IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5173 OF 2015

The Ugar Sugar Works Ltd. … Petitioners

Vs

1. The State of Maharashtra & 2 Ors. ... Respondents

Mr. U.P. Bobade i/b Mr. Suresh M. Sabrad for the Petitioner.

Mr. V.A. Sonpal, Special Counsel with Mr. P.G. Sawant for the Respondent-State.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

TUESDAY, 13TH OCTOBER, 2015

P.C. :

1. By this petition, the petitioner has confined its relief to prayer clause (c), namely, issuance of an appropriate writ, order or direction directing the respondents to refund a sum of Rs.30,89,386/- which is due and payable pursuant to an assessment order passed by respondent No.3 after deducting the amount of Rs.1,15,853/- towards interest from the total sum.

2. It is common ground that the petitioner is a limited company and registered under the Companies Act, 1956. It has a sugar factory and a registered office at Mahaveer Nagar, Sangli – 416416 and branch at and Post Sakharwadi, Taluka Phaltan, District Satara. The petitioner has been managing and running sugar factories in the State of Maharashtra as also Karnataka. During the period 2005 to 2008, an existing sugar factory belonging to M/s. Phaltan Sugar Mills Limited, Sakharwadi, Phaltan, was acquired on lease basis by the petitioner. The petitioner procured cane and also paid sugarcane purchase tax for the period 1st April, 2005 to 31st March, 2006 and 1st April, 2006 to 31st March, 2007 in the sum of Rs.32,05,239/-. The amount of purchase tax was, according to the petitioner, not required to be paid. The lease agreement was for a period of seven years. The petitioner is aware of the fact that in 2005-06 and 2006-07, there was excess production of sugar and subsequent fall in sugar prices. The sugar factories and units became unviable. Even the petitioner incurred heavy losses. That is why the Board of Directors of the petitioner decided not to continue with the arrangement for the further season and requested for

termination of the lease. The lease was terminated on 6th September, 2007.

3. The petitioner is relying upon the order of assessment, copy of which is at Annexure-A. This was for the assessment years mentioned therein, namely, the assessment years 1st April, 2006 to 31st March, 2007.

4. The submission of Mr. Bobade, learned advocate appearing in support of this petition is that the assessment order concludes that the purchase tax is not payable as it is exempt. However, it computes the sum, namely, Rs.32,05,239/- as refundable. The order of assessment refers to Government Resolutions dated 30th April, 2007 and 3rd November, 2008. Mr. Bobade then refers to the Notice issued under Rule 12 of the Maharashtra Purchase Tax on Sugarcane Rules, 1962, computing the refund amount and also another Notice which determines that the petitioner is liable to pay interest and penalty in the sum of Rs.1,15,853/-. Mr. Bobade would submit that throughout the petitioner's case has been that the sum of interest and penalty

payable should be adjusted as against the refund computed. The balance sum, after such adjustment, should be paid over to the petitioner. The petitioner pointed out that they have discontinued the activities at Sakharwadi Unit nor the petitioner has any sales or purchase activities in Maharashtra. Therefore, there is no other dues against which this refund amount can be adjusted. There are no sales tax dues either. In the circumstances, the Government Resolution should not be applied with all its rigour. He submits that the communication at page 22 of the paper-book refusing to grant refund by relying upon the Government Resolutions is patently erroneous and illegal. Mr. Bobade would submit that as there is no other dues and in cases like the petitioner where the amount is refundable, retention of the sum by the State and relying upon the Government Resolutions is unjustified, erroneous and illegal. In that regard, he places reliance upon the Division Bench judgment of this Court in the case of *Union of India & Ors. vs. Arphi Incorporated, 1989 40 Excise Law Times, 311*.

5. On the other hand, Mr. Sonpal appearing for the respondents

would submit that in the first place, the order of assessment should not have computed any refund. The refund was in cases where a co-operative sugar factory ran into difficulties on account of excess sugar production. The factories for the crushing seasons 2005-2006 and 2006-2007 faced these difficulties and that is why an administrative relief was granted in some of these Government Resolutions / Notifications. Those are very clear inasmuch as the Government decided that actual refund will not be admissible at any cost. There could be adjustments possible and on the terms and conditions stipulated in the Government Resolutions. The petitioner is not entitled to any relief in this petition because even if the refund is admissible, the sum cannot be handed over in cash. No adjustment is permissible save and except in case of other dues. Such concessions and relaxations are to enable the co-operative sugar factories to face the difficult situation and tide over the same. The petitioner is not similarly placed. Therefore, the Writ Petition deserves to be dismissed.

6. After having heard both sides, we are of the view that the Writ

Petition deserves to be dismissed. The petitioner has relied upon an order of assessment for the year 1st April, 2006 to 31st March, 2007. For this assessment year, the tax liability was computed and by the Sales Tax Department. The Department determined that no sales tax was payable. As far as the purchase tax and under the 1962 Act is concerned, the assessment order holds that in the light of the exemption from the payment of purchase tax, the tax liability is nil. Rather, there is a refund admissible to the petitioner. However, the amount cannot be refunded as the Government Resolutions under which the exemption is granted are clear.

7. It is now not open to the petitioner to urge that contrary to the Government Resolutions and the stipulations therein, the amount must be refunded in cash to them. Even the adjustment that is claimed and in the form is not permissible given the terms and conditions of the Government Resolutions. Once the assessment order relates to these assessment years and liability is of that year, then, seeking refund and by way of a Writ Petition filed in the year 2015 is also impermissible by the doctrine of delay and laches. What we additionally find is

having taken advantage of these Government Resolutions so as to claim exemption, the petitioner cannot rely on the assessment order and seek actual refund. The Government Resolutions are clear that in no case the administrative relief or concession would result in refund being paid over or the same handed over in cash. There was an adjustment permissible and that too on terms. The subsequent Government Resolution clarifies that while adjusting the sum, the Government will also consider if there are other dues payable and by the sugar factory concerned. If there are other dues, then, the amount already collected and lying in the Government Treasury would be utilised or adjusted against payment of that dues or liability of that nature. In the present case, there are admittedly no such dues. If there are no such dues and no adjustment is permissible, then, the petitioner cannot urge that the amount should be refunded. In any event, the refund in cash or in physical form was not admissible. Having accepted that condition, now a petition to seek the refund will not be maintainable. For these reasons, we do not find any merit in the petition.

8. The judgment relied upon by Mr. Bobade will not be of any assistance because there the petitioner, under mistake, paid the duty. The excise duty was paid despite the exemption notification. The Government argued that no refund is admissible because despite the exemption notification the duty was paid and knowingly. Naturally, therefore, the query was it may have been paid with full knowledge but has the Government power to retain the sum when the excise duty was exempted. The answer being in the negative, the Court directed that the amount should be refunded. There was no other bar and of the nature before us. In such circumstances, the argument of unjust enrichment was also rejected in the absence of relevant material. This judgment can be of no assistance to the petitioner before us.

9. In view of the above discussion, the Writ Petition is dismissed.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***