

(1993) 12 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 4583 of 1993

Tungabhadra Sugar Works Ltd.

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Constitution of India, 1950 — Article 133
Karnataka Sales Tax Act, 1957 — Section 12 AA, 3

Citation : (1994) ILR (Kar) 283

Hon'ble Judges : S.B. Majmudar, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : G.V. Shantharaju, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

R.V. Raveendran, J.—The petitioner-company owns a factory manufacturing sugar at Shimoga and is a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). By this writ petition, the petitioner has challenged the order of assessment and demand dated September 21, 1992 (annexure B) passed by the third respondent (assessing authority) in regard to the assessment period April 1, 1990 to March 31, 1991, confirmed by the second respondent (appellate authority) by order dated January 23, 1993 (annexure A). The grievance of the petitioner is in regard to levy and collection of purchase tax under the Act on the amount paid by the petitioner in regard to the sugarcane supplied to the petitioner by the cane growers, over and above the minimum sugarcane price fixed by the Government of India under clause 3 of the Sugarcane (Control) Order, 1966 (in short "the Control Order" or "the said order").

2. Sugarcane is the principal raw material in the manufacture of sugar. Sugarcane has been declared as an essential commodity under the Essential Commodities Act, 1955. In exercise of the powers conferred u/s 3 of the said Act, the Central Government has promulgated the Sugarcane (Control) Order,

1966, to regulate and control the production and distribution of sugarcane; clause (3) of the Control Order authorises the Central Government to fix the minimum price of sugarcane for each year, in respect of each sugar factory by taking into account the relevant factors enumerated in the said clause. For the sugar year 1990-91, ending September 30, 1991, the Government of India issued a notification dated December 27, 1990, fixing the minimum sugarcane price at Rs. 280.50 per quintal in respect of the petitioner's factory under clause 3, subject to the rebates provided under clause 3A of the said order. Clause 5A provides for fixation and payment of additional price for the sugarcane purchased by the sugar producer. The sugar producer has to purchase sugarcane grown in an area reserved for them, under clause 6 of the said order.

3. The State Government in its advisory capacity issued a notification dated July 28, 1990, notifying that the State advised minimum price for sugarcane for the year 1990-91 shall be Rs. 360 per M.T. net, which included the purchase tax rebate. By the said notification, the State Government also instructed the Director of Sugar to ensure that each factory may arrive at a price higher than the State advised price, depending upon the production and profitability of each factory, separately.

4. During the year 1990-91, the petitioner paid Rs. 395 per M.T. to the cane growers. The petitioner contended that the sum of Rs. 395 paid by them to the growers consisted of Rs. 289.50 being the minimum price fixed by the Central Government and Rs. 105.50 being the advance towards the additional price payable under clause 5A; that only Rs. 289.50 was liable to purchase tax and Rs. 105.50 could not be subjected to purchase tax. The petitioner relied on the decision of the Madras High Court in *Thiru Arooran Sugars Ltd. v. Deputy Commercial Tax Officer* reported in [1988] 71 STC 444 Mad, in support of their contention.

5. The assessing authority, on the other hand, following the decisions of this Court in *Pandavapura Sahakara Sakkare Kharkhane (P) Limited v. State of Mysore* reported in [1973] 32 STC 104 Mys and *India Sugars and Refineries Limited v. State of Karnataka* reported in *India Sugars and Refineries Limited Vs. State of Karnataka*, held that having regard to the definition of the term "turnover" occurring in the Act and having regard to the nature and description of the amount paid by the petitioner to the sugarcane growers, the entire sum of Rs. 395 per M.T. paid by the petitioner to the cane growers was liable to purchase tax. Accordingly, he passed the order of assessment dated September 21, 1992, determining the purchase tax at the rate of 8 per cent over the purchase turnover calculated at Rs. 395 per M.T. instead of the declared purchase price of Rs. 289.50 per M.T. under item 6 of the Third Schedule to the Act. After giving credit to the amounts paid, he determined the tax amount due as Rs. 29,35,512.30 (which included the purchase tax and turnover tax) and issued a demand notice dated September 21, 1992, for the said amount. The petitioner filed an appeal against the said order of assessment before the Joint

Commissioner of Commercial Taxes (Appeals), Malnad Division, Shimoga, who confirmed the order of assessment by his order dated January 23, 1993.

