

Union of India and others

Vs

Surya Phosphate Ltd. and another

Civil Appeal No. 585 of 1992

(Kuldip Singh, P. B. Sawant JJ)

12.08.1992

JUDGEMENT

SAWANT, J.:-

1. The question involved in the present appeal is of the interpretation of Circular letter dated 19th June, 1982 issued by the Fertilizer Industry Co-ordination Committee, Government of India (Department of Chemicals & Fertilizers) ('FICC') to all manufacturers of Single Super Phosphate. Did the circular letter represent to the manufacturers that they would be paid differential rate of subsidy based on the actual ex factory price of each of the manufacturing units or did it inform them that the subsidy would be based on the ex factory price of each of the units which would be worked out by the FICC? To appreciate the controversy, it is necessary to have a glimpse of the relevant facts. Single Super Phosphate, ('SSP') is a low nutrient phosphatic fertilizer. Its two major ingredients are Rock Phosphate and Sulphur. The consumption norms of the two items for manufacturing one metric tonne of SSP are 0.57 M.T. of Rock Phosphate and 0. 125 M.T. of Sulphur. SSP was brought under Retention Price Control w.e.f 23rd May, 1982. There are a number of units manufacturing SSP in the small and medium sectors. In order to boost up the consumption of phosphatic fertilizer, FICC had in March, 1976 issued a scheme of flat subsidy of Rs. 1250/- per tonne of P-205 (equivalent of Rs. 200/- per ton of SSP). The benefit of this .subsidy was passed on to the farmers by lowering suitably the prevailing price of Phosphatic Sulphur.

2. Before 23rd May, 1982, viz., the date on which the SSP was brought under the Retention Price Control, every manufacturer of SSP, irrespective of the cost of manufacture, used to get the same subsidy at the above rate. However, different retail prices were fixed for different manufacturers and for different marketing zones of the same manufacturer. The retail prices were fixed from time to time by the Fertilizers Association of India in accordance with the, formula laid down by the Ministry of Agriculture in May 1966. Under this formula the ex factory price for each manufacturing unit was fixed taking into account the prescribed fixed charges and variations in the price of raw materials and bags as compared to the costs of these materials provided for in the original formula. The result was that there was no uniformity in the price of SSP.

3. The Working Group on Review of Subsidy on SSP examined all these aspects and gave a report in 1980. The group recommended that the scheme of flat subsidy at the above rate be replaced by a scheme of differential level of subsidy for each manufacturer depending on the ex factory price and other expenses incurred by each manufacturer as fixed according to the formula/ guidelines recommended by the Working Group. The Group came to the conclusion that a system of Retention

Price of SSP similar to the one existing for Nitrogenous and Complex Fertilizers was not expedient. While variable costs, which constituted about 80 per cent of the total cost of SSP, were susceptible of determination on a normative approach and without difficulty, the detailed costing of a fixed cost element under each unit was not a practical proposition. This was so mainly because of the existence of a large number of units manufacturing SSP which were also multi-product/ multi-activity units. The Group, therefore, suggested a formula for determining the variable costs to which were to be added the fixed costs suggested by the Group in order to arrive at the ex factory price of each manufacturing unit.

4. This recommendation of the Group was broadly accepted by the Government and SSP was brought under statutory Price Control w.e.f. 23rd May, 1982. While accepting the recommendation of the Group, however, the Government made some changes in it. It is not necessary to refer to them here. The new method of payment of subsidy and formula of working out the ex factory price as suggested by the Group and modified by the Government came into effect on 23rd May, 1982.

5. Pursuant to the introduction of the new method of payment of the subsidy the circular letter in question, viz., that of 19th June, 1982 was addressed by the Government to all manufacturers of SSP. It is necessary to quote the circular letter verbatim:

"To

All manufacturers of Single Super Phosphate.

Sub:- Single Super Phosphate - Retention Ex factory Price in respect of...

Dear Sir,

Consequent upon issue of Government of India, Ministry of Agriculture, Deptt. of Agriculture & Co-operation, telegram No. 1- 9/ 82-F. A. (CP) dated 22nd May, 1982 fixing a uniform retail price of Single Super Phosphate with effect from 23rd May, 1982, it has become necessary to replace the scheme' for payment of uniform flat subsidy of Rs. 1,250/- per MT Of P2 5 by a scheme for payment of differential rate of subsidy based on the ex factory price worked out separately for each manufacturing unit.

