

(1996) 11 SC CK 0033
In the Supreme Court Of India
Case No : Civil Appeal No. 3850 of 1984

State of Gujarat

APPELLANT

Vs

Khedut Sahakari Khand Udyog

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

GUJARAT SALES TAX ACT, 1969 — Section 18, 2, 3

Citation : (1998) 9 SCC 122

Hon'ble Judges : S. P. Bharucha, J; S. C. Sen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The High Court of Gujarat answered the following question in a sales tax reference against the Revenue and the Revenue is in appeal by special leave:

"Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that in terms of the relevant bye-laws and the relevant resolutions passed by the applicant, payment of Rs. 2 per tonne which is termed as "(sic) (in Gujarati)" was a part of the purchase price of sugarcane paid by the applicant to the grower-members and liable to purchase tax u/s 18 of the Gujarat Sales Tax Act, 1969?"

2. It may be mentioned here that there was also another question before the High Court, but the answer to that is not under challenge.

3. The assessment years with which we are concerned are Assessment Years 1-7-1971 to 30-6-1972 and 1-7-1972 to 30-6-1973.

4. The respondent is a sugar factory. It contracted to purchase from its sugarcane-growing members the sugarcane crops grown by them. The growers were entitled to receive the price thereof against the weight of the sugarcane that was delivered to the respondent. It was weighed at the respondent's factory. It appears that the upper portion of the sugarcane, known locally as

"baaniya", is not millable. The respondent, therefore, chopped off the same from the sugarcane before carrying it to its factory. The sugarcane that was weighed, therefore, excluded the chopped-off portion and the growers did not receive the price relative thereto. The growers complained. A formula was, therefore, worked out whereby the respondent paid to the growers, over and above the price assessed on the basis of weight, Rs. 2 per tonne on the sugarcane brought to the factory.

5. It was the case of the Revenue that this amount of Rs. 2 per tonne had to be taken into account in the computation of the respondent's turnover of purchase of sugarcane u/s 18 of the Gujarat Sales Tax Act. Subsection (1) thereof is relevant and reads thus:

"18. Levy of sales tax or purchase tax on sugarcane.--(1) There shall be levied a sales tax or purchase tax on the turnover of sales or as the case may be turnover of purchases of sugarcane sold or purchased for such purposes and at such rate not exceeding ten paise in the rupee and at such one stage as the State Government may, by notification in the Official Gazette, specify and the seller or purchaser, as the case may be, shall be liable to pay tax on such turnover notwithstanding anything contained in Section 3."

It is convenient to refer at this stage to the definition of purchase price in Section 2(22); it means "the amount of valuable consideration paid or payable by a person for any purchase made...."

6. Under the powers conferred by Section 18(1), the State Government issued a notification on 1-2-1971, specifying that there would be levied a purchase tax at the rate of eight paise in the rupee on the turnover of purchases of sugarcane of the purchaser, where such sugarcane is purchased by the purchaser either directly or through an agent for being used by him in the manufacture of sugar as defined in Item 1 of the First Schedule to the Central Excises and Salt Act, 1944.

7. Upon the facts found by it, which we have referred to above, the Tribunal found that the contract between the respondent and the growers was for the purchase of the entire sugarcane, including the portion called the "baaniya". The growers were, therefore, entitled under the contract with the respondent to receive the price against the weight of sugarcane that was delivered and not against the weight of sugarcane whose "baaniya" had been cut off, which the respondent had carried to its factory in that form for its own convenience. The "baaniya" portion of the sugarcane, even though it was purchased by the respondent, could not be weighed at its factory because it was not brought there. The respondent and the growers had arrived at a formula whereby Rs. 2 per tonne were paid by the respondent to the growers to compensate for the "baaniya" portion which was not weighed. It was, therefore, held that the sum of Rs. 2 per tonne had to be included in the turnover of purchase of sugarcane by the respondent for the purposes of Section 18(1).

8. The High Court, in reference, held that when the respondent paid its growers the sum of Rs. 2 per tonne, it was not paying for sugarcane that was intended to be used for the manufacture of sugar and, therefore, the sum of Rs. 2 per tonne fell outside its turnover of purchase of sugarcane u/s 18.

9. Upon the facts found, we are of the view that the Tribunal was right. The facts indicate that the respondent had purchased all the sugarcane that was harvested by the growers for the purposes of being used in the manufacture of sugar. That the respondent cut off a portion of the sugarcane, namely, the "baaniya", and did not use it in the manufacture of sugar is, therefore, of no consequence. The sum of Rs. 2 per tonne paid to compensate for the weight of the "baaniya" which, for the reasons aforesaid, could not actually be weighed must, therefore, be treated to be a part of the purchase price of the sugarcane and, therefore, liable to be included in the turnover of purchase of sugarcane by the respondent u/s 18(1).

10. In the result, the appeal is allowed. The judgment and order under appeal is set aside. There shall be no order as to costs.