6. Aggrieved by the said order of assessment and the order under appeal, the petitioner has filed this writ petition for quashing the assessment order and demand notice dated September 21, 1992 and the appellate order dated January 23, 1993 and seeking a mandamus to respondents 2 and 3 not to levy and collect purchase tax on the State advised price, but to levy and collect tax only on the minimum price fixed by the Central Government. The petitioner contended that although there is an alternative remedy by way of appeal to the Karnataka Appellate Tribunal provided in the Act, the same was not an efficacious remedy, as the Tribunal did not have the power to grant stay pending disposal of the appeal and having regard to the order of the Government fixing the State advised price, the petitioner would not get any relief before the Tribunal. When the matter came up before a learned single Judge on March 2, 1993, he referred the matter to a Division Bench as the petitioner contended that the decision in *India Sugars and Refineries Limited Vs. State of Karnataka*, required reconsideration.

7. Sri G. V. Shantharaju, learned counsel for the petitioner, submitted : (a) that the purchase tax was payable only on the minimum cane price (Rs. 289.50) fixed by the Central Government; and (b) that the additional sum of Rs. 105.50 per M.T. paid to the cane growers cannot be subjected to purchase tax, as the said sum was not part of the purchase price and therefore could not be made part of petitioner's taxable turnover of purchases. Elaborating on the second point, he contended :

(i) the price payable to the cane grower is only the "minimum cane price" fixed by the Central Government under clause 3 of the Control Order; and the "additional price" payable under clause 5A was not part of the price, but only sharing of excess realisation from the sale of levy free sugar, between petitioner and cane growers; and the amount paid in excess of the "minimum cane price" was only an advance towards the additional price to be determined and declared under clause 5A;

(ii) the amount paid in excess of "minimum cane price" is not an ex gratia or voluntary payment, but an amount paid under compulsion, as advance towards the "additional price" in view of fixation of the "State advised price".

He then contended that if for any reason, the court held that the "additional price" determined under clause 5A and paid/payable by the petitioner, was part of the purchase price to be treated as part of the purchase turnover, then the purchase tax in regard to such "additional price" fixed under clause 5A will become payable by the petitioner only on determination and declaration of such additional price by the Central Government under clause 5A and till then, any amount paid in excess of the "minimum cane price" shall be treated as an advance and such advance shall not be subjected to purchase tax. He contended

that as and when the additional price is determined under clause 5A, the petitioner will pay the purchase tax thereon, if the same is found to be liable for purchase tax.

8. Sri H. L. Dattu, learned counsel for the respondents, on the other hand, contended that what was taxable was not merely the minimum price fixed under clause 3 of the Control Order, but the entire consideration that passed from the purchaser (petitioner) to the seller (cane grower); and as there is no dispute that the petitioner had paid Rs. 395 per M.T. to the cane growers and that no part of it, much less Rs. 105.50 was repayable by the cane growers, it is not possible to restrict the price to be subjected to purchase tax to Rs. 289.50 per M.T.

9. To appreciate the rival contentions, it is necessary to refer to some of the relevant provisions of the Karnataka Sales Tax Act and the Control Order.

The Karnataka Sales Tax Act, 1957 :

9.1. Section 5(3)(b) of the Act provides that in the case of purchase of any goods mentioned in column (2) of the Third Schedule, at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule tax under the Act shall be levied on the dealer liable to tax under the Act, on his taxable turnover of purchases in each year, relating to such goods. From April 1, 1990, sugarcane has been added at item 6 in the Third Schedule to the Act. The rate of tax is 8 per cent and point of levy is purchase by the last dealer in the State liable to tax under the Act. "Taxable turnover" is the aggregate amount for which the goods are bought or sold by a dealer, whether for cash or for deferred payment or other valuable consideration, on which a dealer shall be liable to tax - vide section 2(1)(u-1) read with section 2(1)(u-2) and 2(1)(v).

The Sugarcane (Control) Order, 1966 :

9.2. Section 2(g) of the Control Order defines "price" as follows :

""Price" means the price or the minimum price fixed by the Central Government from time to time for sugarcane delivered -

(i) to a sugar factory at the gate of the factory or at a sugarcane purchasing centre; or

(ii) to a khandsari unit."

Clause 3 provides for fixation of minimum price of sugarcane to be paid by the sugar producer to the cane growers in the following terms :

"3. Minimum price of sugarcane payable by producer of sugar. - (1) The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to -

- (a) the cost of production of sugarcane;
- (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
- (c) the availability of sugar to the consumer at a fair price;
- (d) the price at which sugar produced from sugarcane is sold by producer of sugar; and
- (e) the recovery of sugar from sugarcane :

Provided that the Central Government or, with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in clause 3A, allow a suitable rebate in the price so fixed.

