IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.5264 & 5265 of 2008
and
M.P.Nos. 1 & 1 of 2008

Cheyyar Co-operative Sugar Mills Limited,
Rep. By its Administrator,
R.Vanitha,
Anakkavoor,
Thenthandalam, Cheyyar Taluk. .. Petitioner in both WPs

vs

1.The Deputy Commercial Tax Officer,
Vandavasi.

2.The Appellate Assistant Commissioner (CT),
Vellore.

3.The Sales Tax Appellate Tribunal (Main Bench),
Rep. By its Secretary,
City Civil Court Building,
High Court Complex,
Chennai – 600 104.

4.The State of Tamil Nadu
Rep. By its Deputy Commissioner (CT)
Vellore. .. Respondents in both WPs

Prayer in WP.No.5264 of 2008: Petition filed under Article 226 of the Constitution of India praying to call for the records on the files of the third respondent herein in S.T.A.No.280/03 (1995-96) dated 4.10.2007 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the same, or pass such further or other orders as may deem fit and proper in the circumstances of this case, and thus render justice.

Prayer in WP.No.5265 of 2008: Petition filed under Article 226 of the Constitution of India praying to call for the records on the files of the third respondent herein in S.T.A.No.277/03 (1996-97) dated 4.10.2007 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the same, or pass such further or other orders as may deem fit and proper in the circumstances of this case, and thus render justice.

For Petitioner	:	Mr.N.Prasad (in both WPs)
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate for R1, R3 & R4 R3 – Tribunal (in both WPs)

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The petitioner is the Cheyyar Co-operative Sugar Mills Limited based in Vellore District (referred to hereinafter as 'petitioner'). It is aggrieved by an order of the Sales Tax Appellate Tribunal passed on 04.10.2007 and 23.11.2007 reversing the order of the Appellate Assistant Commissioner and restoring the assessment made in terms of the Tamil Nadu General Sales Tax Act 1959 (hereinafter referred to as 'Act') relating to the periods 1995 – 96 and 1996 – 97.

2. The issue in question relates to the taxability or otherwise of the State Advisory Price (SAP) voluntarily paid by the petitioner mills to cane growers. Some history would be apposite to deal with the legal

question that raises for resolution in these matters.

3. The petitioner mill is engaged in manufacture and trading of sugar, declared as an essential commodity by the Government of India under the provisions of the Essential Commodities Act, 1955 (in short, 'Essential Commodities Act').

4. Article 3 of the Sugarcane (Control) Order, 1996 (in short, 'Control Order') provides for various procedures in connection with the production, including licencing, pricing and transportation, of sugarcane. The object of the Control Order is to bringing about a balance between the interests of all stakeholders engaged in the supply of sugar being cane growers, sugar mills and consumers.

5. Such equilibrium is set against the context of adequacy in supply of sugar for every sugar production season. In addition to the price that is mandated to be paid under the Control Order yet another component is the State Advisory Price (SAP) that the sugar mills have been advised to provide for.

6. States have taken varied approaches in regard to the requirement to pay SAP. The State of Tamil Nadu had issued Government Orders providing for the payment of SAP that had been challenged by the mills. The litigation travelled to the Hon'ble Supreme Court and, along with connected matters, was ultimately decided by a Constitution Bench in the case of *U.P. Cooperative Cane Unions Federations v West U.P. Sugar Mills Association and others* [(2004) 5

SCC 420].

7. Paragraph 41 of that judgment refers to the position prevailing in Tamil Nadu then, and reads as follows:-

> *"It is important to note that in Tamil Nadu there is no statutory provision for regulating the supply and purchase of sugarcane for use in sugar factories or khandsari sugar manufacturing units. Therefore, the order of the State Government dated 15.11.1980 fixing higher revised minimum cane price had not been issued in exercise of any statutory power. In para 6 of the Reports, the Court observed that unless there be an agreement between the grower and the purchaser for purchase of the sugarcane at higher price, the obligation of the purchaser is to pay the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. It was further observed that without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under Clause 5-A cannot form part of the price of sugarcane. It was pointed out in para 7 that the State advice to the purchasers to pay certain amount in addition to the minimum price fixed under Clause 3 in anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount of advance was paid in anticipation of fixation of additional cane price under Clause 5-A, which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance, then the purchaser would have to pay the deficit amount. Similarly, when the amount of advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact that whether the refund was actually made or not. Any amount paid by way of advance towards a probable additional price to be worked out in accordance with the formula given in the 1966 Order could not be*

treated as price of sugarcane for the purpose of levy of sales tax. In fact in para 9 of the reports it was observed that for treating the entire amount paid by the purchaser as the price of the sugarcane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugarcane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as an aggregate of the price fixed under Clauses 3 and 5-A of the 1966 Order. It was further held that unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under Clause 3 and the additional price fixed under Clause 5-A, as part of the amount paid in advance prior to the fixation of the additional price under Clause 5-A, cannot be treated automatically as a part of the total price of the sugarcane.

8. Thus, the procedure followed in the State of Tamil Nadu for fixation of SAP, was collaborative. The three stake holders, the State, cane growers and the sugar mills, were expected to negotiate and fix, the SAP in a consensual manner, in a tripartite meeting. Ultimately it was only in 2018 that the Tamil Nadu Sugarcane (Regulation of Purchase Price) Act, 2018 was enacted, bringing a statutory basis for the levy of advisory price over and above the minimum price fixed under the Central Act.

9. The above narration is intended to set in context the discussion in the paragraphs to follow, and in addressing the legal issue that arises in this matter. We have heard Mr.N.Prasad, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate for the official respondents in detail.

