

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 21043 of 2008 (O&M)

Date of decision: 12.7.2018

M/s Siria Rice and General Mills

.. Petitioner

vs

Food Corporation of India and another

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal**

Present: Mr. Kashmiri Lal Goyal, Senior Advocate with
Mr. Umang Goyal, Advocate for the petitioner (s).

Mr. Akshay Bhan, Senior Advocate with
Mr. Abhishek Sanghi, Advocate for the respondents.

Rajesh Bindal, J.

1. This order will dispose of bunch of eight writ petitions bearing CWP No. 21043, 21137, 21141, 21292, 21314, 21334, 21335 and 21336 of 2008, as common questions of law and facts are involved therein.

2. The facts have been taken from CWP No. 21043 of 2008.

3. The petitioner herein has approached this court praying for quashing of communication dated 2.12.2008 issued by the Food Corporation of India (for short, 'the Corporation') and letter dated 11.5.2006 from the headquarter of the Corporation. Vide aforesaid communications, claim of the petitioner for payment of tax on the rice supplied under the levy order has been declined.

4. Mr. Kashmiri Lal Goyal, learned senior counsel appearing for the petitioner submitted that the petitioner in the present case is running a rice shelling unit. He is duly registered dealer under the Punjab Value Added Tax Ordinance, 2005 (which was replaced by the Punjab Value Added Tax Act, 2005 (for short, 'the Act')).

5. On 10.10.2005, exemption certificate was issued in favour of the petitioner which entitled him exemption from payment of tax on the rice manufactured by him. The period of validity was from 30.10.1999 to 25.10.2009. The maximum amount of exemption from tax which the petitioner could claim was fixed as ₹ 67,65,000/-. The exemption certificate was issued in favour of the petitioner under the provisions of the Deferment and Exemption Rules, 1991 framed under the Punjab General Sales Tax Act, 1948, on the condition that the petitioner will export 25% of its production outside India. The petitioner complied with that obligation. In terms of the levy order issued by the government under the Essential Commodities Act, 1955, the petitioner was required to supply compulsorily 75% of the rice manufactured by him to the State or the Central Agencies at the rates fixed by them. For the Kharif season 2005-06 rate of the levy rice was fixed vide letter dated 31.10.2005 addressed by the Government of India to the States. It provided that the rates mention therein are inclusive of all taxes.

6. As per the levy order, the petitioner supplied rice to the Corporation, however, while making payment, a sum of ₹ 8,11,689/- for the season 2005-06, ₹ 5,25,313/- for the season 2006-07, and ₹ 3,73,253/- for the season 2007-08, were deducted out of the total bills raised. Finding the deductions to be arbitrary, the petitioner wrote letter dated 27.11.2008 to the

Corporation requiring it to make the balance payment. The same was responded to vide communication dated 2.12.2008 by the Corporation stating that as the petitioner is enjoying the benefit of exemption from payment of sales tax, the amount being not payable to the Sales Tax Department, he is entitled to receive that amount. The same has been done on the instruction of the Headquarters. Copy of the letter dated 11.5.2006 from the Headquarter was attached. The aforesaid two communications are under challenge in the present writ petition.

7. The contention raised by learned counsel for the petitioner is that mere mentioning of the fact that the amount of sale price being paid for levy rice is inclusive of tax would not mean that any amount of tax is included therein. In support of the arguments, reliance was placed upon judgment of Hon'ble the Supreme Court in Deputy Commissioner of Commercial Taxes (Vigilance) vs M/s Hindustan Lever Limited 2016 (13) SCC 28. Once this presumption cannot be raised by the Corporation, there is no question of deduction of any amount on account of the tax component from the total sale price. The price paid is the total sale price fixed for the levy rice, without there being any details. The petitioner did not have any choice but to sell rice to the Corporation under the levy order at the fixed price, hence, to claim that element of tax is included therein, is misleading.

8. He further submitted that initially the petitioner had been granted exemption from payment of tax, however, this is subject to compliance of certain conditions, which continue for certain period even after the benefit has been availed of. In case subsequently the exemption is cancelled, the same is from the very beginning and as a result the unit availing exemption from payment of tax is liable to pay entire amount of

tax. The Corporation did not have any jurisdiction to deduct tax from the bills on the transactions of sale of rice to the Corporation. There is no bar under the Act from collection of tax even by an exempted dealer from sale of its products. The issue as to whether dealer can retain the tax so collected or it may have to be paid to the State on the principle of unjust enrichment is a different issue. In any case, the Corporation cannot retain that amount. Reference was also made to judgment of Gujarat High Court in Subhash Iron & Steel Rolling Industries vs State of Gujarat 1982 (50) STC 305.

9. Learned counsel for the petitioner was fair enough to state that the price as fixed for purchase of levy rice by the Corporation is same even for the other dealers, who were not availing exemption from payment of tax. The amount of tax is not being paid in addition to the price so fixed even to those dealers.

10. Without prejudice to the submissions made above, it was further submitted that under any circumstances, the Corporation is liable to pay tax to the petitioner. It is a different matter that the same may be claimed by the Excise and Taxation Department from the petitioner on the principle of unjust enrichment.

