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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.331/2002

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31st October, 2011

RAJASTHAN VANASPATI PRODUCTS LIMITED Appellant

Through: Mr. C.V. Francis, Advocate with Mr.
Arun Francis, Advocate.

VERSUS

UNION OF INDIA & ANR. Respondents

Through: Dr. Chaudhary Shamruddin Khan,
Advocate with Mr. Aamir Naseem,
Advocate for the respondent No.1.
Mr. Neeraj Malhotra, Advocate for the
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment dated 11.1.2002 which dismissed the suit for recovery of Rs.1,45,719.09/- filed by the appellant/plaintiff and decreed the claim of the respondent No.2/State Trading Corporation of India for Rs.1,85,090/- alongwith interest @ 12% per annum.

2. The facts of the case are that the appellant/plaintiff was the manufacturer of vanaspati oil. In the manufacture of vanaspati oil, there was requirement of use of imported vegetable oil. Eighty percent of the imported vegetable oil was to be used in the manufacture of vanaspati.

Since the imported vegetable oil was used, and which was a scarce commodity, the respondent No.1/Union of India had channelized its import through the respondent No.2/State Trading Corporation of India. The respondent No.1 used to fix from time to time the issue price of the imported vegetable oil in order to maintain the selling price of vanaspati in public interest. The respondent No.1, so far as the present facts are concerned, fixed a tentative issue price of imported vegetable oil at Rs.6,100/- per tonne by a notification dated 1.8.1978. On the basis of this provisional price fixed, allocation of 592 metric tonnes of the imported vegetable oil was made to the appellant/plaintiff for the month of March, 1979. Two delivery orders dated 6.3.1979 and 13.3.1979 for 104 metric tonnes and 43.46 metric tonnes were issued in favour of the plaintiff. Two further delivery orders dated 13.3.1979 and 9.3.1979 for 45 metric tonnes and 50 metric tonnes were also issued in favour of the plaintiff making a total of 242.46 metric tonnes. The appellant/plaintiff after paying the price at Rs.6,100/- per tonne asked for delivery, however, complete delivery was not given and only 65.190 metric tonnes was delivered before 13.3.1979. The balance quantity of 177.272 metric tonnes was delivered later. The respondent No.1 vide its letter dated 18.3.1979 finally fixed the issue price of the imported vegetable oil @ Rs.7,250/- per metric tonne. This aspect was duly communicated by the respondent No.2 to the appellant/plaintiff at the time of delivering the imported vegetable oil to the appellant/plaintiff. The appellant/plaintiff had given its undertaking dated 6.3.1979 like all other buyers that delivery may be made at the

provisional price and when the final price is fixed the said final price will be accepted by the appellant/plaintiff/buyer as per the undertaking dated 6.3.1979 Ex.PW1/D1. By this undertaking, the appellant/plaintiff undertook and agreed that the appellant/plaintiff/buyer shall immediately pay to the respondent No.2 the difference between the final price and the provisional price on the first demand being made. The appellant/plaintiff after having taken delivery of the allocated quantity of imported vegetable oil @ Rs.6,100/- per metric tonne made further payments for supply of further imported vegetable oil and from which monies the respondent No.2 in terms of the undertaking adjusted an amount of Rs.1,53,881.50/- being part of the demand of Rs.3,31,986.60/-. The appellant/plaintiff objected to this mode of recovery by the respondents and therefore the subject suit came to be filed. In the subject suit, the respondent No.2/defendant No.2 raised a counter claim for the balance amount payable for the quantity delivered because of the difference in the provisional price of Rs.6,100/- per metric tonne and the final price of Rs.7,250/- per metric tonne.

3. The issues which were required for determination on this aspect were issue Nos.2 and 9 for the appellant/plaintiff and issue Nos.8 and 11 to 13 for the respondents/defendants. These issues are:-

“2. Whether the plaintiff's agreement/undertaking of 6.3.1979, on the basis of which release orders for March, 1979 allocation were issued by defendant No.2 on the earlier issue price, was without authority of law, illegal, vitiated, without free consent etc and was not binding on the plaintiff, as alleged, in paragraph 4 (reply to preliminary objections) of the plaintiff's replication? If so, to what effect? OPP
9. Whether the plaintiff is entitled to the said sum of Rs.1,45,719.90/- or any part thereof from defendant No.2? OPP

8. Whether the deft. No.2 could have appropriated its said dues in the sum of Rs.1,45,719.90 from the monies received from the pltff. for supply of oil in the usual course of its business, and whether the adjustment so made amounts to misappropriation? If so, to what effect? OPD

11. If issues Nos.7 to 9 are decided in favour of the pltff, whether deft. No.2 is entitled to the said amount of Rs.1,45,719.89 towards difference in issue price from the pltff. by way of set off or counter claim? OPP-2

12. If issue No.11 is decided in favour of deft. No.2, whether deft. No.2 is entitled to interest on the said sum of Rs.1,45,719.80 @ 20% per annum from 5.5.79 till set off/payment? OPD-2

13. Whether the deft. No.2 is entitled to the sum of Rs.39,370.91 by way of difference of issue price in respect of 42.262 M.T. of oil for which orders were issued before, but delivery by the pltff. was taken at Kandla after 31st March, 79 by way of set off or counter claim? OPD-2”

4. On these issues, the trial Court has returned the findings that the undertaking dated 6.3.1979 Ex.PW1/D1 was undisputed so far as the appellant/plaintiff is concerned and therefore the appellant/plaintiff was bound to make the payment at the final rate which was fixed by the respondent No.1/Union of India. For the sake of convenience, I reproduce the letter of undertaking as under:-

“
The Deputy Marketing Manager
The S.T.C. of India Ltd.
Oils & Fats Div.
New Delhi
Dear Sir,

6.3.79

We agree that you may hereinafter issue us DOS for the edible oil for manufacturing of vanaspati/direct consumption on your existing release price which shall be provisional price. We unconditionally agree and undertake that as and when the final price is fixed by you we shall accept the said final price without any reservation whatsoever and shall immediately pay you the difference between the final price and the provisional price if any on your demand. Similarly refund if any becomes payable to us the same shall be paid by you immediately. We will abide by the decision taken by STC in the matter.

Thanks

Yours
For Rajasthan Vanaspati Products Ltd.

Authorized Representative”

A reading of the aforesaid undertaking leaves no manner of doubt that the appellant/plaintiff had always undertaken to pay the final price determined and therefore it cannot back out of its liability. There is nothing unusual in this course of dealing inasmuch as not only the appellant/plaintiff but also all other buyers have been charged for and have paid at the final rate fixed by the respondent No.1.

5. The contention of the learned counsel for the appellant that if they would have not given the undertaking, delivery would not have been effected under the delivery orders which would have stopped the running of the factory, is an argument without merit because no one can back out of its commitment after taking advantage of the same. The commitment was to pay at the correct final price which was determined, and which surely ought to bind the appellant because delivery was taken only pursuant to the undertaking. And, it is not as if the appellant has been singled out for any adverse treatment inasmuch as all other buyers have also similarly paid at the finally determined price.

6. In view of the above, I do not find any merit in this appeal which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

OCTOBER 31, 2011
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VALMIKI J. MEHTA, J.