10. Sugarcane is taxable at the point of purchase and in the present case, it is the difference between the statutory minimum price on the one hand, and the excess over and above the minimum price, that has been brought to tax. Admittedly, the petitioner has chosen voluntarily to pay to the cane growers the SAP over and above the statutory minimum price.

11. However, the petitioner is aggrieved, as according to it, the basis under which the payment of SAP was made was voluntary and not either contractual or statutory. We have noted earlier that till 2018 the payment of SAP was entirely dependent on the negotiations between the State, mills and cane growers in a tripartite meeting. There was no statutory compulsion to pay SAP and the mills paid SAP based on the outcome of the deliberations in the tripartite meeting.

12. In this context, the findings by the Sales Tax Appellate Tribunal, in the case of *Ambur Cooperative Sugar Mills* in STA 1561 of 2002 batch (order dated 03.09.2007) assume relevance. The STAT notes at paragraph 9 (internal page 7 of the order), the submission of the State that there was a meeting conducted for the purpose of fixation of SAP on 04.11.1995.

13. However, the minutes of that meeting that had been produced by the representative of the Commercial taxes department, revealed that the sugar mills had not been represented and hence the meeting was not a tripartite meeting. Incidentally, the present Petitioner is also

situated in Vellore District and it is an admitted position that it had not participated in the tripartite meeting for fixation of price.

14. This confirms the factual position that there had been no tripartite meeting held in 1995. The fact remains however that the petitioner had voluntarily paid the SAP to the cane growers that year. In *Thiru Arooran Sugars Ltd v Deputy Commercial Tax Officer, Mannargudi and others* (1978) 71 STC 444, that assessee, also a sugar manufacturer, had faced a similar position as arising in this case. The SAP had been paid on the basis of agreements with the cane growers.

15. At paragraph 43, the Division Bench of this Court notes that such payment might constitute an *'advance payment'* per Section 3(2) of the Act. However, they go on to say that as the advances had been made under implied pressure from the cane growers, such payments were not really voluntary, *stricto senso.*

16. At paragraph 48, the Bench states that having regard to the character, the mode and the manner of payment of the advisory price, the character of the payment made would not qualify to be characterized as '*price*'. We are told by the Revenue that the aforesaid decision has become final.

17. In the case of *State of Tamil Nadu and others v Kothari Sugars & Chemicals Ltd / Tungabhadra Sugar Works and another v State of Karnataka and others,* this very question come up for decision before the Apex Court and vide judgment reported in 101 STC 197, the

decision in *Thiru Arooran Sugars Ltd* stands affirmed. The relevant observations are extracted below:-

> *"On a perusal of the relevant provisions of the Sugar- cane (Control) Order, 1966, particularly Clauses 3 and 5-A therein, it is clear that the total price of sugar-cane fixed thereunder is the aggregate of the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A. Thus, unless there be an agreement between the grower and the purchaser for purchase of the sugar-cane at a higher price, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under Clauses 3 and 5-A. In other words, under the Statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugar-cane at an amount higher than the minimum cane price fixed under Clause 3 and the additional cane Price fixed under Clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under Clause 5-A cannot form part of the price of cane sugar.*
>
> *In these matters there is admittedly no statutory basis since the 'State advice' to the purchasers to pay a certain amount in addition to the minimum cane price fixed under Clause 3, in anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount paid as advance under the State advice also does not have any contractual basis since this was not paid as a result of an agreement between the grower and the purchaser. The amount of advance was paid in anticipation of fixation of the additional cane price under Clause 5-A which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance then the purchaser would have to pay the deficit amount. Similarly, when the amount*

of advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact whether the refund was actually made or not. For the purpose of determining the price of sugar-cane for computation of the purchase tax, the only significant amount is the aggregate of the minimum price fixed under Clause 3 and the additional cane price fixed under Clause 5-A, unless a higher price is paid to the grower by agreement between the purchaser and grower.

It was argued by learned counsel for the State that the higher price inclusive of the excess amount included in the advance paid on State advice is deemed to have been paid by an agreement between the grower and the purchaser and, therefore, the entire amount would be the price of sugar- cane. This is a question of fact in each case. It is true that if in a given case it is found as a fact on the basis of evidence that the purchaser had agreed with the grower to pay the higher price described as 'advance' including the amount in excess of the additional price fixed under Clause 5-A then in that case the entire amount would be the price of sugar-cane. However, there is no such basis found in the present case wherein the excess amount forming part of the advance was paid only under compulsion on the direction contained in the 'State advice'. It is significant that a provision for adjustment is clearly made in sub-clause (6) of Clause 5-A. This provision supports the view we have taken. The decision of the Madras High Court which is reported in Thiru Arooran Sugars Ltd. Vs. Deputy Commercial Tax Officer Mannargudi & Ors., 1988 (71) STC 444 is, therefore, upheld and the appeals against the decision of the Madras High Court are, therefore, dismissed."

18. In the present case, there is nothing to show that the advance payments are irrecoverable or that the petitioner does not intend to recover the same. However, and admittedly, the payment of

SAP by the petitioner is voluntarily, though under compulsion, and not under a condition imposed either by contract or statute.

19. We thus agree that the payment of SAP is voluntary, traceable solely to maintaining goodwill and a congenial relationship with the cane growers. Such payments cannot be taken to be part of purchase price for the purpose determining turnover under the Act as the payments to be taken into account for that purpose can only be the payments mandated to be paid under the statute. Incidentally, the petitioner is under a statutory obligation to pay tax in respect of SAP from the year 2018 onwards and the petitioner confirms that such payments are being made.

20. In light of the above discussion, we set aside the impugned orders and allow these writ petitions. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
09.08.2024

Index:Yes
Neutral Citation:Yes
ssm

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2.The Appellate Assistant Commissioner (CT),
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3.The Secretary,
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