2. To enable this office to work out the ex factory price in respect of SSP manufactured in your unit, information in the enclosed pro formae may please be furnished to this office urgently, latest by 15th July, 1982. The information should be furnished separately for the periods 1-10-81 to 31-12-81 and 1- 1 -82 to 31-3-82 only certified by a Chartered Accountant or your Statutory Auditors."

6. Along with the Circular letter, as stated in its body, pro formae were circulated for collecting information of various elements contributing to the variable and fixed costs.

7. After the then existing units submitted the relevant information and taking into consideration their representations, the variable costs were determined with reference to the expenses for each factory on the average of three months preceding the last quarter. The costs were calculated with reference to-the details furnished by each unit in the detailed pro formae for variable input costs. To this cost was added the fixed costs to arrive at the ex-factory price of each individual unit. The extracts of the relevant minutes of the meetings of the FICC held on 16th October, 1982 and 17th February, 1983

which are annexed as Annexure 'C' to the present petition, show the details of the manner in which the ex-factory price was worked out for the product.

8. The respondent Company commenced its production of SSP for the first time on 28th November, 1984, i.e., long after the replaced subsidy as suggested and worked out by the new formula came into force. The installed capacity of the unit as declared by, the company was 120 tonnes per day or 39,800 M.T. per annum. As the respondent-company had no captive plant for manufacturing Sulphuric Acid, the notional cost of a matching 43 tonnes per day Sulphuric Acid captive plant based on the actual cost of the standard plant for 1984 was taken at Rs. 99.81 lakhs for the purposes of computation of fixed charges applicable to the unit. It may be stated here that admittedly those manufacturing units which had a captive Sulphuric Acid plant could produce Sulphuric Acid at lesser cost and others had to procure it at a higher price from market. In order to equalise the cost of production of SSP of both types of units this method of taking the notional cost had to be adopted as approved by the FICC. Thus, it would be seen that though the respondent-Company's unit did not incur any capital cost on setting up a matching Sulphuric Acid plant, the notional cost of a Sulphuric Acid plant to match the requirement of installed capacity of SSP was provided for while working out the conversion cost in the case of respondent-Company's unit. Based on this notional costs which formed part of the capital employed, normative working capital, the share capital and borrowings, etc. were also worked out and their fixed charges were accordingly determined. There is no dispute that subsidy worked out by the above methodology was paid to the respondent-Company as it was paid to other units manufacturing SSP.

9. The respondent-Company, however, was not satisfied with the method of calculating the subsidy and insisted that while working out the subsidy the Government was obliged to take into consideration the landed costs of Sulphuric Acid at its factory as revealed in the cost data submitted by it. It worked out the subsidy on the said basis at Rs. 1,12,58,449/- as arrears of subsidy from the date it commenced production and filed a writ petition before the High Court for recovery of the said amount. The respondent Company also prayed for injunction to restrain the Government from paying the ex factory price of SSP manufactured by it except on the basis of its actual cost of production including the actual landed cost of Sulphuric Acid at the factory.

10. By the impugned judgment, the Patna High Court held that in view of the fact that the respondent-Company purchased Sulphuric Acid from open market and transported it to its factory, the Government was bound to calculate the subsidy payable to the Company taking into consideration its ex-factory price of SSP. It is this decision of the High Court which is under challenge before us.

11. Shri Sen, the learned counsel appearing for the respondent-Company contended that the language of the Circular letter dated 19th June, 1982 (reproduced hereinabove) is very clear. By this Circular letter, the FICC had in terms promised every manufacturer of SSP a differential rate of subsidy based on the ex-factory price worked out for each of the SSP manufacturing units. Hence, the Government was obliged to pay the entire difference between the retail price of SSP fixed by the Government (which was lower than the cost of production of SSP) and the actual ex-factory price of SSP of each of the manufacturing units. Hence, urged Shri Sen, the High Court was right in directing the Government to calculate the subsidy payable to the respondent-Company as per the interpretation of the Circular letter by the Company and also to pay the arrears in question. He also contended that that is the only interpretation possible of the said Circular letter.