Explanation. - (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.

(2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1)."

As sub-clauses (3), (3A), (4), (5), (6) and (7) of clause 3 are not relevant, they are not extracted. Clause 3A provides that sugar producer shall pay for the sugarcane purchased by him, to the sugarcane grower, either the minimum price fixed under clause 3 or the price agreed to between the producer, and the sugarcane grower (referred to as "the agreed price"). Clause 3A also provides for the rebates that can be deducted from the price paid for sugarcane.

9.3. Clause 5A deals with the additional price to be paid for sugarcane purchased. Sub-clause (1) provides that where the sugar producer purchases sugarcane, from a sugarcane grower, during each year, he shall, in addition to the minimum sugarcane price fixed under clause 3 pay to the sugarcane grower, an additional price, if found due in accordance with the provisions of the Second Schedule annexed to the Control Order. The Second Schedule gives the formula for computation of the additional price payable to the cane grower by the sugar producer. Sub-clauses (2) and (3) provide the procedure for determination of such additional price. Sub-clauses (4), (5) and (6) of clause 5A, providing for the manner of payment of such additional price are extracted below :

"(4) The additional price determined under sub-clause (2) or sub-clause (3), as the case may be, shall be paid by the producer of sugar to the sugarcane grower, at such time and in such manner as the Central Government or the State Government as the case may be, may, from time to time, direct.

(5) No additional price determined under sub-clause (2) or sub-clause (3), as the case may be, shall become payable by a producer of sugar who pays a price higher than the minimum sugarcane price fixed under clause 3 to the sugar cane

grower :

Provided that the price so paid shall in no case be less than the total price comprising the minimum sugarcane price fixed under clause 3 and the additional price determined under sub-clause (2) or sub-clause (3), as the case may be.

(6) Where any extra price is paid by the producer of sugar to the sugarcane grower for the supply of sugarcane in addition to the minimum sugarcane price fixed under clause 3, the extra price so paid shall be adjusted against the additional sugarcane price determined under sub-clause (2) or sub-clause (3), as the case may be, and the balance, if any, shall be paid to the sugarcane grower."

Sub-clauses (7) to (10) of clause 5A are not relevant for our purpose.

10. A careful reading of the relevant provisions of the Control Order referred to above, shows : (a) that the minimum price fixed under clause 3 is not the purchase price, but is only the minimum price that should be paid by the sugar producer; (b) that the Control Order does not provide any ceiling or maximum price that should be paid to the cane growers; (c) that the Control Order only provides for payment of the minimum price fixed under clause 3 and the additional price determined under clause 5A(1); (d) that the Control Order contemplates and provides for a negotiated agreed price being arrived at between the cane grower and sugar producer; (e) that if such agreed price paid is higher than the minimum price plus the additional price payable under clauses 3 and 5A, then the sugar producer, need not pay the additional price under clause 5A; (f) that if the agreed price is however less than the aggregate of the minimum price and the additional price, then the sugar producer shall be liable to make good the difference between such amounts, that is the aggregate of minimum price plus additional price less the agreed price. But there is no provision for any refund by the cane grower to the sugar producer, in the event of the agreed price paid by the sugar producer being more than the aggregate of the minimum price and the additional price. Thus it is clear from the Control Order that the sugar producer is liable to pay to the sugarcane grower, either the agreed price or the aggregate of minimum price and additional price, whichever is higher.

11. The concepts of "price", "consideration", "turnover" and "taxable turn-over" under the Sale of Goods Act, 1930, and the Karnataka Sales Tax Act, are not affected by the Control Order. Subject to the minimum price and the additional price fixed under its provisions, the Control Order does not prohibit parties from voluntarily agreeing to a higher price; nor is there any compulsion to sell or purchase sugarcane at a fixed price. In these circumstances, purchase tax is payable under the Sales Tax Act on the agreed price or the aggregate of the minimum price and the additional price fixed under the Control Order, whichever is higher. It is also evident from the terms of the Control Order that if the sugar producer pays only minimum price to the cane growers at the time of delivery, then he will have to pay purchase tax on such minimum price on account. When

