

Shri Anand Sugar Mills

Vs.

State of Uttar Pradesh and Others

Civil Appeal No. 946(N) of 1972

(D. P. Madon, G. L. Oza JJ)

20.12.1985

JUDGMENT

MADON, J. -

1. This appeal by certificate is directed against the judgment and order of the Allahabad High Court dismissing the writ petition filed by the appellant Firm challenging the validity of a notice dated April 21, 1970, demanding Rs 1,76,788 on account of interest on delayed payment of purchase tax under the U.P. Sugarcane (Purchase Tax) Act, 1961 (U.P. Act of 1961), and a recovery certificate dated March 6, 1970 for Rs 80,072.95 on account of cane price and interest thereon under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act of 1953), issued by the Cane Commissioner, U.P., and a notice dated April 21, 1970, from the Tahsildar, Khalilabad, demanding payment of the said sum of Rs 80,072.95.

2. The facts which have given rise to this appeal lie within a narrow compass. The appellant Firm carries on the business of manufacturing sugar at Khalilabad in the district of Basti in the State of Uttar Pradesh. By his notice dated December 14, 1967, the Cane Commissioner, U.P., called upon the appellant Firm to deposit in the Government Treasury within 15 days a sum of Rs 1,79,870 due on account of interest on delayed payment of purchase tax under the U.P. Sugarcane (Purchase Tax) Act, 1961, up to October 31, 1967. The said notice concluded by stating : "All the papers for the verification of the figures of the amount of interest can be seen in the office of the Cane Inspector." By its reply dated December 22, 1967, the appellant Firm informed the Sugarcane Inspector, Gorakhpur, that it was sending its clerk to him for the purpose of receiving the details of the said amount for doing the needful in the matter. By his notice dated April 21, 1970, the Tahsildar, Khalilabad, intimated to the appellant Firm that the Cane Commissioner had sent a recovery certificate for Rs 1,76,788 "on account of interest on purchase tax ending March 31, 1969" and called upon the appellant Firm to deposit the said sum in the Treasury by May 15, 1970, failing which coercive measures would be adopted. A copy of the said notice was annexed as Annexure "C" of the appellant Firm's writ petition. By his recovery certificate dated March 6, 1970, forwarded to the Collector, Basti, the Cane Commissioner, U.P., certified that a sum of Rs 80,072.95 was due by the appellant Firm as "arrears of price of sugarcane, commission and/or interest thereon for the period ending January 31, 1970" due by the appellant Firm to the Co-operative Cane Development Unions whose names were mentioned in the said certificate. The said certificate further stated that interest included in the certificate had been charged at 7 1/2 per cent per annum from the due date of payment and that further interest at the same rate should be realised on all unpaid amounts till the date of the final payment. Copies of this certificate were sent to inter alia to the appellant Firm and to the Honorary Secretaries of Co-operative Cane Development Unions of Khalilabad, Shahjahanwa, Govind Nagar and Gaur. A copy of this recovery certificate was annexed to the

appellant Firm's writ petition as Annexure "D". By its letter dated March 9, 1970 the appellant Firm forwarded to the District Cane Officer, Basti, a copy of a memorandum of settlement bearing the same date in which it was stated that the appellant Firm and the Co-operative Cane Development Union Ltd., Khalilabad, had reconciled their accounts up to 1968-69 relating to cane price and interest thereon and commission as set out in the said memorandum. The said memorandum of settlement further stated that two cheques, both dated March 9, 1970, on account of cane price and interest thereon were enclosed in full and final settlement of such account. By its letter dated March 11, 1970 addressed to the Cane Commissioner, U.P., the appellant Firm raised various contentions regarding the amount claimed in the said recovery certificate dated March 6, 1970. In view of the order we propose to pass, it is unnecessary to refer to the contentions raised in the said letter. By his notice dated April 21, 1970, the Tahsildar, Khalilabad, intimated to the appellant Firm that the Cane Commissioner had sent to him the said recovery certificate for Rs 80,072.95 and called upon the appellant Firm to deposit the said amount in the Government Treasury by May 15, 1970. A copy of the said notice was annexed to the appellant Firm's writ petition as Annexure "E".

3. The appellant Firm thereupon filed a writ petition in the High Court, being Civil Miscellaneous Writ Petition No. 2088 of 1970, challenging the validity of the said notices and recovery certificate, namely, Annexures "C", "E" and "D" to the writ petition. The main contentions of the appellant Firm in the said writ petition was that so far as the notice demanding interest on delayed payment of purchase tax, namely, Annexure "C" to the writ petition, was concerned, no interest could be demanded until an order assessing or imposing such interest was passed. The other contention was that the said notice gave no details or particulars of the amount claimed and that the so far as the recovery certificate dated March 6, 1970, and the said notice dated April 21, 1970, namely, Annexures "D" and "E" to the said writ petition, were concerned, part of the amount shown as due had already been paid or adjusted and the rest was the subject-matter of pending arbitration proceedings.

4. The appellant Firm's writ petition was heard along with other writ petitions which raised the same contention with respect to the validity of the notice demanding interest on delayed payment of purchase tax under the U.P. Sugarcane (Purchase Tax) Act, 1961. In view of the amendments made with retrospective effect in sub-sections (3) and (5) of Section 3 of the said Act by Chapter V of the U.P. Taxes and Fees Laws (Amendment) Ordinance, 1970 (U.P. Ordinance 14 of 1970), which was repealed and replaced by the U.P. Sugarcane (Purchase Tax) (Amendment) Act, 1970 (U.P. Act 1 of 1971), the Allahabad High Court dismissed all these writ petitions with no order as to costs.

