

Hill Tiller and Co. and Others

Vs

Coffee Board, Bangalore, Through Its Chief Marketing Officer and Another

Civil Appeal No. 584 (N) of 1969

(R. S. Sarkaria, V. D. Tulzapurkar, A. P. Sen JJ)

09.03.1979

JUDGMENT

TULZAPURKAR, J. –

1. This appeal by certificate is directed against the judgment and order passed dated June 5, 1968 of the Mysore High Court dismissing Writ Petition No. 1765 of 1966 filed by the appellants under Article 226 of the Constitution.

2. The facts giving rise to the writ petition may be stated thus : Chicory, a component used for blending with coffee, used to be imported from foreign countries. Prior to October 1, 1960 licences for import of chicory by "Actual Users" were issued directly to the by the Joint Chief Controller of Exports and Imports, Madras. Between October 1, 1960 and September 30, 1962 these imports were canalised through the coffee Board but on and after October 1, 1962 imports on account of "Actual Users" were stopped as the government discontinued the scheme of allotment of chicory to "Actual Users". Blended coffee has been a commodity for export earning valuable foreign exchange and with a view to give incentive to exporters of coffee from India, the government introduced a scheme called Coffee Export Promotion Incentive Scheme in the year 1962 whereunder through the Coffee Board allotment of imported chicory was done to persons who exported coffee. The values of chicory so allotted to each exporter registered with the Board was related to the amount of foreign exchange earned by him on the export of blended coffee. The scheme was published in a Circular dated September 19, 1962 addressed by the Coffee Board to all registered exporters whereunder initially in respect of coffee shipped by the India exporters for consumption in U.S.A. from January 1, 1962 to June 30, 1962 the quantity of imported chicory to be allotted to the exporters was to be calculated on 10% of the foreign exchange equivalent in rupees earned by each exporter on the quantity of coffee shipped to U.S.A. and "the rate for allotment of imported chicory to the exporters will be the same as that fixed by the Board for allotment of imported chicory to Actual Users". The scheme remained in force from January 1, 1962 to April 30, 1966 whereafter it was discontinued; but for periods subsequent to June 30, 1962 under different circulars issued from time to time the quantity to be allotted was altered, for instance, for the period from January 1, 1963 to June 30, 1963 the quantity was reduced to 2 1/2% of the foreign exchange equivalent in rupees earned by each exporter in respect of quantities shipped to U.S.A and to the extent of 1 1/2% in respect of quantities shipped to non-bilateral account countries except U.S.A. and for the period July 1, 1963 to September 30, 1963 the allotment of chicory was reduced to 2 % of the foreign exchange earned by the exporters but it was again enhanced to 3% which enhanced allotment continued in respect of exports up April 30, 1966. It appears that after the said scheme was discontinued, the Coffee Board had with it on May 1, 1966 a balance stock of 508 tones of imported chicory which the Coffee Board started disposing of in small quantities by public auction.

3. On September 7, 1966 the appellants filed a writ petition No. 1765 of 1966 against the Coffee Board and the Union of India seeking a mandamus directing the respondents, particularly the Coffee Board to make the allotment of the balance quantity of imported chicory lying with it to registered exporters of coffee in equitable proportions according to what they were entitled to on the basis of the circulars on the percentage of their earnings of foreign exchange on their export of coffee and an injunction restraining it from selling or disposing of the same in any other manner. Such reliefs were sought on two grounds, namely, (a) that the balance stock of chicory lying with the Coffee Board which had been imported on exporters' account must be regarded as being held in trust for registered exporters of coffee and that the Coffee Board could not sell or otherwise deal with or allot such chicory to any other person, and (b) that in determining the value of the chicory that had been allotted to the exporters of the coffee on the basis of the foreign exchange earned them the Coffee Board had wrongly taken the price inclusive of import duty paid by it and handling and administrative charges and other expenses incurred by it while only C.I.F. price of chicory should have been adopted and this had resulted in allotment of lesser quantities of chicory to the exporters. Negativating both the grounds the High Court dismissed the writ petition of the appellants. As regards the first ground the High Court, on the material placed before it by the Coffee Board, came to the conclusion that the total quantity of chicory imported by the Coffee Board on exporters' account i.e. under licences granted by the Government of India under the Coffee Export Promotion Incentive Scheme was only 2140 tonnes while the total quantity of chicory allotted to exporters for the entire period of the scheme was 2615 tonnes, that is to say, the total allotment to experts was in excess of the total quantity imported under the scheme, which excess quantity was perhaps diverted from the quantity of chicory imported on Actual Users' account and, therefore, the registered exporters could not claim any further allotment from of the said stock of 508 tonnes of chicory. Regarding the second ground the High Court took the view that the appellants had failed to substantiate how they were entitled to claim that C.I.F. price of imported chicory should have been adopted for determining the value of the chicory allotted to the exporters.