11. On the other hand, learned counsel for the respondents submitted that the price of levy rice fixed by the Government of India, as was communicated to the State of Punjab, vide letter dated 31.10.2005 (Annexure P-2), clearly mentioned that the same is inclusive of all taxes including those leviable at the stage of rice. He further referred to costing sheet vide which the price of levy rice was calculated, which clearly mentioned that besides the cost of paddy, all expenses, statutory or otherwise leviable thereon, have been added, including the amount of tax,

while determining the price of levy rice. Hence, to claim that the price so fixed does not include the element of tax, is totally misconceived.

12. He further submitted that judgment in M/s Hindustan Lever Limited's case (supra), is distinguishable, as in that case the price was fixed by the seller himself and it was able to make out a case that the price did not include the element of tax. In that case certain goods were manufactured by an exempted unit, whereas similar goods by another unit of the company where tax was leviable. The sale price of the goods was to be kept uniform throughout the country, otherwise there would have been anomalous position. It was under those circumstances that while explaining the term 'inclusive of all taxes', Hon'ble the Supreme Court found that element of tax was not included in the case where the goods were manufactured by the exempted unit. The facts in the case in hand are entirely different. Here the buyer has fixed the price, where complete details are there, which specifically includes element of tax. Once the petitioner is exempted from payment of tax, he cannot be permitted to claim the same from the Corporation. Benefit of any exemption from payment of tax always flows to the buyer of the goods and in the case in hand, the Corporation is the buyer of the goods from the petitioner. In any case, the petitioner cannot retain the amount of tax, even if it is paid by the Corporation as it has no right to collect the tax, being exempted from payment of tax. It would be a case of unjust enrichment.

13. He further submitted that the writ petition is otherwise not maintainable for recovery of any amount as the petitioner should have availed remedy of filing of civil suit.

14. Heard learned counsel for the parties and perused the relevant referred record.

15. The undisputed facts on record in brief are that the petitioner is a unit engaged in manufacturing of rice. For the purpose, he purchased paddy. In terms of the provisions of the Deferment and Exemption Rules, 1991, the petitioner had been issued certificate entitling him exemption from payment of tax under the Act. Meaning thereby, he is not liable to pay any tax on his sales under the Act upto a specified limit. Levy rice is supplied to the State/ Central Government or its agencies at the price fixed by the Government of India. Undisputedly in terms of the levy order, the petitioner is required to compulsorily supply 75% of its production of rice to the State at the fixed price. Needful was done by the petitioner. Bills were raised. Payments were also made. However, while making the payments, the Corporation deducted a sum of ₹ 8,11,689/- for the season 2005-06, ₹ 5,25,313/- for the season 2006-07, and ₹ 3,73,253/- for the season 2007-08, from the bills so raised by the petitioner on account of the element of tax included therein. It was for the reason that the petitioner is exempted from payment of tax on the sales. The petitioner is claiming the aforesaid amount.

16. To appreciate the contention as to whether the price fixed for levy rice, includes the element of tax on paddy and rice, reference can be made to communication dated 31.10.2005 issued by the Government of India, Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution), New Delhi. It is mentioned therein that for the kharif season 2005-06, the price of different quality of rice has been fixed, which includes all taxes, including those leviable at the rice stage. How the aforesaid amount has been calculated is further borne

out from a calculation sheet annexed by the Corporation with the reply. The same is extracted below:-

“PUNJAB- COSTING SHEET OF LEVY RICE

	<i>(Rice-Raw)</i>		<i>(Rice-Parboiled)</i>	
	COMMON	GRADE 'A'	COMMON	GRADE 'A'
COMPONENTS	2005-06	2005-06	2005-06	2005-06
Minimum Support Price of Paddy	570.00	600.00	570.00	600.00
Statutory charges				
i) Purchase Tax/ Trade Tax/ VAT @ 4%				
Market Fee @ 2%	11.40	12.00	11.40	12.00
iv) Arhatia Commission/ Dami @ 2.5%	14.25	15.00	14.25	15.00
R.D. Cess @ 2%	11.40	12.00	11.40	12.00
Mandi Labour	4.64	4.64	4.64	4.64
Milling Charges	15.00	15.00	25.00	25.00
Cost of 1 quintal of paddy	626.69	658.64	636.69	668.64
Cost of 1 qtl. Of rice (at 68% out-turn ratio)	935.36	983.04	936.31	983.29
VAT @ 4%	37.41	39.32	37.45	39.33
Cost of 2 new 50 kg gunny bags	39.06	39.06	39.06	39.06
Sales Tax on Gunnes @ 4% (VAT)	1.56	1.56	1.56	1.56
Misc/ Special Element	-	-	-	-
Grand Total Levy Price	1013.39	1062.99	1014.38	1063.25
Rounded off to nearest 10 paise	1013.40	1063.00	1014.40	1063.30

17. A perusal of the aforesaid calculation sheet shows that besides the cost of paddy, the components which have been taken care of while calculating the price of rice, included the element of tax on rice. The basic price of rice after adding all costs including the profit of the miller was calculated at ₹ 935.36 for common variety of rice and component of 4%

VAT was added thereon to the tune of ₹ 37.41. After adding the cost of gunny bags and tax thereon, final procurement price was determined. Hence, the argument that merely because in the price of levy rice fixed by the Central Government the word, 'inclusive of all taxes' has been mentioned, the same will not mean that the tax is included therein, is totally misconceived.

