

Ramesh Enterprises etc

Vs

Coffee Board

Civil Appeals Nos. 5965-66 of 1990

(CJI S. Ranganath Misra, P.B. Sawant, K.Ramaswamy JJ)

07.12.1990

JUDGMENT

1. Special Leave is granted. Common questions of law and fact are involved in these two appeals and they are being disposed of by this common judgment. The appellants are registered exporters under the provisions of the Coffee Act, 1942 and the Coffee Rules, 1955. The respondent-Coffee Board conducts auction of coffee for the purpose of effecting export. The registered exporters participate in the auction and purchase coffee for export. The terms and conditions of the auction-sale are fixed by the Board. The auction on account of which the dispute involved in these appeals arose was held on 18 th May, 1977. The dispute relates to the interpretation of clause 10 of the terms and conditions of the said auction. The clause reads as follows:

"10. Tender of Bids: - The Bid tendered shall be exclusive of Sales Tax, Central Excise Duty, Customs Duties, Octroi Duty and every other imposts and shall be on the basis of delivery of coffee ex-bags, ex-curing works.

However, should there be any change in the rates, taxes, duties and imposts mentioned above between the date of auction at which the exporter purchased the coffee and the expiry of a period of 45 days from the date of such auction, including the date of the auction, the consequent enhancement of the liability of the exporter for the payment of any or all of such levies in respect of the coffees purchased at such auction and shipped within the abovesaid period shall be to the account of the Board to the extent of 50 per cent of the increase in the rates of any or all such levies.

Provided, however, the extent of such enhanced liability which will be to the account of the Board shall be 75 per cent of the increase in the rates of any or all such levies, if the coffees purchased at the auction are shipped within a period of 30 days from the date of the auction.

Any increase in the rates of any or all of such levies on coffee attracting the increased rates and not shipped within a period of 45 days from the date of the auction at which the coffees were purchased shall be entirely to the account of the exporter.

In case of any reduction of the liability of the exporters on account of any reduction in the rates of any or all the taxes, duties and imposts within a period of 45 days from the date of the auction on coffees attracting such reduced rates of levies such reduction of liability shall accrue to the Board to

the extent of:

(a) 50 per cent of the reduction in the rates of any or all of such taxes, duties and imposts on coffees attracting such reduced rates of levies and shipped within a period of 30 days from the date of auction.

(b) 75 percent of the reduction in the rates of any or all of such taxes duties and imposts on coffees attracting such reduced rates of levies and shipped beyond a period of 30 days from the date of auction.

The additional sums that may become payable by the exporter to the Board as a consequence of such reduction in the rates of taxes, duties and other imposts shall be paid within seven days from the date of shipment."

2. Before we proceed further, it is necessary to note two facts. The first is, as has been stated clearly in the above clause, that the period of 45 days is to be calculated from the date of the auction inclusive of that date. Secondly, the provision in the clause for sharing the excess or reduction in the rates, taxes, duties, imposts etc. is made for the express purpose of fixing the reserve price below which the specific lot of coffee is not to be sold at the auction. For fixing such upset price, the Board takes into account, among other things, the existing rates of taxes and duties. Admittedly, when the auction was held on 18th May, 1977, the Board had taken into consideration, among other things, the export duty which existed till 17th May, 1977, i.e., the day prior to the date of the auction, and had fixed the reserve price accordingly. Since export duty is a component factor for the fixation of the upset price, the quantum thereof depends upon what the export duty at a given point of time is.

3. It appears that till 17th May, 1977 the export duty on coffee was Rs. 2,200/- per quintal. However, on the 18th May, 1977, i.e., the date on which the auction was held, it was reduced to Rs. 1,600/- per quintal. Admittedly, at the time the auction was held no communication of the reduction of the duty issued at New Delhi had been received by the Board, and the reserve price, therefore, was not altered by the Board to reflect it. There is no dispute that if the Board had received the said communication, the reserve price would have been fixed at a different level.