4. At the outset it may be stated that counsel for the appellants did not question the High Court's finding on the first point, namely, that the total allotment of imported chicory to the exporters was in excess of the total quantity imported on exporters' account under the scheme. The only contention urged in support of this appeal before us was that the exporters (including the first appellant) were entitled to allotment of additional quantity of chicory from out of 508 tonnes lying with the Coffee Board in equitable proportion on the basis of the relevant circulars, inasmuch as while making the earlier allotments the value thereof had not been reckoned on the basis of C.I.F. price of the imported chicory only but the price inclusive of import duty, handling and administrative charges of the Board had been adopted resulting in lesser quantities being allotted to them.

5. In support of the above contention counsel for the appellants placed strong reliance upon paragraphs 2, 3 and 4 of the circular of the Coffee Board dated September 19, 1962 explaining the method of allotment of imported chicory under the Incentive Scheme to registered exporters. It was stated that the registered exporters of coffee including the first appellant were unquestionably liable to pay the import duty, handling and administrative charges etc. to the Board separately i.e. in addition to C.I.F. value or price but it was contended that these factors ought to have been excluded while determining the quantity of chicory to be allotted to them which should have been done only on the basis of C.I.F. value or price paid by the Board while importing chicory and in that behalf reliance was placed on Rule IX of the "Rules Governing Allotment of Imported Chicory to Actual Users" framed by the Coffee Board on December 7, 1960.

6. On the other hand, counsel for the Coffee Board contended that neither the Circular dated

September 19, 1962 nor Rule IX of the Rules Governing Allotment of Imported Chicory to Actual Users supported the appellants' contention, but on the other hand, para 3 of the Circular dated September 19, 1962 clearly stated that the rate (meaning value or price of imported chicory) for determining the allotment to the exporters was "to be the same as that fixed by the Board for allotment of imported chicory to Actual Users" and while making allotment of imported chicory to Actual Users the Board had invariably and without exception reckoned the value on the basis of the price which was inclusive of import duty, handling and other administrative charges etc. and, therefore, allotments on similar reckoning had been properly made to registered exporters including the first appellant. It was further contended that since the registered exporters including the first appellant had acquiesced in and accepted the earlier allotments made on the basis of the price being inclusive of import duty, handling and other expenses incurred by the Board they should be not permitted to make a grievance in that behalf at a belated stage. Counsel, therefore, urged that on both these grounds the appellants' contention deserves to be rejected.

7. From the rival contentions urged by counsel on either side, which we have summarised above, it will appear clear that the main question that arises in the appeal is whether under the terms of the Incentive Scheme as contained in the Circular issued by the Coffee Board on September 19, 1962 the registered exporters of coffee were entitled to have their allotments of imported chicory determined on the basis of only the C.I.F. price paid by the Board for importing chicory as contended by the appellants or the Coffee Board was entitled to make the allotments on the basis of the value or price of such imported chicory being inclusive of import duty, handling and administrative charges etc. incurred by the Board as urged by it ? Since the question depends upon the terms of the Incentive Scheme it will be desirable to set out the material terms which are to be found in paragraphs 2, 3 and 4 of the said Circular. The material portion of the Circular runs thus :

# COFFEE BOARD BANGALORE 19-9-1962CCY/62/849

All Registered Exporters,

Dear Sirs,##

Allotment of Chicory to exporters of Coffee as an Export Promotion Incentive.