18. As admittedly, the petitioner was holder of certificate entitling him exemption from payment of tax for the period in question, he is not entitled to charge tax on the sale and if any tax is collected by him, the same would be payable to the State on the principle of unjust enrichment. Any amount collected by a dealer as tax, if not leviable cannot be retained by him.

19. While making the payment of the amount of rice supplied by the petitioner to the Corporation, out of the bills so raised, while calculating the value as per the price fixed by the Government of India, the Corporation had deducted the element of tax on rice finding that the petitioner is an exempted unit, which is not liable to pay tax to the State. The fact cannot be denied that in case the petitioner being an exempted unit collects tax on sale, he shall not be entitled to retain the same as on the principle of unjust enrichment, the same may have to be deposited with the State. But here the claim made by the petitioner is that he is entitled to receive the amount of tax for sale of rice and deposit thereof with the Department of Excise and Taxation is a matter between the petitioner and the department. The Corporation has nothing to do with that. However, the argument does not appeal to us. Instead of generating more litigation or reopen issues, which already stood settled, we are deciding the matter on a broader principle as to

whether the petitioner is entitled to recover the tax from the Corporation and in that process considering the cost calculation sheet while fixing the price of levy rice, we find that element of tax on rice being included therein and the petitioner being an exempted unit, will not be entitled to claim that amount from the Corporation.

20. Judgment of Hon'ble the Supreme Court in M/s Hindustan Lever Limited's case (supra), is distinguishable on facts. In that case, the price of the goods was fixed by the seller. Same set of goods were manufactured in a unit, which was exempted for payment of tax and in another unit, where tax was payable. As a matter of policy to keep same MRP of the commodities throughout India, the dealer therein had mentioned on all the products that the price includes the element of tax. In fact, mentioning of maximum sale price, 'inclusive of all taxes', was mandatorily required in terms of provisions of Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

21. Hon'ble the Supreme Court noticed in the aforesaid judgment that the dealer therein had placed on record substantive material showing that it had not collected the tax on the goods manufactured by the unit, which was exempted from payment of tax. It has been so recorded in para 19 of the judgment, hence, it was held not liable to pay tax to the State on presumptive basis.

22. The facts in the case in hand are otherwise where the price of the goods has been fixed by the buyer, which clearly mentioned that the element of tax is included therein. The aforesaid situation is fortified from another fact that there is no distinction in the price of the rice being paid to the rice millers, who are liable to pay tax to the State.

23. Somewhat similar issue with reference to the component of tax on the prices fixed for levy rice in the State of Haryana came up for consideration before Hon'ble the Supreme Court in Jay Vee Rice and General Mills vs State of Haryana and others (2010) 35 VST 576, where one of the issue considered by Hon'ble the Supreme Court was as under:-

“The questions which fall for consideration in these appeals are mainly two-fold. The first issue that arises for our consideration is whether in the light of the facts and circumstances of the present case and upon a true and correct interpretation of construction of Note (i) to Schedule III under Clause 2(i) of the Haryana Rice Procurement Levy Order, 1985 (hereinafter referred to as "the Levy Order"), the appellants/dealers had collected purchase tax on paddy from the government or its agencies alongwith procurement price of levy fixed under the said Levy Order and if so, what would be the effect of such collection.”

24. The note appended to the levy order fixing the price of rice therein, is extracted below:-

"Note (i): The above prices of rice are for net rate of naked grains inclusive of purchase tax (emphasis added) and mandi charges of paddy and depreciation of gunny bags used for packing paddy but exclusive of cost of gunny bags and taxes, if any, after ex-mill stage of rice."

25. Hon'ble the Supreme Court while upholding the judgment of Division Bench of this Court on the issue opined that the procurement price includes the price of purchase tax. Relevant para thereof is extracted below:-

“We have already referred to the aforesaid note appended to the Notification dated October 17, 1996. The aforesaid

note leaves no room for doubt that the assessee, while supplying rice to DFSC, collected purchase tax amongst other things by way of the procurement price.”

26. Similar is the position in the case in hand.

27. In view of our aforesaid discussions, once we find that the price of levy rice fixed by the Government of India, at which the petitioner had supplied rice to the Corporation, includes the component of tax on rice, he will not be entitled to claim the same from the Corporation being a unit exempted from payment of sales tax. The petitioner cannot claim that the tax be paid to him and issue as to whether he can retain or the same to be paid to the Excise and Taxation Department is a matter between the petitioner and the department, the litigation being quite old and the petitioner being not legally entitled to retain the amount of tax, even if paid by the Corporation, we do not find it appropriate to generate more litigation and re-open the issues, which have already been settled long back, namely, the assessment under the VAT Act of the petitioner as well as of the Corporation.

28. For the reasons mentioned above, we find no merit in the writ petitions. The same are dismissed.

(Rajesh Bindal)
Judge

12.7.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No