

\$~11

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08.01.2018

+ LPA 427/2016 & CM No.27590/2016 (*stay*)

UNION OF INDIA

..... Appellant

Through: Mr. Jasmeet Singh, CGSC with
Mr. Saurabh Tiwari, Mr. Srivats Kaushal &
Mr. Aditya Madaan, Advs. for UOI.

versus

ANAMIKA SUGAR MILLS & ANR

..... Respondents

Through: Mr. C. Mukund with Mohd. Faris
& Mr. Pankaj Jain, Advs. for R-1.

Mr. Anil Mittal with Ms. Komal Aggarwal,
Advs. for R-2/State of U.P.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.(ORAL)

1. The Union of India is aggrieved by a decision of the learned Single Judge whereby its letter seeking to impose restriction on the sale of levy sugar beyond the period of three months stipulated by the Sugar Control Order of 2002, was upheld; the condition imposed in a letter of the Union dated 30.11.2010 was set aside.

2. The brief facts are that sugar, an essential commodity under the Essential Commodities Act, 1955 was regulated by various statutory orders. The order as prevailing before 2002, required the

sugar manufacturers to maintain a certain quantity of levy sugar, to be listed by the appropriate Government, depending upon the exigencies, i.e. for fulfilling the social needs under the Public Distribution System (PDS). Since the pre-existing order did not define any time limit for the maintenance of such supplies, the Patna High Court declared the then regime to be arbitrary and violative of Article 14 of the Constitution. Having regard to these circumstances, the Union issued a letter i.e. the impugned letter which *inter alia* reads as under:

“Sir,

Reference is invited to this Directorate letter no.5-5(Maha)/99-SC-II dated 18.06.2002 communicating the decision of the Central Government to allow the sugar mills to sale equivalent quantity of their un-lifted levy sugar remaining un-lifted after a lapse of three months from the date of allotment in the open market subject to the levy obligation of the concerned sugar mills remaining unchanged. The Factories were also advised to furnish information on un-lifted levy sugar in the prescribed proforma duly certified by the concerned State authorities/FCI.

2. The above decision of the Central Government does not provide time limit for carrying forward the levy obligation in respect of sugar converted from levy sugar to non-levy. The Central Government has reviewed its earlier decision and has decided as under:

I. The sugar mills will be allowed to sell equivalent quantity of their un-lifted levy sugar which remains un-lifted after lapse of three months from the date of allotment, in the open market.

However, the levy obligation of the concerned sugar mill will remain unchanged. For this purpose the concerned sugar mill will be required to request to the Directorate of Sugar with the certificated from the concerned State Authorizes/FCI in the prescribed proforma enclosed with the letter dated 18.06.2002. A copy of the proforma is enclosed for ready reference. Where the State Agencies/FCI do not furnish the requisite certificate, the matter shall be brought to the notice of the Chief Director (Sugar), Directorate of Sugar who will take up the matter with the concerned authorities.

II. The period of carry forward of levy obligation would be maximum two sugar seasons subsequent to the sugar season to which the levy obligation pertains, subject to the condition that:

There should not be any complaint, whatsoever, from the allottee State/FCI/APO about non-delivery of allotted quantity of levy sugar by the sugar mill concerned. In other words, there should not be any willful default by the sugar mill in delivery/dispatch of levy sugar.

The quantity of levy sugar obligation proposed to be carried forward should be physically available with the sugar mill in their godowns and should be certified by the Central Excise Authority concerned.

Where the levy sugar obligation of a sugar mill is carried forward to future sugar seasons(s), the sugar mill shall be entitled to the levy price only for the sugar season to which the levy obligation pertains; and

Action for sale of un-lifted levy sugar will be initiated only on receipt of specific request of the concerned sugar mill. It is clarified that no sugar mill shall sale the un-lifted levy sugar without obtaining release order from the Directorate of Sugar.”

3. The sugar manufacturers – the petitioners are aggrieved by the condition in the said impugned letter, especially the stipulation in Clause II requiring them to maintain the levy obligation for two sugar seasons subsequent to the sugar season in which the obligation is imposed. The result of this obligation was that at any given point of time, the sugar manufacturer had to ensure that a quantity equivalent to 20% of the total produce for the concerned season or year, was available for levy by the Government. The condition also entitled “roll over” or “carry forward” of that obligation in case the Government could not levy the quantity so kept apart. The outer limit for this was, of course, two sugar seasons.