#1. ....##

2. The incentive of will be in the form of an allotment of imported Chicory to the exporters who have actually shipped coffee to U.S.A. from January 1, 1962. The quantity will be calculated on 10% of the foreign exchange equivalent in rupees earned by each exporter of the quantities of coffee shipped to U.S.A. from January 1, 1962.

3. The rate for allotment of imported chicory will be the same as that fixed by the Board for allotment of imported chicory to actual users.

4. Within one month from the date of issue of this circular, any registered exporter who has exported coffee to U.S.A. during January/June 1962 may submit a formal application to the Board, mentioning the quantity of coffee shipped by him during the period January/June 1962 and the amount of foreign exchange earned by him by way of these exports. The amount of foreign exchange earned by the exporter and mentioned in the application should be duly certified by the foreign exchange Banks

through which the bills were negotiated by the exporter. The quantity to be given as incentive will be determined in the following manner :

- (1) Foreign exchange equivalent in rupees earned on shipments of coffee to U.S.A. during the period January 1962 Rs.
- (2) Ten per cent of the above Rs.
- (3) Rate for allotments of chicory Rs.
- (4) Entitlement of the exporter towards incentive (amount shown against item (2) divided (3) Rs.

#5. ....6. .... Yours faithfully, (Sd.) Chief Coffee Marketing Officer.##

Paras 3 and 4 are very important and throw light on the issue to be decided. It is clear that expression "rate for allotment" occurring in para 3 and in item (3) of para 4 meant or referred to the value or price of chicory for determining the allotments. (In fact in one of the subsequent circulars dated March 25, 1966 item (3) of para 4 ran : "Value of chicory for determining entitlement".) Therefore, under para 3 it was stipulated that the rate (meaning value or price of imported chicory) for allotment to the exporter was to be the same as had been fixed by the Board for allotment of imported chicory to Actual Users (for whom imports of chicory had been canalised through the Coffee Board in the earlier period). Secondly, para 4 indicated the manner in which the entitlement of each exporter was to be determined and reading items (2), (3) and (4) of that para it is clear that the quantity of such entitlement was to be arrived at by dividing the amount shown against (2) (viz. 10% of the foreign exchange earned) by the amount shown against (3) (viz. value or price of the imported chicory). The question is while dividing the amount at item (2) by the amount at item (3) whether the latter amount should be only the C.I.F. price paid by the Board while importing chicory or that amount should be the value or price inclusive of import duty, handling and administrative charges etc. incurred by the Board ? In our view, para 3 furnishes the answer to the question, namely, that the rate (meaning the value or price of imported chicory) for making allotment to each exporter shall be the same as was fixed by the Board for making allotment of imported chicory to Actual Users. In paragraph 17 of the counter-affidavit dated October 10, 1966 filed by the Coffee Board in reply to the writ petition, it had been categorically averred that the rate for allotment to Actual Users included not merely the C.I.F. value of the chicory but also the import duty and other costs of importation and other incidental expenses. This averment was never disputed or challenged in the High Court but in order to satisfy ourselves that this averment was based on factual material we called upon the Coffee Board to file an additional affidavit setting out material if any on which the averment was based and accordingly an additional affidavit dated February 8, 1979 on behalf of the Coffee Board has been filed before us. In paragraph 3 thereof a nothing made in original file No. CCY/22/60 relating to the period November 1960 has been extracted (we may state that the original file containing the noting was produced for our perusal at the hearing). The noting relates to the subject : "Import of Chicory-General Procedure for Allotment to Actual Users" and Item 12 of the note deals with 'fixation of selling price' and it has been stated

under that item that "for fixation of selling price of imported chicory the following items will have to be taken into account : (a) C.I.F. price of chicory powder per ton, (b) Import duty at 50% ad valorem, (c) Port Trust dues, demurrage charges, etc., (d) Clearing charges, cartage, godown rent, (e) Commission charges for Clearing Agent if agreed, and (f) Administrative expenses of the Board. With these formalities, we may be able to go ahead with the scheme". Paragraph 3 of the affidavit proceeds to state that the aforesaid noting had been approved by the Chairman of the Coffee Board and was implemented during the subsequent years and that there had been absolutely no modification in the method of arriving at the price while the actual price varied from year to year on account of the changes in the components that went into the allotment price. From this affidavit it is quite clear that while making allotments of imported chicory to Actual Users the rate or value of imported chicory was invariably taken to be the price inclusive of import duty, handling and administrative charges and other items of expenditure. If that be so in terms of a para 3 of the Circular dated September 19, 1962 the registered exporters of coffee including appellant 1 were liable to have their entitled made to them on the basis of not merely the C.I.F. price of imported chicory but the price which was inclusive of import duty, handling and administrative charges and other expenses incurred by the Board and the allotments made to them on this basis were proper.

