(2002) 03 PAT CK 0011

In the Patna High Court

Case No : C.W.J.C. No. 9776 of 2000

Vishnu Sugar Mills Ltd. APPELLANT

Vs

Bihar State Agriculture Marketing Board and Others RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Citation : (2002) 03 PAT CK 0011

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Y.V. Giri, learned Sr. Advocate appearing for the Petitioner, and Mr. Ram Janam Ojha for the Respondents. This writ petition is directed against the order dated 10.7.2000 (Annexure-9), passed by the revisional authority u/s 27-C of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as ''the Act''), whereby he has dismissed the Petitioner''s revision application and has up-held the order dated 18.8.98 (Annexure-6), passed by the Assessment Sub-Committee (Respondent No. 4) in terms of Section 27-A(7) of the Act. There is some dispute before me between the learned Counsel for the parties whether this order was passed u/s 27-A(7) or Section 27-AA of the Act.

2. The Petitioner is a public limited company within the meaning of Companies Act, 1956, having its registered office at 3/3, Gillander House, Netaji Subhash Road, Calcutta, and is engaged in the manufacture of sugar having its factory at Harakhua within the district of Gopalganj. The Petitioner company was subjected to assessment proceeding for realisation of market fee under the Act for 1995-96 and was assessed at Rs. 13,92,150.20 P. vide order dated 17.10.96 (Annexure-3), which was deposited by the Petitioner. There is no dispute so far as this amount is concerned. However, the matter was reopened by the authorities under the Act and the aforesaid order dated 18.8.98 was passed either in terms of Section 27-A(7) or Section 27-AA of the Act by the Assessment Sub-committee, whereby for the same period the Petitioner was assessed for a further amount of Rs. 9,16,330.62 P. and a further sum of Rs. 1,09,95.67 P was

added towards fine, totalling Rs. 10,26,290.29 P. The demand notice is dated 25.8.98 (Annexure-7). The Petitioner preferred appeal in terms of Section 27-B of the Act before the Regional Director who dismissed the appeal and up-held the aforesaid order dt. 18.8.98 (Annexure-6), read with the demand notice dated 25.8.98 (Annexure-7), vide order dt. 19.7.99 (Annexure-8). It is relevant to state that the Petitioner has not deposited the amount in question and preferred the revision application u/s 27-C of the Act. In the meanwhile, the Supreme Court handed down its judgment on 10.8.99 in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., wherein it has been held that the manufacturers engaged in the manufacture of sugar and molasses as well as the sale and purchase of sugarcane are not liable to pay market fee under the Act. It has further been held in paragraphs 112, 113, 204 to 207 of the judgment that the amount of market fee already realised shall not be refunded to the manufacturers. The judgment of the Supreme Court was directed against a Division Bench judgment of this Court reported in The Belsund Sugar Co. Ltd. and Another Vs. The State of Bihar and Others, The Supreme Court disagreed with the judgment of this Court and set aside the same. It is relevant to state that the present Petitioner had similarly preferred writ petition in this Court which was dismissed by a Division Bench of this Court. Relying on the judgment of the Supreme Court, the Petitioner preferred revision application which was registered as Case No. 4 of 1999 (Vishnu Sugar Mills v. Agricultural Produce Market Committee, Gopalganj,) in terms of Section 27-C of the Act before the revisional authority praying therein to set aside the demand notice dt. 25.8.98 (Annexure-8), which has been dismissed by the impugned order dt. 10.7.2000 (Annexure-9).

3. While assailing the validity of the impugned order, learned Counsel for the Petitioner submits that law is well settled by the aforesaid judgment of the Supreme Court that the manufacturers of sugar and molasses are not liable to pay market fee on these two items of production and on the transactions relating to sugarcane. The impugned order in question relates to market fee payable on sale and purchase of sugarcane and, therefore, the Petitioner is not liable to pay market fee on such transactions. However, he fairly concedes that in view of the directions of the Supreme Court, the Petitioner is not praying for refund of the amount already deposited. He confines his prayer to the supplementary assessment of Rs. 10,26,390.29R inter alia, for the reason that this amount has not till date been deposited. He also relies on a Division Bench judgment of this Court.

4. Mr. Ram Janam Ojha, learned Counsel for the Respondents, submits that the Supreme Court has observed in its judgment that the same shall apply prospectively. In so far as the past transactions are concerned, the Market Committee shall be entitled to realise as per the assessments already made but the payments could not be realised on account of stay orders passed by the Court.