4. The Union argued in defence of its case that the obligation of two years was brought in, to mitigate the hardship in the pre-existing regime which directed sugar manufacturers to retain the 20% quota of the stocks equivalent to it, for an indefinite period – which had been faulted with by the Patna High Court. It was submitted that having regard to the complex mechanism of the PDS, which necessitated assessment on a dynamic basis of sugar demands throughout the country and in the PDS system (having further regard to the fact that some areas had deficit and some

surplus, *vis-à-vis* sugar production) a two year limit within which the levy sugar quota had to be retained was reasonable. It was further contended that in the beginning of the concerned sugar season, though the manufacturers are under an obligation to retain 20% of the actual quantity, for a period of three months, in the event of the Government's inability to levy that quantity, they are free to sell it but at the same time ensure that 20% or a quantity equivalent to what may be required is made available for the next two years.

5. The Single Judge noticed firstly that the Levy Sugar Supply Control Order of 1979, nowhere empowered the Central Government to issue any statutory order *vis-à-vis* carry forward nor did it contain any other provision in that regard. He also relied on Clause 2(4) of the Control Order which enables levy sugar of which delivery is taken, to be stored, which according to him meant that delivery had been taken in the same year and the custody of the produce could be with the manufacturer. What ultimately persuaded the Single Judge, to accept the manufacturer's contentions was not only the absence of statutory authorization, but also that as a matter of fact, the Government had specified the levy sugar to be only 10%, for the relevant subsequent years i.e. 2009-10 onwards. The Single Judge also noticed that the concept of levy sugar had been abolished altogether in 2013.

6. It is argued on behalf of the Union, in the appeal that the Single Judge fell into error in not considering that the two year limit was a reasonable one and formulated specifically having

regard to the observations and directions of the Patna High Court. Prior to the impugned letter, the system that prevailed, directed sugar mills to retain the 20% levy sugar for an indefinite period. The impugned letter, in fact, directed that period and shortened it. Learned counsel justified the imposition of the two year carry forward rule, by reference to Section 3(c) of the Essential Commodities Act and said that this condition was imposed in exercise of the larger regulatory power of the Union.

7. This Court has considered the materials on record. The Single Judge correctly, in our opinion, noticed that the Sugar Control Order nowhere authorized the carry forward concept. This particular order invalidated the direction contained in the impugned letter. As far as the Union's submission with regard to the larger regulatory power goes, the Court is of the opinion that having chosen to formulate the sugar control orders (which have statutory force) in a particular manner and create a framework which addresses the quantum of levy sugar as well as the other related aspects, if the question of retention of sugar by the mills to specify the levy obligation, was to be in any manner dealt with, the proper place ought to have been the statutory order itself. In other words, having once sought recourse to and used the statutory power under the parent statute to make a statutory order, the Central Government could not have travelled beyond that and fallen back upon the broader power of regulation. Accepting the Union's argument in this regard would be arming it with power unarticulated in the statute and, in fact, allowing it to supplant and

not merely supplement its provisions. Furthermore, the Court is of the opinion that there is no good ground to interfere with the Single Judge's decision especially since the levy sugar concept and regime has been abolished in the last nearly five years.

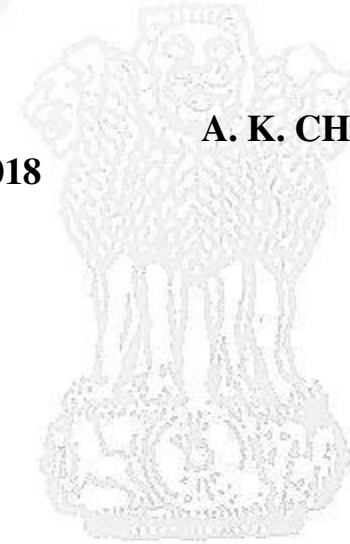
The appeal lacks merit and is consequently dismissed. The pending application also stands disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 08, 2018

kks



सत्यमेव जयते