
(2006) 08 AHC CK 0318
In the Allahabad High Court
Case No : Writ Petition No. 12 of 1991 (M/B)

Shiv Saran Lal Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3, 3(1)
Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 — Rule 13A

Citation : (2007) 6 AWC 6212

Hon'ble Judges : Pradeep Kant, J;B.B. Agarwal, J

Bench : Division Bench

Advocate : Satya Prakash and Dharmendra Gupta, for the Appellant; Rakesh Vajpayee, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant and B.B. Agarwal, JJ.—The Petitioners are the partners of a Khandsari Unit situated at village Bhadura post Ratasiya district Lakhimpur Kheri (hereinafter referred to as Unit).

2. The necessary licence for running the unit was granted to the Petitioner on 22.10.1986. The Unit was purchased by the Petitioners on 22nd August, 1986 and on 10th October, 1986 the Petitioners informed the authorities that they will start their business of crushing the sugar cane in the unit with effect from 27.10.1986. However, the Petitioners could not successfully run the unit for the whole crushing season and therefore they decided to close down the unit during the subsisting season. Accordingly the Petitioners informed the authorities, namely, Assistant Cane Commissioner-cum-Licensing Authority, Commissioner Sugarcane, Lucknow and Khandsari Inspector Lakhimpur Kheri by means of a registered letter on 20.11.1986 about their decision to close down the unit with effect from 5th December, 1986.

3. The Petitioners on the expiry of term of licence of one year moved an application for renewal of the licence for the next year, i.e., 1987- 88 when they

were informed that since they have not deposited the purchase tax due against them their licence cannot be renewed unless the said dues are cleared. The Petitioner was also issued a notice on 7.10.1987 requiring him to pay the payment of the amount due alongwith interest to which the Petitioners submitted their reply on 11.11.1987 but their reply did not find favour with the Licensing Authority. Therefore, their licence was not renewed. Treating the aforesaid dues as arrears of land revenue, recovery proceedings were also initiated for which citation of demand was issued on 11th December, 1987.

4. It is the admitted case of both the parties and rather it is not disputed by the State that the Petitioners were granted licence for first year, namely, 1986-87 and that they had given due information about the date of start of their business viz. of crushing sugar cane and that they had sent information regarding their decision to close the business with effect from 5th December, 1986 on 20th November, 1986 by registered post.

5. The plea of the Respondent- State in support of the present recovery is that the aforesaid intimation (registered letter dated 20.11.1986) since was received in the office of the Licensing Authority on 21.5.1987, i.e., after more than six months from the date of declared closure, therefore, the Petitioners have been fastened with the liability of the payment of purchases tax for the whole year.

6. Relevant extract of Section 3 (1) of the U.P. Sugarcane (Purchase Tax) Act, 1961 (hereinafter referred to as Act) reads 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:

2 (a) a factory at such rate not exceeding ten percent of the per quintal price of sugarcane, as the State Government may notify in this behalf, and 1(b) a unit, at the rate of one rupee and fifty paise per quintal price of sugarcane as the State Government may notify in this behalf.

2. 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.

3. (1A) 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.

The Petitioners had exercised their option for paying the purchase tax on assumptive purchase on quantity of the sugarcane and, therefore, for deposit of

the tax in accordance with the said option in consonance with the Rule 13A of U.P. Sugarcane (Purchase Tax) Act (hereinafter referred to as Act).

Rule 13 obligates the owner of the unit to deposit the tax in the Government Treasury on or before the seventh day of the month next following:

The relevant extract of Rule 13A is being quoted below:

1. 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 declaration in Form XIII, which shall be sent under a registered cover to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer so as to reach them 15 days before the start of the unit. In such declaration the owner shall specify the date from which he decides to start the working of his unit:

Provided that where the owner decides to start the working of his unit from any date earlier than the date specified under this sub-rule he shall, before he starts the working of his unit, give intimation to this effect, in writing and under registered cover at least one week before the date from which he decides to start the working of his unit to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer:

Provided further that where the owner decides to start the working of his unit from any date subsequent to the date specified under this sub-rule, he shall give an intimation to this effect, in writing and under registered cover to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer, at least one week before the date specified.

(1A) The owner of a unit shall give an intimation in writing of the date on which he decides to close the working of the unit. It shall be given under registered cover at least one week before such date to the Sugar Commissioner, Assistant Sugar Commissioner and the Assessing Officer:

Provided further that where the owner decides to start the working of his unit from any date subsequent to the date specified under this sub-rule, he shall give an intimation to this effect in writing and under registered cover to the Sugar Commissioner and the Assessing Officer, at least one week before the date specified.

7. The aforesaid rule obligates the owner of the unit who has exercised his option for paying purchase tax on assumption basis to send an information in writing to the Sugar Commissioner, Assistant Sugar Commissioner and the Assessing Officer about such declaration and also specify the date from which he decides to start the working of his unit. This intimation is to be sent under a registered cover, keeping in mind that it reaches the aforesaid authorities at least 15 days before the start of the unit.

8. Proviso attached to aforesaid Sub-rule (1) says that in case the owner decides

to start the work of his unit from any date subsequent to the date specified under the Sub-rule (1), then he shall have to give the intimation in writing and under registered cover, at least one week before said date to the authorities named therein.

9. Sub-rule (1A) requires that if the owner of a unit decides to close the working of the unit, he shall have to give an intimation to that effect in writing of the date on which he decides to close the unit to the Sugar Commissioner, Assistant Sugar Commissioner and the Assessing Officer, but this intimation has to be given under a registered cover at least one week before such date namely from the date on which he decides to close the working of the unit.