the additional price is subsequently determined under clause 5A, the sugar producer shall be liable to pay purchase tax on such additional price. If the additional price is paid during a subsequent year, then the payment of the purchase tax on the additional price will be governed by section 12AA of the Act. If an agreed price is paid by the sugar producer to the cane grower, there is no provision which enables the producer to contend that he is liable to pay purchase tax only on the minimum price and treat the difference as an advance towards additional price to be determined under clause 5A or treat the difference as an incentive paid in advance pending settlement of the additional price under clause 5A or contend that the difference cannot be subjected to purchase tax till determination of additional price under clause 5A of the Control Order. Having regard to the provisions of the Sugarcane (Control) Order, the petitioner as sugar producer will be liable to pay purchase tax on the agreed price (negotiated price). And on fixation of additional price, if the aggregate of minimum price and additional price is more than the agreed price, then the sugar producer shall pay purchase tax on such difference, in addition to purchase tax paid on the agreed price.

12. The petitioner contended that the payment of an amount higher than the minimum price fixed under the Control Order was not a voluntary payment, but was a payment under coercion having regard to the State Government circular dated July 28, 1990. The said circular states that every year the State Government have been announcing the State advisory price for sugarcane; that the State advisory minimum price of sugarcane was fixed by the State Government after considering the cost of cane cultivation and incidental expenses borne by growers on the one hand and the conversion cost incurred by the sugar factories on the other hand, to arrive at a reasonable price with the intention of ensuring remunerative returns to the cane growers while ensuring the viabilities of the sugar factories; that for the year 1990-91 also the State Government consulted the representatives of sugarcane growers, managements of various sugar factories, Members of Parliament, Legislative Assembly and Legislative Council of the cane growing districts; and after consultation with all sections and taking into account the advice rendered, the State Government had decided that the State advisory minimum price for sugarcane for the year 1990-91 shall be Rs. 360 per M.T. The circular also made it clear that the said advisory minimum price is the net amount which included the purchase tax rebate permitted by the Government order dated March 14, 1990; that apart from ensuring the said minimum payment, the Director of Sugar should ensure that each factory may arrive at a price higher than the State advised minimum price, depending upon the production figures, profitability for each of the concerned factories, etc.; but under no circumstances, the price should be less than Rs. 360 per M.T.

13. The petitioner contends that fixing of cane price, whether the minimum price or the additional price can be done only under the provisions of clause 3 and clause 5A of the Control Order; that outside the aforesaid provisions of the

Control Order, the State Government had no authority or power to fix or indicate a State advisory minimum price; that when the Control Order provided for minimum price payable immediately and the additional price payable ultimately after taking into account the necessary relevant factors, it was totally unnecessary for the State Government to fix the advised minimum price; that on account of the State Government fixing the advised minimum price, at a figure far higher than the minimum price fixed under clause 3 and further directing the Director of Sugar to ensure that the price paid by the sugar producer to the cane grower was more than the State advised minimum price, it became impossible for the sugar producer to pay the lesser minimum price fixed by clause 3; therefore payment of any amount in excess of the minimum price under clause 3 of the Control Order, should be treated as price paid under coercion and consequently, the same could not be subjected to purchase tax. He also contended that the petitioner was forced to pay price at Rs. 395 per M.T. to the growers in view of the said circular of the State Government dated July 28, 1990 fixing the State advised minimum price at Rs. 360 per M.T. with a rider to the Director of Sugar to ensure payment of a higher price to the cane growers.

14. The petitioner also contended that in several cases, sales tax authorities insisted on payment of the purchase tax on the "State advised minimum price", even if a lesser price was paid to cane growers; that the sales tax authorities were taking the "State advised minimum price" as the base figure for calculation of purchase tax, even though the said "State advised minimum price", was neither the price fixed under the Control Order nor the agreed price; and that demand of tax on such price was without authority of law.

15. The petitioner relied on the decision in Thiru Arooran Sugars case [1988] 71 STC 444 (Mad.). The facts in that case capsulated in the head-note is extracted below :

"The petitioners were manufacturers of sugar and other by-products with factories situated in Tamil Nadu. Sugarcane purchased by the petitioners from cane growers was liable to purchase tax and additional sales tax under the Tamil Nadu General Sales Tax Act, 1959 and the Tamil Nadu Additional Sales Tax Act, 1970. The petitioners filed monthly returns for the sugar seasons of 1980-81 and 1981-82, declaring as taxable turnover the purchase value of sugarcane purchased from the cane growers at the price fixed by the Government of India by notification under clause 3 of the Sugarcane (Control) Order, 1966. The returns were accepted and tax was remitted. Subsequently, the Director of Sugar communicated to the petitioners that they were to pay a certain higher amount as the price of sugarcane to the growers for the two years in question, because the State Government had directed the sugar industries in Tamil Nadu to pay a minimum price linked to a sugar recovery of 8.5 per cent, and stated that the amounts paid in excess of the price fixed and notified by the Government of India under clause 3 of the Sugarcane (Control) Order, 1966, would be adjusted against the additional cane price payable under clause 5A(6) of the Sugarcane