4. In view of the reduction in the export duty made on and from 18th May, 1977, the Board by its Circular of June 2, 1977 addressed to all registered exporters demanded refund of the proportionate amount of reduced duty in terms of the aforesaid clause 10. All the exporters including the present appellants refunded 50% of the reduction in the duty. However, thereafter the appellants wrote to the Board asking for the return of the amount so paid contending that there was already a reduction in duty on the date of the auction, namely, on 18th May, 1977 and, therefore, it cannot be said that there was a reduction in duty within 45 days from the date of the auction. The Board pointed out that the reduction in duty was effected on 18th May, 1977 by the authorities at Delhi and, admittedly, neither the Board nor the auction purchasers were aware of the said reduction at the time the auction was held on that day. The Board also stated that the aforesaid clause (10) stipulated that the increase or reduction in duty effected within 45 days from the date of auction inclusive of the said date, was to be shared equally between the Board and the auction-purchasers. Since the reduction in duty was effected on the date of auction, the said day was includible within the period of 45 days mentioned in the said clause. The Board, therefore, refused to refund the amount.

5. The appellants, therefore, filed separate writ petitions in the High Court for a direction to the

Board to repay the amount paid by them. It is not necessary to go into the other disputes between the auction-purchasers and the Board which related to either the adjustment of the amount paid against the other amounts due to the Board as in the case of the appellants M.S.P. Exports (P.) Ltd. or the claim for additional amount of refund made by the Board against the other appellants, namely, Ramesh Enterprises.

6. The learned single Judge of the High Court dismissed the writ petitions both on the ground that the petitions were not maintainable under Art. 226 being related to claims arising out of a purely commercial contract whether statutory or non-statutory, and also on merits holding that since 45 days were to be counted including the day of auction, the Board was entitled to the proportionate reduction in duty. This decision was confirmed in appeal by the Division Bench on both the counts by the impugned judgment.

7. Shri Ramaswamy, the learned Counsel appearing for the respondent Board raised a preliminary contention that in the first instance the contract out of which the present dispute arises was not statutory. Even if it was statutory, the dispute related to a purely commercial contract and no writ could lie to enforce either the terms of such contract or the claims arising out of it. The High Court had given clear finding on the said point and hence, the present appeal should be dismissed on that ground alone. Shri Shanti Bhushan, the learned Counsel, appearing for the appellants submitted that assuming that the finding of the High Court was correct on that point, since the learned single Judge as well as the Division Bench had also decided the matter on merits, the appellants cannot now be asked to file suits since the said findings would come in their way. If such suits are filed. Since the High Court has decided the disputes between the parties on merits as well, we do not think it necessary to go into the question whether the contract between the parties was statutory or non-statutory and whether further assuming that the contract was statutory, writ petitions would lie for enforcing the terms of such contracts and the claims arising out of them. We propose to dispose of these appeals purely on the interpretation of clause 10 of the contract.

8. We have already reproduced at the outset clause 10. The clause in terms states that any increase or reduction in taxes, duties etc. within 45 days of the auction (inclusive of the day of the auction) shall be shared between the auction-purchasers and the Board. It is not disputed before us that neither the Board nor the auction-purchasers was aware of the reduction in export duty for which a communication was issued at Delhi on 18th May, 1977 itself. It is also, therefore, not disputed that the Board had fixed the reserve price on the basis of the export duty, which was prevalent till 17th May, 1977. Shri Shanti Bhushan, the learned Counsel, however, contended that when the change was effected in the export-duty on 18th May, 1977, the change should be deemed to have come into operation with effect from the mid night of the 17th. May, 1977 and before the commencement of the 18th. Hence, it should be held that the rate of duty, namely, Rs. 1600/- per quintal was in operation at the time the auction was held on the 18th May, 1977. There was, therefore, no change in duty at, the time of the auction or any time within 45 days thereafter. This contention though apparently attractive ignores the very vital provision in the said clause 10, namely, that the period of 45 days includes the day of the auction as well. Hence, an increase or reduction in duty made on the day of auction is also sharable between the parties. The purpose of, including the day of auction in the period of 45 days, contrary to the manner of computation of time in the General Clauses Act, obvious and is brought home more prominently by the present instance itself. As has been stated earlier, the reserve price is fixed on the basis of the rates, taxes, duties, etc. which are in existence till the day prior to the date of auction. These imposts keep changing and none of the parties has a control over their variation or over the time of their variation. The dates of auction have necessarily be fixed in advance. It is to obviate the hardship or to grant the necessary benefit, as the case may

be, that purposely the period of 45 days laid down in clause 10 is stipulated to include the day of the auction as well. It is for this reason that we are unable to accept the contention advanced by Shirr Shanty Bhutan and are in complete agreement with the impugned decision of the High Court on merits.

9. In the circumstances, we dismiss both the appeals with costs.

Appeals dismissed.

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