Allahabad Canning Co vs Union Of India on 24 July, 1984

Equivalent citations: 1984 AIR 1741, 1985 SCR (1) 207, AIR 1984 SUPREME COURT 1741

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Amarendra Nath Sen, Misra Rangnath

PETITIONER:
ALLAHABAD CANNING CO.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT24/07/1984

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, AMARENDRA NATH (J)
MISRA RANGNATH

CITATION:
1984 AIR 1741 1985 SCR (1) 207
1984 SCALE (2)227

ACT:
Levy Sugar Price Equalisation Fund Act, 1976-Proviso to s. 6 (1)-When attracted-Scope of.

HEADNOTE:
Section 3 (1) of the Levy Sugar Price Equalisation Fund Act, 1976 established a fund known as the Levy Sugar Price Equalisation Fund. Sub-sec. (2) of section 3 provided that there shall be credited to the Fund amounts representing all excess realisations made by the manufacturers. Section 6 (1) provided that where any amount of excess realisation was credited to the fund, the buyer of levy sugar from whom such excess realisation as made by the manufacturers shall be entitled to the refund of such excess realisation from the Fund. There was a proviso to section 6 (1) which inter alia precluded buyers of levy sugar to claim refund of excess realisation in certain cases. The appellants, who carried on

the business of manufacture of syrups, squashes, jams and jellies, preservation of vegetables and other food products and from whom excess realisation was made and credited to the Fund, applied for refund of such realisation. The Central Government rejected the appellants' application for refund on the ground that they had not been able to establish fully and clearly that the incidence of higher sugar price was not passed on by them to the consumers of the end products. The appellants preferred a writ petition which was dismissed by the High Court on the same ground. Hence this appeal by special leave.

Allowing the appeal,

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HELD: The proviso on its plain terms applies only where the party claiming refund of the amount of excess realisation is a wholesale or a retail dealer who has passed on the incidence of the excess over the controlled price of levy sugar to the retail dealer or to the consumer, as the case may be. The proviso obviously cannot apply to a case where a claim for refund has been made, by a consumer of sugar from whom excess realisation has been made by the manufacturer of sugar. [106C-D]

In the instant case the appellants were admittedly consumers of sugar

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and not dealers in sugar and since they were not dealers in sugar, there could be no question of any incidence of excess being passed on by them to the retail dealer or to the consumer. [106D]

The proviso to section 6 (1) contemplates a case where a dealer-whether wholesale or retail-sells sugar to a retail dealer or consumer as the case may be and not where a person sells a manufactured product containing sugar as one of its ingredients. [106G]

In the instant case the appellants sold manufactured product containing sugar as one of its ingredient. Therefore, the proviso to section 6 (1) was not attracted and the appellants were entitled to claim refund of the excess realisation from the Fund. [106H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1487 of 1984.

Appeal by Special leave from the Judgment and Order dated the 21st August, 1981 of the Allahabad High Court in Civil Misc, Writ Petition No. 9820 of 1981 Harbans Singh for the appellant.

Abdul Kader and G.S. Narayanan for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J. This is an appeal by Special Leave directed against an order of the High Court of

Allahabad dismissing a writ petition filed by the appellants claiming refund of a sum of Rs. 22681.88 from the Levy Sugar Price Equalisation Fund under Section 6, sub-section (1) of the Levy Sugar Price Equalisation Fund Act, 1976 (hereinafter referred to as the Equalisation Fund Act). The facts of the case are few and may be briefly stated as follows:

> The appellants carry on business of manufacture of syrups, squashes, jams and jellies, preservation of vegetables and other food products. One of the essential raw materials for these products manufactured by the appellants is sugar. There was at the material time Sugar Control Order 1966 issued under S. 3 of the Essential Commodities Act, 1955, clause 4 of which provided that no purchaser shall sell or agree to sell or otherwise dispose of sugar or deliver or agree to deliver sugar or remove any sugar from the bonded godown of the factory in which it is stored, except under and in accordance with the directions issued in writing by the Central Government or the Chief Director. Pursuant to this Order the Central Government introduced the policy of partial decontrol of sugar in August, 1967 and under this policy, the Central Government adopted a scheme of acquiring levy sugar from the factory. The price of levy sugar acquired by the Central Govt. was fixed every year in accordance with the principles set out in Section 3 (3c) of the Essential Commodities Act, 1955 and during the period in question the price of levy sugar was determined under the sugar (Price Determination) Order 1972. This order was however challenged by factories manufacturing sugar and an interim order was passed by the High Court of Allahabad permitting them to charge a price higher than that fixed under the order, on condition that they furnished bank guarantee for the difference in price in favour of the Registrar of the High Court. Now, different prices were fixed under the sugar (Price Determination) order, 1972 for different zones and so far as the East U.P. Zone was concerned, the price fixed was Rs. 175 per quintal exclusive of excise duty, sales tax etc. with the result that the price inclusive of these taxes and duties amounted to Rs. 190 per quintal. The appellants purchased from K.M. Sugar Mills Limited, Motinagar, Faizabad a certain quantity of sugar under a release order issued by the Central Government under the Levy Sugar Supply (Control) order 1972 and they lifted an aggregate quantity of 400 quintals of sugar on 12-

8-1972 and 16-8-1972. Now, under the sugar (Price Determination) order, 1972 K.M. Sugar Mills Limited were not entitled to recover from the appellants price at a rate exceeding Rs. 190 per quintal but by virtue of the stay order granted by the High Court of Allahabad they recovered from the appellants price at the rate of Rs. 234.89 per quintal and the total excess amount charged by K.M. Sugar Mills Limited from the appellants thus came to Rs 22681.88 for which bank guarantee was given by K.M. Sugar Mills Limited in favour of the Registrar of the High Court. The writ petition filed by K.M. Sugar Mills Limited against the Sugar (Price Determination) Order, 1972 along with other similar writ petitions filed by other manufacturers of sugar was however, ultimately dismissed by the Allahbad High Court in November, 1974 with the result that the Registrar of the High Court became entitled to encash the bank guarantee given by K.M. Sugar Mills Limited and a sun of Rs. 22,681.88 was accordingly recovered by the Registrar under the bank guarantee.

Since the excess amount recovered by the various manufactu-

rers of sugar, including K.M. Sugar Mills Limited really belonged to the consumers to whom sugar had been sold by these manufacturers, Parliament enacted Levy Sugar Price Equalisation Fund Act, 1976 with effect from 1-4-1976 for the purpose of ensuring that the excess amount so recovered should not remain in the hands of manufacturers of sugar so as to unjustly enrich them but should be paid to the consumers of sugar from whom it had been unlawfully recovered by the manufacturers. Section 3(1) of the Equalisation Fund Act established a Fund known as the Levy Sugar Price Equlisation Fund. Sub Section (2) of Section 3 provided that there shall be credited to the Fund amounts representing all excess realisations made by the manufacturers, irrespective of whether such realisations were made before or after the commencement of the Equalisation Fund Act. Pursuant to this provision, the Registrar of the High Court deposited a sum of Rs. 22681.88 to the Credit of the Fund. Section 6 of the Equalisation Fund Act then proceeded to enact that where any amount of excess realisation is credited to the Fund, the buyer of Levy sugar from whom such excess realisation was made by the manufacturer shall be entitled to the refund of such excess realisation from the Fund. This Section is material for the purpose of determination of the controversy arising in the present appeal and we would, therefore, reproduce it as follows:

> (1) Where any amount is credited to the Fund a refund shall be made from the Fund to the buyer of Levy Sugar from whom any excess realisation was made by the producer or dealer, Provided that no buyer shall be entitled to claim as refund under this sub-section if he-
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> (a) being the wholesale dealer, had passed on the incidence of such excess over the controlled or fair price of levy sugar to the retail dealer by whom the price of such sugar was paid or
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> (b) being a retail dealer, had passed on the incidence of such excess over the controlled or fair price of levy sugar to the consumer by whom the price of such sugar was paid."