5. Having considered the submissions, I am of the view that the controversy between the parties can be resolved from a plain reading of the judgment of the Supreme Court. In so far as the present case is concerned, two directions in the judgment are relevant. The Supreme Court has clearly held that the manufacturers of sugar are not liable to pay market fee under the Act with regard to sale and purchase of sugarcane, sugar and molasses. The Supreme Court has further held in paragraphs 112 and 113 that keeping in view the peculiar facts and circumstances of the case namely, the possibility "of uncontrolled and avoidable litigations in future regarding the amount of refund, all past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees. Similarly market fees not collected in the past shall also not be collected hereafter. The Supreme Court further added that if any of the Market Committees has been restrained from recovering market fee from the writ Petitioners in the High Court or if any of the writ Petitioners in the High Court has, as an Appellant before the Supreme Court, obtained stay of the payment of the market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions. I have no manner of doubt that the amount already paid by the Assessee and collected by the authorities under the Act till 10.8.99 (the date of judgment) shall not be required to be refunded. In so far as those of the amounts are concerned which may have been assessed but not deposited by the manufacturers, shall now not required to be paid. This position admits of no doubt on a plain reading of the judgment of the Supreme Court in Belsund Sugar Company Ltd. (supra).

6. Similar issues have come up before this Court on earlier occasions also, for example, C.W.J.C. No. 9578 of 1999. Having realised the mistake of misappreciation and misapplication of the judgment of the Supreme Court (supra) regarding collection of the assessed amount is concerned; the Managing Director had filed his affidavits. Paragraph 5 of one affidavit, and paragraph 3 of another affidavit, are set out herein below for the facility of quick reference:

5. That the matter was discussed with the Chairman and it has been de decided that the controversy has been resolved by the Apex Court and the Board is duty bound to abide by the order of the Apex Court as well as the decision of this Hon''ble Court. In other words, the Board is not empowered to collect market fee which has not been collected after the decision of Apex Court in The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,

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3. That the deponent states that this matter is fully covered by the judgment of

the Hon''ble Supreme Court in Belsund Sugar case and the Board is duty bound to abide by the order of the Hon''ble Supreme Court and it cannot collect Market fee after the pronouncement of the order of the Hon''ble Supreme Court which has not been collected.

Talking note of the aforesaid affidavit, a Division Bench of this Court allowed C.W.J.C. No. 9578 of 1999 by order dt. 29.6.2001 (Annexure-7) and held that: "In these circumstances, as the Respondents acknowledge that market fee is not leviable, the petition succeeds.

Sd/- Ravi S. Dhavan, C.J. Sd/- Aftab Alam, J."

7. There is yet another aspect of the matter. Soon after the Supreme Court handed down the judgment, the authorities under the Act preferred review petition No. 1249-63/99 before the Supreme Court for review of the judgment. The review petition is marked Annexure-8 to the Petitioner''s rejoinder before me, paragraph 6(f) of which is set out hereinbelow for the facility of quick reference:

(f) That the Hon''ble Court failed to appreciate that though it has provided that the judgment shall have prospective effect and the market fee for past transactions which has already been paid need not be refunded, no provision has been made for payment of market fee which has been collected by the Appellants, till the date of the judgment under review, but has not been paid to the Market Committee.

The review petition was dismissed by order dt. 7.10.99 (Annexure-8A), which is set out hereinbelow for the facility of quick reference:

We have carefully gone through the review petitions and connected papers. According to us no case is made out for interference in review proceedings. The grounds raised in the review petitions seek to re-argue the matter on merits. This is not within the scope of the review proceedings. The review petitions are accordingly dismissed.

It is thus manifest that the Respondents are needlessly pursuing this matter.

8. This writ petition is allowed and the impugned orders dated 18.8.98 (Annexure-6), dated 25.8.98 (Annexure-7), dated 19.7.99 (Annexure-8) and dated 10.7.2000 (Annexure-9) are hereby set aside. I have no manner of doubt that the authorities under the Act are needlessly pursuing the matter with inexorable obduracy which should have stopped with the judgment of the Supreme Court burdening this Court with most unwanted litigations. I express my strong sense of displeasure and allow this writ petition with costs quantified at Rs. 10,000/- to be paid by the Secretary, Agricultural Produce Market Committee (Respondent No. 3), which I would have normally directed to be paid to the Petitioner. However, learned Counsel for the Petitioner submits that the same instead be paid to the Bihar State Legal Services Authority. Let the said amount be accordingly deposited within four weeks from today. This Court

appreciates the gesture shown by Mr. Y.V. Giri.