(Control) Order, 1966. The petitioners paid the amounts directed by the State Government to the cane growers and treated the amounts paid in excess of the price notified under clause 3 of the Sugarcane (Control) Order, as "advance payment" kept in an "advance account". Representations to the State Government made by the petitioners seeking waiver of purchase tax on these excess amounts, on the ground that they were not part of the purchase price, were rejected. Assessments were made accordingly and demands raised for arrears of tax on the difference between the statutory cane price fixed under clause 3 and the price directed by the State Government. The petitioners filed writ petitions, initially challenging the entire demand, but subsequently conceded that the amount representing the additional cane price payable under clause 5A of the Sugarcane (Control) Order, which was to be adjusted from the advance, could also be treated as part of the price on which tax could be levied. The petitioners, therefore, confined the challenge in the writ petitions to amounts paid in excess of the additional price payable under clause 5A(6) and contended that these amounts could not be taxed as part of the price because (a) the State Government had no authority to compel the petitioners to pay over and above the statutory price fixed by the Central Government and (b) the petitioners could recover these amounts from the growers :"

Allowing the writ petitions, the Madras High Court held :

"(i) that the formula given in the Second Schedule to the Sugarcane (Control) Order, 1966 for the computation of the additional price payable under clause 5A(6) of the Order contemplates the sharing of excess realisation on sale of the sugar by cane growers with the mills. The formula requires post-sugar season determination and the entire power of fixation of fair price in relation to sugarcane, which, being a foodstuff is an essential commodity, has been taken over by the Central Government by virtue of section 16 of the Essential Commodities Act, 1955;

(ii) that merely because the amounts were paid by the petitioners pursuant to the directive of the Director of Sugar, they could not be called the agreed price. The agreement was only to pay the control or statutory price. The petitioners had paid the minimum price fixed under clause 3 of the Sugarcane (Control) Order, 1966. Thereafter, their liability was only to pay the statutory price fixed under clause 5A, which was done after the sugar season was over. There was no implicit agreement between the cane grower and the manufacturer to pay a price higher than the minimum statutory price. Therefore the amounts paid over and above price fixed under clause 5A could never be treated as consideration for the purchase of cane;

(iii) that though the nomenclature given to the payment, i.e., "advance might not be decisive but what was relevant was the character, mode and manner of the payment. The character of the payment was not price and the payments were not voluntarily made, but upon compulsion, as non-payment would have attracted the provisions of the Sugar Undertakings (Taking Over of Management)

Act, 1978;

(iv) that merely because the petitioners had not claimed the excess amounts from the cane growers, the character of the payments did not stand altered. What was material was the right of the petitioner at law to recover the excess amount, which were never part of the price; and

(v) that therefore, the petitioners were not liable to be taxed on the excess over and above the cane price fixed under clause 5A of the Sugarcane (Control) Order, 1966."

The Madras High Court though elaborately considered the matter, has proceeded on the assumption that the price legally payable by the sugar producer to cane grower is only the minimum price and additional price fixed under clauses 3 and 5A of the Control Order and that the Control Order does not contemplate any negotiated agreed price between the sugar producer and cane grower and any payment in excess of the price payable under clauses 3 and 5A, is a payment made under compulsion on account of the action of the State Government. The effect of express provisions of clause 3A which provides for a negotiated price being agreed between the sugar producer and cane grower and sub-clauses (4), (5) and (6) of clause 5A which contemplate payment of a higher agreed price by the sugar producer to the cane growers which is more than the aggregate of the minimum price and additional price under clauses 3 and 5A of the Control Order, have not been considered. Hence, though the facts of this case are similar to Arooran's case [1988] 71 STC 444 (Mad.) with great respect to the learned Judges who decided Arooran's case [1988] 71 STC 444 (Mad.) we are unable to agree with the decision arrived therein.

16. On the other hand, we feel that the matter is squarely covered by the two decisions of this Court relied and referred to by the respondents.

