane and the transport or other charges have been regarded as amounts payable by the sugarcane grower, but initially paid by the mill and later recovered from the price payable to the sugarcane grower. On these materials, the contention on behalf of the petitioners that there has been a variation or modification of the contract entered into between the mills or factories and the sugarcane growers pursuant to which delivery was taken at the fields, cannot be accepted."

4. Consequently, the tax revision cases in that decision were dismissed. That was also a case where one of the terms in the agreement was that the sugarcane grower should deliver the sugarcane at the mill or factory premises for the price fixed by the Government. But, in some cases where the sugarcane growers did not have transport facilities, the assessee sent lorries to the sugarcane growers and brought the sugarcane to the mills or the factories, and the assessees

deducted the transport charges from the statutory price payable to the sugarcane growers in respect of sugarcane supplied by them. The assessing authority as well as the appellate authority held that the assessee was not entitled to reduce the cane price claimed fixed by the Government. The transport charges claimed by the assessee was not exempted.

5. It is to be noted that under clause (3) of the Sugarcane (Control) Order, every year the Central Government fixes a statutory price payable by every sugar mill or factory as purchase price for supply of cane by the cane growers. The State Government also pays some additional amount as a result of representations and discussions between the representatives of the mills or factories, the growers and the State Government. Admittedly, in the instant case also, as per the terms of the agreement, the sugarcane growers delivered sugarcane at the mills or factory premises of the assessee as per contract. There is no provision in the contract for payment of any reduced amount other than the one provided under the statutory provision. It is also admitted by the assessee that the purchase price of sugarcane was fixed by a tripartite committee and that the sugarcane growers should supply their sugarcane at the factory site of the mills. The price fixed is for delivery at the factory site. As rightly observed by the Appellate Tribunal, as per agreement, delivery is to be effected at the doors of the factory and no deduction is permissible under law towards the transport charges incurred by the growers. It is to be noted that sugarcane is taxable at the point of last purchase. The purchase price payable for the supplies is inclusive of the transport charges. The decision in *Kallakurichi Co-Operative Sugar Mills Limited and Another Vs. The State of Tamil Nadu*, is on all fours applicable to the facts of this case.

6. The decision in [1976] 38 STC 238 (*State of Tamil Nadu v. Madurantakam Co-operative Sugar Mills*) in our view does not help the revision-petitioner in this case. We have gone through the facts of that case. In that case, the assessee claimed exemption in respect of turnover relating to transport charges paid to the growers included in the purchase turnover of the cane. Subsequent to the price fixation, the cane growers were pressing for payment of transport charges from the fields to the factory or the mills or to take delivery of the cane at the fields without an obligation on the part of the cane growers to supply the same at the factory site. This was also agreed to between the assessee and the cane growers. The agreement was that either the sugar mills will make its own arrangement to transport the harvested cane from the fields to the factory or if the cane growers were asked to transport them, they will have to be paid the transport charges. Out of Rs. 92,729.14 a sum of Rs. 55,624.80 related to the amount paid by the assessee to various third party lorry owners for transporting the cut sugarcane from the fields to the factory site and the balance of Rs. 37,104.34 represent the amount paid to the sugarcane growers towards transport charges for which exemption was not granted. So far as Rs. 55,624.80 which related to payment of transport charges paid by the assessee to the various third party lorry owners for transporting sugarcane from the field to the

factory site, the Bench held that the same was not to be included in the taxable turnover; but the charges paid by the assessee to the cane growers to bring the cut sugarcane is liable to be included in the taxable turnover of the assessee even though a separate voucher was given to the cane growers for the transport charges to which they are entitled to. When once it is accepted that as per an agreement entered into, the sugarcane grower had agreed to bring the sugarcane and deliver it at the mill or factory premises in accordance with a date schedule fixed by the mills and there is no clause either in the application for registration or in the agreement to indicate that the sugarcane growers could deliver the sugarcane at a place other than the mill or factory premises and receive reduced prices, the charges paid to the sugarcane growers to bring the cut sugarcane to the mill site is liable to be included in the taxable turnover even though separate voucher is given to which they are entitled to, there is no reason for holding that since transport charges were paid by the assessee to the third party lorry owners to transport the sugarcane to the factory, in order to assist the cane growers, it should not be included in the taxable turnover of the assessee. Hence, we are in agreement with the view expressed by the Division Bench in Kallakurichi Co-Operative Sugar Mills Limited and Another Vs. The State of Tamil Nadu, . The Appellate Tribunal is justified in applying the ratio laid down in the above decision and dismissing the appeals. We see no reason to interfere with the order of the Appellate Tribunal, in these revisions.

7. In the result, three revisions fail and stand dismissed.

8. Petitions dismissed.