5. The appellant Firm thereafter filed this appeal after obtaining a certificate from the High Court under clause (1) of Article 133 of the Constitution of India prior to the amendment of that clause by the Constitution (Thirtieth Amendment) Act, 1972, on the ground that the amount in dispute at the time of the filing of its writ petition and in dispute on appeal was more than Rs 20,000.

6. The effect of the said amendments made in sub-sections (3) and (5) of Section 3 of the U.P. Sugarcane (Purchase Tax) Act, 1961, and of the validating section in the said Ordinance and in the said Amendment Act has been considered by this Court in Civil Appeal No. 947(N) of 1972, *Ganesh Sugar Mills v. State of U.P.* ((1986) 1 SCC 623). In that case this Court held that as a result of the said amendments which were made with retrospective effect and in view of the said validating sections the contention that no interest on delayed payment of purchase tax could be demanded or recovered without an order assessing or imposing interest did not hold good any longer and the position had been put beyond all doubt by the said validating provisions. The High Court was, therefore, right in rejecting this contention raised by the appellant Firm.

7. The High Court has not, however, dealt with the other contentions raised in the appellant Firm's writ petition. This was very probably due to the fact that several writ petitions were held together and disposed of by a common judgment and the High Court's attention was not drawn to the facts of each individual case. These contentions were that no particulars were given of the amount of interest on delayed payment of purchase tax and that the appellant Firm had paid part of the purchase price of sugarcane and that the rest of the amount was disputed and was subject-matter of pending arbitration proceedings. The appellant Firm has made a grievance of this in its application for grant of certificate made to the High Court as also in its statement of case filed in this Court. So far as the appellant's contention that no particulars were given of the amount claimed as interest on delayed payment of purchase tax is concerned, a similar contention was raised in Ganesh Sugar Mills case ((1986) 1 SCC 623) and has been upheld. The factual position here is the same. All that the said notice dated April 21, 1970 (Annexure "C" to the appellant Firm's writ petition) states is that it is "on account of purchase tax ending March 31, 1969". In the counter-affidavit filed by the Sugarcane Inspector-cum-Assistant Sugarcane Commissioner, Gorakhpur, it was stated that in pursuance of the appellant Firm's said letter dated December 22, 1967, a representative of the appellant Firm had come to the office of the Sugarcane Inspector, Gorakhpur, and was furnished with information regarding the amount of interest due on delayed payment of purchase tax. This has been denied in the affidavit in rejoinder filed by the appellant Firm. Even assuming that what is stated in the counter-affidavit is true, it does not help the respondents because the said letter dated December 22, 1967, was written with reference to the said notice dated December 14, 1967, from the Cane Commissioner to the appellant Firm claiming a sum of Rs 1,79,870 on account of interest on delayed payment of purchase tax up to October 31, 1967. It was not his notice which was challenged in the appellant Firm's writ petition but the said notice dated April 21, 1970, claiming a sum of Rs 1,76,788 on account of interest on delayed payment of purchase tax for the period ending March 31, 1969, a copy of which was annexed to the writ petition as Annexure "C". For the reason stated by this Court in Ganesh Sugar Mills case ((1986) 1 SCC 623) it will meet the ends of justice if the same order is also made in this appeal as in that case. So far as the dispute relating to the recovery of purchase price of sugarcane and commission and interest thereon is concerned, the High Court has not heard that part of the case and it therefore, becomes necessary to remit the writ petition to the High Court for determination on this point.

8. In the result, though we confirm the judgment of the High Court with respect to the finding that the notice demanding interest on delayed payment of purchase tax was not invalid on the ground that there was no order imposing or assessing such interest, we set aside the order imposing the appellant Firm's writ petition and in place thereof we substitute the following order :

9. The Cane Commissioner, U.P., will furnish to the appellant Firm within one month from today particulars of the amount of interest claimed in the notice dated April 21, 1970, from the Tahsildar, Khalilabad (Annexure "C" of the appellant Firm's writ petition in the High Court). Such particulars will consist of the period for which the tax was paid late, the amount of such tax, and the dates when such tax was due and when it was in fact paid. If the appellant Firm contests any of these particulars, it will be open to it to file its objections before the Cane Commissioner within one month of the receipt of such particulars and the Cane Commissioner will dispose of such objections within one month thereafter after giving an opportunity of a hearing to the appellant Firm. If the Cane Commissioner finds that any amount of tax was paid late, the appellant Firm will pay interest due on the same within one month of the intimation to it of the Cane Commissioner's order on the objections, if any, filed by the appellant Firm and if no objections are filed by the appellant Firm, then within six weeks of the receipt by the appellant Firm of the particulars mentioned above. In default of payment as aforesaid, the Cane Commissioner will be entitled to adopt recovery

proceedings in respect of the amount of interest payable. No recovery proceedings in respect of interest for the period to which the said notice dated April 21, 1970, relates will be taken until the date for payment specified by us above has expired.

10. The appellant Firm's writ petition, namely, Civil Miscellaneous Writ Petition No. 2088 of 1970, insofar as it relates to the challenge to the said recovery certificate dated March 6, 1970, (Annexure "D" to the appellant Firm's writ petition), and the said notice dated April 21, 1970, from the Tahsildar, Khalilabad (Annexure "E" to the appellant Firm's writ petition), is remitted back to the High Court for disposal on merits, which the High Court will endeavour to do as expeditiously as possible. In the meantime, no proceeding will be taken for the recovery of the amount claimed in the said recovery certificate dated March 6, 1960, and the said notice dated April 20, 1970.

11. There will be no order as to the costs of this appeal.

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