16.1 In Pandavapura Sahakara Sakkare Kharkhane's case [1973] 32 STC 104 (Mys.) the facts were :

"The assessee manufacturing sugar in its factory entered into agreements with the sugarcane growers for the purchase of sugarcane at the minimum purchase price fixed by the Central Government by its order issued under the Sugarcane (Control) Order, 1956. Under the agreements, the growers agreed to deliver the sugarcane f.o.r. the factory premises. Subsequently, as an inducement to the growers to supply more sugarcane, the assessee promised to pay, in addition to the minimum price agreed upon, the harvesting and transportation charges at the rate of four paise per quintal. The assessee contended that the additional payments made by the assessee by way of harvesting and transportation charges to the growers were merely ex gratia payments to give an incentive to the growers to regularly supply sugarcane to the assessee's factory and that those amounts did not form part of the purchase price."

A Division Bench of this Court held :

"In the instant case, the Central Government had fixed only the minimum price for sugarcane and not the maximum price. Under the contract entered into between the assessee and sugarcane growers, the minimum sugarcane price payable f.o.r. factory premises was fixed. The subsequent conduct of the assessee and the cane growers shows that the original agreements were varied by the agreement to pay an extra sum, viz., four paise per quintal. We have perused some of the bills given by the assessee to the cane growers. They show that in addition to the minimum price, transport charges were added to the said price. The substance of the transaction between the assessee and the cane growers is that the original contract has been varied by enhancement of the price for the sugarcane supplied. The additional amount paid by the assessee cannot be regarded as ex gratia payment since it is directly related to the quantity of sugarcane supplied. The term "turnover" has been defined to mean "the aggregate amount for which goods are bought by a dealer": vide section 2(v). In our opinion, the aggregate of all amounts including additional amounts paid by the assessee towards harvesting and transportation charges is the assessee's turnover and the view taken by the Sales Tax Appellate Tribunal was right.

16.2. In *India Sugars and Refineries Limited Vs. State of Karnataka*, the facts were :

"The assessee was a company engaged in the manufacture of sugar. For the years 1969-70 and 1971-72, the assessee entered into agreements with the sugarcane growers for the purchase of sugarcane at the minimum price fixed by the Central Government under the Sugarcane (Control) Order. Subsequently, there was some dispute between the assessee and the sugarcane growers as to the price payable for sugarcane. The dispute relating to the year 1969-70 was referred to an arbitrator who made the award directing that the company must pay a certain sum per metric ton as bonus. The award was accepted by the company and payment was accordingly made to the respective sugarcane growers. For the year 1971-72 the company itself agreed to pay a certain sum per metric ton as freight or lorry charges to the sugarcane growers and payment was made accordingly. The question was whether the extra payment made formed part of the purchase turnover liable to be taxed."

Another Division Bench of this Court held

"We do not think that any date of payment under a contract of sale would be relevant for the purpose of considering whether that payment should form part of the turnover or not. In a transaction of sale or purchase, delivery of goods may be made on one day and the price may be paid on another day. The real question to be examined is whether the payments made subsequent to the purchases were in the nature of ex gratia payments or towards the price of sugarcane purchased. On the facts found the payments made for both the years in question were directly connected with the sugarcane purchased. They were not lump sum payments to each sugarcane grower. For the year 1969-70 the payment required to be made was described as bonus, but it was directly related to per metric ton

of sugarcane supplied. Similar was the nature of payments made for the year 1971-72 although they were described as freight and lorry charges."

"It seems to us that the extra payments made by the company to the sugarcane growers cannot be said to be voluntary or unilateral for the purpose of maintaining good relationship of the sugarcane growers. The sugarcane growers were disputing the adequacy of the price payable by the company for the sugarcane supplied by them for the year 1969-70. That dispute was terminated by the award of the arbitrator. For the year 1971-72 the company agreed to pay extra payment to the sugarcane growers at the rate of Rs. 3.74 per metric ton. These payments so far as the growers are concerned would be the price for their sugarcane and not for any other work. They received extra price over and above the minimum price fixed by the Central Government. Such payments, in our opinion, cannot escape the turnover as defined u/s 2(1)(v) of the Act since they form part of the aggregate amount for which the goods were purchased."