Since a sum of Rs. 22681.88 represented excess realisation made by K.M. Sugar Mills Limited from the appellants and this amount was credited to the Fund by the Registrar of the High Court, the appellants filed an application in form IV making a claim for refund of this amount from the Fund. This application was filed by the appellants, on 30th April, 1979, admittedly within the prescribed period of six months. The Central Government, however, rejected the claim made by the appellants on the ground that they had not been able to establish fully and clearly that the incidence of higher sugar price was not passed on by them to the consumers of the end products.

The appellants thereupon preferred a Writ Petition in the High Court but the High Court also rejected the Writ Petition on the same ground, namely, that according to the finding recorded by the Central Government the appellants had not been able to establish fully and clearly that the incidence of higher sugar price was not passed on to the consumers of the end products and since this was a finding of fact base on evaluation of the material and evidence produced by the appellants before the

competent authority, the High Court would not be justified in interfering with the order of the Central Government. The appellants thereupon preferred the present appeal with special leave obtained from this Court.

The main point of controversy between the parties centres round the true interpretation of S. 6 Sub-section (1) of the Equalisation Fund Act. This provision lays down as a condition precedent to its applicability that the excess realisation made by the manufacturer of sugar should have been credited to the Fund. Now, the application made by the appellants in from IV stated in so many terms that the amount in question had been deposited by the Registrar of the High Court in terms of the Levy Sugar Price Equalisation Fund Rules, 1972, through the Chief Pay & Accounts Officer, Govt. Of India, Ministry of Agriculture & Irrigation, Department of Food, New Delhi. This statement was not at any time disputed on behalf of the Central Government either in the order made by the Central Government rejecting the claim of the appellants or in the proceedings before the High Court. It is indisputable that a sum of Rs. 22681.88 representing the excess realisation made from the appellants by K.M. Sugar Mills Limited was credited to the Fund by the Registrar of the High Court. And in any event, this must be presumed to have been done because the Equalisation Fund Act having been enacted for this purpose, the Registrar of the High Court would naturally be expected to carry out his obligation under the statute by depositing the amount of excess realisation recovered by him under the bank guarantee given by K.M. Sugar Mills Limited. There can, therefore, be no doubt that in terms of Section 6, Sub-section (1) the appellants were entitled to claim refund of the sum of Rs. 22681.88 from the Fund. The only question is whether the proviso to section 6, Sub-section (1) precluded the appellants from claiming refund of that amount. The proviso on its plain terms applied only where the party claiming refund of the amount of excess realisation is a wholesale or a retail dealer who has passed on the incidence of the excess over the controlled price of levy sugar to the retail dealer or to the consumer, as the case may be. The proviso obviously cannot apply to a case where a claim for refund has been made by a consumer of sugar from whom excess realisation has been made by the manufacturer of sugar. The appellants were admittedly consumers of sugar and not dealers in sugar and since they were not dealers in sugar, there could be no question of any incidence of excess being passed by them to the retail dealer or to the consumer.

The learned counsel appearing on behalf of the respondent contended that the excess over the controlled or fair price of levy sugar must have been passed on by the appellants to the consumer when they sold the manufactured products to them, because the higher price paid by them for the sugar purchased from K.M. Sugar Mills Limited must have been taken into account by them in fixing the price of the manufactured products. This may be so or may not be so. It is not necessary for us to examine this question because it is irrelevant on the terms of the proviso to Section 6, Sub-section (1). That proviso deals with a situation where a wholesale or retail dealer passes on the incidence of excess over the controlled or fair price of levy sugar to a retail dealer or consumer, who purchases such sugar. It contemplates a case where a dealer-whether whole sale or retail-sells sugar to a retail dealer or consumer as the case may be and not where a person sells a manufactured product containing sugar as one of its ingredients, we have, therefore, no doubt that the proviso to Section 6, Sub- section (1) was not attracted in the case of the appellants and, consequently, the appellants were entitled to claim refund of the sum of the Rs. 22681.88 from the sum of Fund.

We accordingly allow the appeal, set aside the judgment of the High Court and issue a Writ directing the respondent to pay to the appellants a sum of Rs. 22681.88 together with interest thereon at the rate of 6 per cent per annum from today until payment. The respondent will pay the costs of the appeal to the appellants.

H.S.K. Appeal allowed.