8. Turning to Rule IX of the Rules Governing Allotment of Imported Chicory to Actual Users framed by the Coffee Board on December 7, 1960 on which reliance was placed by counsel for the appellants it appears to us clear that the said rule on its proper construction cannot avail the appellants. It is true that the said Rules were framed by the Coffee Board on the subject of allotment of imported chicory to Actual Users during the period October 1960 - March 1961 when the imports of chicory were canalised through the Coffee Board. Rule IX which dealt with 'Sales Tax' will have to be read in the context of the preceding Rule VIII that dealt with 'Payment' of price by the allottee of imported chicory and so read it will be clear that the same was framed only for making it clear that the allottee was also liable to pay sales tax and other taxes, in addition to the price payable by him under Rule VIII. Rule IX had nothing to do and never dealt with the topic of how the allotment to the Actual User was to be determined. It is in this context Rule IX will have to be construed. It ran thus :

IX. Sales Tax. - The allotment rate shall be exclusive of all taxes such as sales tax - both Central and State - and any other taxes, cesses, duties leviable on the same according to law. These shall always be borne by the allottee.

Counsel for the appellants urged that the expression 'the allotment rate' in the above rule meant 'rate (price) for allotment' and, therefore, this rule provided for reckoning the price for making allotment as being exclusive of all taxes, cesses and duties (which would include import duty). It is impossible to put such construction on this rule. In the first place the expression used is not 'rate for allotment' (as is the case in paras 3 and 4(3) of the Circular dated September 19, 1962) but the expression is 'the allotment rate' which must mean and did mean 'the allotment price' meaning thereby the price of the allotment or price of the allotted quantity which shall be exclusive of all taxes, cesses and duties leviable thereon under the law. Secondly, the context as indicated above shows that the expression 'the allotments rate' must have meant the 'rate or price of the allotment'. On its proper construction, therefore, the said rule does not support the appellants' contention that the value or price of imported chicory was to be reckoned as exclusive of taxes, cesses and duties while determining the quantity of the allotment.

9. In our view, therefore, neither under the terms of the Circular dated September 19, 1962 nor under Rule IX of the Rules for Allotment of Imported Chicory to the Actual Users framed on December 7, 1960 were the registered exporters (including the first appellant) entitled to have allotments of imported chicory made to them on the basis of merely the C.I.F. price paid by the Board while importing chicory.

10. Moreover, we find considerable force in the contention of counsel for the Coffee Board that the registered exporters (including the first appellant) should not be permitted to put forward their aforesaid grievance at a belated stage, for, the facts emerging on record in that behalf are very revealing. It was after accepting the earlier allotments made on the basis of the price being inclusive of import duty, handling and administrative charges and other expenses incurred by the Board under the scheme that for the first time by its letter dated October 4, 1965 the Association (second appellant) made its complaint that the price was wrongly being reckoned as inclusive of import duty, handling and administrative charges etc. to which the Coffee Board by its reply dated October 19, 1965 asserted that the price had been fixed after careful consideration and the same could not be reduced. Even thereafter by its letter dated January 28, 1966, the Association seems to have acquiesced in and accepted allotments made to the registered exporters on that basis up to the month of October 1965 and merely stated that the Association will feel obliged if allotments for the month of November and onwards were made on the basis of mere C.I.F. price paid by the Board and that too because the market for imported chicory was declining very fast with the result that the coffee exporters were unable to realise profits as calculated by them and, therefore, in order to enable them to reduce their losses the request was made. In other words, relief of sympathetic consideration was solicited by the Association from the Coffee Board with regard to future allotments. In these circumstances the grievance made by the appellants cannot be entertained by a court of law.

11. In the result the appeal fails and is dismissed with costs.

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