17. We may also refer to an earlier decision of the Madras High Court in North Arcot District Co-Operative Sugar Mills Ltd. (Now Ambur Co-Operative Sugar Mills Ltd.) Vs. The State of Tamil Nadu, . In that case, though under the Sugarcane (Control) Order, the Government of India had fixed Rs. 73.70 per tonne as the minimum price for sugarcane, the cane growers demanded more and, ultimately, the assessee agreed to pay Rs. 110. This was later on approved by the Registrar of Co-operative Societies and the Government. The agreement executed by the ryots provided that the mills had to pay the controlled price or the price which was legally payable to them. The claim of the assessee was that any amount paid over and above Rs. 73.70 per tonne fixed under the Sugarcane (Control) Order was in the nature of a subsidy and not a part of the price of sugarcane supplied, and, therefore, could not be included in the turnover. The court held, that as the dispute between the assessee and the cane growers regarding the price payable was amicably settled by the assessee agreeing to pay Rs. 110 per tonne, that would amount to a novation of the contract, in so far as the price payable was concerned and entire sum of Rs. 110 per tonne represented the price payable for the sugarcane and no part of it was subsidy and, therefore, the entire amount was liable to be included in the turnover.

18. Arooran [1988] 71 STC 444 (Mad.) distinguished these three cases on the ground that these decisions were rendered prior to insertion of clause 5A in the Control Order with effect from October 1, 1974, and on the ground that these cases related to novation of contracts regarding the price payable. The insertion of clause 3A by notification dated September 24, 1976, which recognises a negotiated agreed price, was not noticed in Arooran [1988] 71 STC 444 (Mad). We have discussed the combined effect of clauses 3A and 5A of the Control Order in para 10 above. It will be noticed therefrom that clause 5A does not in any way, alter the legal position enunciated in the above three decisions. Even after insertion of clause 5A, parties reaching an agreed price, in excess of the aggregate of the minimum price and additional price, is contemplated and such

excess will also be liable to purchase tax.

19. Reference may also be made to the decisions of the Supreme Court at this juncture. In *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, the Supreme Court observed that the test to find out the sale price is what is the consideration passing from the purchaser to seller for sale of the goods and it is immaterial to enquire as to how the amount of consideration is made up. In *Central Wines, Hyderabad Vs. Special Commercial Tax Officer*, the Supreme Court held that the amount of money which goes from the pocket of the purchaser to the pocket of the seller as a condition or consideration for the passing of the property in the goods is the sale price; in other words, it is the amount, but for the payment of which, the seller would not transmit his title to the goods in favour of the purchaser and the consideration obtained by the seller from the purchaser would, in the eye of law, be the sale price regardless of what nomenclature is given to any part of the price charged. The above observations will equally apply to determine the taxable purchase turnover in this case relating to purchase of sugarcane. The decision in *Central Wines, Hyderabad Vs. Special Commercial Tax Officer*, was sought to be distinguished in *Arooran's case* [1988] 71 STC 444 (Mad.) on the ground that it was rendered with reference to the definition of the term "turnover" occurring in section 2(s) of the Andhra Pradesh General Sales Tax Act, 1957. The definition of "turnover" in Karnataka Sales Tax Act is similar to the definition in the Andhra Pradesh General Sales Tax Act. In both Acts, the "turnover" refers to the aggregate amount for which goods are bought or sold, whether for cash or for deferred payment or other valuable consideration. Hence there can be no doubt that the entire consideration that passed from the petitioner to the cane growers with reference to purchase of cane, whatever name it is called or in whatever manner it is paid, is liable to purchase tax. The petitioner will not be able to avoid payment of purchase tax on any part of Rs. 395 per M.T. paid, by calling it as advance or payment under compulsion or share in profits or otherwise.

20. The petitioner also relied on clause 6 of their standard form of contract for purchase of sugarcane with sugarcane growers. Under the said clause the cane growers agreed to receive the sale price determined by the Central Government for the sugarcane supplied by them. The petitioner therefore contended that anything paid in excess of what was fixed by the Central Government under the Control Order was on account of compulsion by the State Government. The contention that the contract provides for payment as per the price fixed by the Central Government and therefore, no purchase tax is payable on the amount paid in excess of what is fixed under the Control Order is not tenable. Even though the contract may fix a price, nothing prevents the parties from subsequently modifying or increasing the price, resulting in novation. The aforesaid term in the contract can be relied on, only if the petitioner had paid a sale price as determined by the Central Government under the Control Order. Where the petitioner has paid a higher price than what is payable in terms of clauses 3 and 5A(1), it will be a case of novation of contract and the increased

price will replace the original contract term relating to price.