12. There is no dispute that what holds the field for the payment of the subsidy is the Circular letter

of 19th June, 1982. The controversy relates to its interpretation. Taking into consideration the entire history of the subsidy as we have narrated above, the recommendation of the Working Group, its acceptance by the Government and the issuance of the Circular letter to implement the recommendation and the subsequent minutes of the meetings of the FICC held on 16th October, 1982 and 17th February, 1983 and the method for working out the ex-factory price detailed therein, we are of the view that the contention advanced by Shri Sen is not correct. Viewed in its proper context, there is no doubt that the Circular letter in question had only intimated to the manufacturers that consequent upon the fixing of the retail price of SSP w.e.f. 23rd May, 1982, it had become necessary to replace the old scheme of the payment of uniform flat subsidy, by a new scheme. The new scheme was for payment of differential rate of subsidy. That rate of subsidy was to be based on the ex-factory price which had to be worked out separately for each manufacturing unit. In order to work out the ex-factory price of each unit, it was necessary to have information from each of the units of items detailed in the pro formae. The information called for was for two different quarters preceding the quarter beginning from April, 1982 since the uniform retail price of SSP had come into effect from 23rd May, 1982. This quarterly information was to be certified either by the Chartered Accountant of the unit concerned or by the statutory auditors. The quarterly information was required because the variable costs were to be determined with reference to the expenses for each factory on the average of three months preceding the last quarter. In para 2 of the Circular letter it was clearly stated that the information in question was required "to enable this office to work out the ex-factory price in respect of SSP manufactured in your unit". This was a clear indication that it was the FICC which was going to work out ex-factory price. If the subsidy was to be based only on the ex-factory price to be stated by the manufacturing unit, there was no question of working it out by the FICC office.

13. It would thus be seen that the Circular letter made no representation other than conveying to each of the manufacturing units that a scheme for payment of differential rate of subsidy in place of the earlier uniform flat subsidy was being introduced. What that differential rate of subsidy would be would depend upon the ex-factory price worked out by the FICC separately for each manufacturing unit. The method by which the ex-factory price was to be worked out for each of the manufacturing units was not indicated in the Circular letter. That was to be on the basis of the recommendation of the Group as accepted by the Government. In fact, the new method of payment of subsidy was based on the said recommendation which also included the formula to work out the ex-factory price.

14. Shri Sen attacked the recommendation of the Group and the method adopted by the FICC to work out the ex-factory price and the subsidy, on the ground that they were not made known to the manufacturing units. They were, according to him, kept confidential by the Government and all that was held out was the promise contained in the Circular letter of 19th June 1982 which, according to him, was for payment of subsidy to each unit on the basis of its actual costs. It is not necessary for us to go into the question as to whether the method/formula adopted by the FICC should have been made known to the manufacturers or not. Suffice it to point out that the Circular letter in question had not indicated any particular method of working out the ex-factory price. It was implicit in the said Circular letter that the ex-factory price would be worked out by the FICC on certain basis. It is incorrect to say that in the absence of a method for working out the ex-factory price indicated in the said Circular letter it should be presumed that what was represented to the manufacturing units was that they would be paid subsidy on the basis of the actual costs shown by them.

15. Understandably, the method adopted by the FICC for Working out the ex-factory price was on a normative basis as recommended by the Group and accepted by the Government. That was as it

should be. In the absence of norms for working out the costs of different components there would virtually, be a chaos and arbitrariness. To give only one instance : if a manufacturing unit were to consume more Rock Phosphate and Sulphur or Sulphuric Acid than the consumption norm, its cost of production of SSP would be higher than the cost of production of the standard SSP. It cannot be argued that in spite of it, the manufacturing unit should be paid the differential rate of subsidy on the basis of the unwarranted cost. One can multiply such instances with reference to each of the other elements of cost of producing SSP. In the absence of norms, there would be a good deal of scope for arbitrariness and misfeasance at both ends. We are, therefore, of the view that the contention urged by Shri Sen cannot be accepted.

16. For the reasons stated above, the interpretation placed by the High Court on the Circular letter of 19th June, 1982 cannot be accepted. Consequently, the conclusion arrived by it is erroneous. Hence we allow the appeal and set aside the impugned decision. The respondent-Company will bear the cost of the appeal. Appeal allowed.

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