10. The proviso attached to Sub-rule (1A) further says that where the owner decides to close the unit after the date which he has specified under Sub-rule (1A), he shall give an intimation to that effect in writing under a registered cover to the Sugar Commissioner, Assistant Sugar Commissioner and the Assessing Officer at least one week before the date so specified.

11. The Rule 13A which has the heading "Payment of tax by owner exercising option" thus, contemplates both the situations namely the manner in which the declaration/option is to be given alongwith the date of start of the unit and also the date of closure of the unit.

12. The requirement of sending intimation for the start of unit mandates the owner of the unit to send the information under a registered cover so as to reach the authorities specified therein at least 15 days before the start of the unit.

13. The difference in the aforesaid two provisions, namely, at the time of start of the unit and at the time of closing of the unit in respect of the intimations which are to be sent under registered cover is obvious and apparent, namely for intimating the date of start of business, such intimation has to reach at least 15 days before the date on which the unit is to start, whereas in the matter of closure, the only requirement is that such intimation has to be sent at least one week before the date on which the unit is to be closed by registered post.

14. The plea of the State that the intimation sent by the Petitioners though was sent by registered cover to the named authorities on 20.11.1986 intimating that the unit would be closed on 5th December, 1986, but since it reached after six months, therefore, the Petitioners were liable to pay the purchase tax for the whole season, i.e., the date till the intimation is actually received in the office does not stand corroborated or supported by the aforesaid rules, nor any other provision has been placed before us in support of the said plea.

15. A taxing statute has to be read and construed in the manner it has been enacted. The legislative intent cannot be inferred contrary to the words and the language used in the statute. Sub-rule (1A) vividly and clearly provides for sending intimation by registered cover of the decided date of closure at least one week before the date so specified. It does not say that such intimation/

information should reach the office or the authorities named therein, at least before seven days from the date of closure of the unit, viz. a phrase which has been specifically used in Sub-rule (1) does not find mention in Sub-rule (1A). The conscious omission on the part of the Legislature in introducing the requirement of reaching the intimation of closure to the named officer before the date of closure, cannot be interpreted, contrary to the provisions nor the words "that it should reach at least before seven days from the date of closure" can either be read into the provision nor can be inserted.

16. The argument can be tested with another angle namely if the actual receipt of the information of closure from a specified date is the intent and essence of Sub-rule (1A), then it may lead to anomalous results for the simple reason that an owner of a unit who sends the intimation as provided in Sub-rule (1A) would have to wait and see that until the information reaches the authorities, he cannot close the unit, meaning thereby he would be compelled to continue with the functioning of the unit till the information reaches the authorities and they acknowledge the same. This would again mean that despite the difficulties which compelled the owner or necessitated the closure of the unit, on their own would not be sufficient to allow the closure of the unit unless intimation is duly received in the office or the authority and owner of the unit who for the reasons known to him does not wish to continue with the functioning of the unit from a particular date shall be compelled to carry on the business activities even though he is not willing to do so. This, as a natural corollary would fasten the liability of payment of tax, for this extended period, though the unit is lying closed and no sugarcane has been purchased. This is not the intention of the rule. There is no requirement under the Act or the Rules that an owner of a crusher unit is to necessarily carry on the crushing for the whole season and he cannot close the same at any point of time during the season. The intimation of closure in all cases has to be given to the authorities irrespective of the fact that as to whether the owner decides to close the unit either during the subsisting crushing season (mid-season) or on the completion of the crushing season. The interpretation given by the State does not stand substantiated by the provisions of rules nor Sub-rule (1A) can be read in the light of the plea raised by the State.

17. In the instant case, it is admitted that the requisite intimation of closure within time prescribed had been sent by the Petitioner to the named authorities which makes substantial or full compliance of the provisions of Sub-rule (1A). It hardly matters that the said information reached the office of the authorities after six months.

18. We may, however, clarify that if after the intimation being sent by the owner of a unit as per the requirement of Sub-rule (1A) or proviso thereof, on inspection being made by the authorities or otherwise if it comes to their knowledge that the unit is still functioning, then of course, the purchase tax can be levied and realized as the owner would be treated in default of not paying the tax as he continued with the crushing despite intimation of closure being sent by

him. But this would be a case depending on facts of each and every case individually where such a plea is available.

19. Apart from the aforesaid factual and legal position, it is also on record that on 7th December, 1986 an inspection of the unit of the Petitioner was made, wherein the Inspector found in his report that the unit was lying closed w.e.f. 5th December, 1986 and due information about the said closure had already been sent by the Petitioner on 20.11.1986. This inspection was made by an authority under the Act and there was no reason to disbelieve the report given by the Inspector nor it has been challenged by the State. In view of the fact that unit was found closed on 7th December, 1986 when inspection was made, there would have been no occasion for the levy or realisation of any purchase tax after the date of closure specified and intimated by the Petitioners.

20. The learned Counsel for the State Sri Rakesh Vajpayee has also drawn our attention to the fact that the notice for recovery was first sent to the unit but the unit was found closed and, therefore, the second notice of recovery was sent to the residence of the Petitioner. This fact also confirms the report of the Inspector and the plea taken by the Petitioners that their unit was lying closed since 5th December, 1986, due intimation regarding which was sent as per the statutory provisions.

21. The Petitioners, thus, having complied with the mandatory requirements of the rules as applicable in the matter of closure of unit, thus could not have been subjected to levy/realisation of any purchase tax for any period beyond 5th December, 1986.

22. For the reasons stated above, we hold that the levy and realisation of purchase tax for any period beyond 5th December, 1986 was absolutely without any authority and without any reason, being based on no material. The demand aforesaid is liable to be quashed which is hereby quashed.

23. We further issue a writ in the nature of mandamus restraining the Respondents from recovery of any amount from the Petitioner in pursuance of the impugned recovery.

Writ petition is allowed. Costs easy.