21. Let us now consider the effect of the circular of the State Government notifying its advisory price for sugarcane. The State Government has resorted to fixing "State advised minimum price" for sugarcane, every year to maintain harmony between the large number of cane growers and sugar producers. But that price is still an "advisory" price and is not fixed in exercise of any power under the Control Order or any other law. The State Government has no legal or statutory authority to fix the price in regard to sugarcane. The circular itself uses the word "advisory price" thereby making it clear that it has no binding force but is only of persuasive value. Any contention regarding "coercion" or "compulsion" is meaningless when the petitioner has paid a price which is Rs. 35 more than the State advised price. Any price which has been paid or agreed to be paid, on the basis of the price recommended by the State Government in the interest of sugar industry or with a view to ensure proper supplies, will still be an agreed price. Merely because the State Government has advised a price, it does not become a payment under compulsion. The State Government merely acts as a conciliator and mediator in fixing the State advised minimum price and as such a price is arrived at after taking note of all factors and circumstances and after hearing all sections, it is no doubt of great persuasive value, commending acceptance. But nevertheless there is no legal compulsion to pay such price. The petitioner is not bound to pay a price, merely because the State Government chooses to recommend a price. It cannot be equated to a legal liability or legal compulsion which arises on account of fixation of price under law, that is, under the Control Order of a price determined by a court of law or arbitrator in the event of dispute regarding price. It therefore follows that while purchase tax is payable on the consideration/price which is legally payable, be it an agreed price or price fixed by the Control Order or a court or arbitrator, purchase tax cannot be collected on the basis of State advised price which is merely recommendatory, if the sugar producer has not paid such advised price. We therefore hold that the purchase tax cannot be demanded on the basis of State advised minimum price, unless the said advised price has been paid or agreed to be paid by the purchaser.

22. We therefore, hold that assessment order dated September 21, 1992 and the order of the appellate authority dated January 23, 1993, are in accordance with law and do not call for interference. We hold that the assessing authority is entitled to levy and collect purchase tax on the price of Rs. 395 per M.T. paid by the petitioner to the cane growers.

23. We also issue the following clarifications and directions regarding levy and collection of purchase tax on sugarcane supplied under the Sugarcane (Control) Order, 1966 :

(a) If the sugar producer (purchaser of cane) pays only the minimum price fixed by the Central Government under clause 3 of the Control Order, and nothing more, purchase tax shall be payable only on such minimum price.

(b) Merely because the State Government has recommended or notified a State advised minimum price, purchase tax cannot be demanded on such advised minimum price.

(c) If however the sugar producer pays or agrees to pay the State advised minimum price or any other negotiated agreed price, the sugar producer as purchaser shall be liable to pay purchase tax on such State advised price or agreed price as the case may be; the same will be the position regarding the price or consideration declared by any decree made by the court, either in a suit or on the basis of the award of an arbitrator, in a dispute between the cane grower and the purchaser.

(d) If the Central Government fixes the additional price under clause 5A(I), in addition to the minimum price, then the petitioner shall become liable to pay purchase tax on such additional price fixed under clause 5A(1) of the Control Order; if the additional price is not fixed in the same year, payment of purchase tax on such additional price will be governed by section 12AA of the Act.

(e) If the petitioner pays to the cane grower, by way of consideration, any amount in excess of the minimum price, purchase tax shall be levied and collected on such consideration, irrespective of such excess being referred to as advance or incentive or by any other name. If such excess payment which suffers purchase tax, is subsequently adjusted towards additional price determined under clause 5A(1) of the Control Order, then purchase tax shall be collected u/s 12AA, only on the balance of the additional price.

The writ petition is disposed of accordingly.

24. No costs.

ORDER

25. The learned counsel for the petitioner made an oral request for grant of certificate of fitness to appeal against the judgment pronounced by us today, to the Supreme Court under article 134A, read with article 133 of the Constitution of India.

26. We have held that the purchase tax cannot be demanded on the basis of the State advised minimum price unless the said advised price has been paid or agreed to be paid by the purchaser. We have also held that the petitioner is liable to pay purchase tax on the price paid by them. Our decision is based on findings of facts particular to these cases and therefore, in our view, these cases involve no substantial question of law of general importance, which in our opinion needs to be decided by the Supreme Court. The oral request for certificate is therefore, rejected.

27. However, at the request of the learned counsel for the petitioner, the stay regarding payment of additional amount of purchase tax as demanded by the impugned notice and which stay is current during the pendency of the writ

petition, is continued for a further period of four weeks from today, to enable the petitioner to approach the Supreme Court in an appeal against the present judgment.

28. Writ petition disposed of accordingly.