**(2011) 07 AHC CK 0251**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 331 of 2000

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| Agauta Sugar and Chemicals | | APPELLANT |
| | Vs | |
| Appellate Authority/Cane Commissioner, Uttar Pradesh and Another | | RESPONDENT |

**Date of Decision:** July 29, 2011

**Acts Referred:**

- Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 - Section 3, 3(2), 3A
- Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 - Rule 16(5), 17

**Citation:** (2011) 9 ADJ 690

**Hon'ble Judges:** Arun Tondon, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Hon''ble Arun Tondon, J.

The petitioner Company is a factory engaged in the manufacture of sugar through vacuum pan process. The provisions of U.P. Sugar Cane (Purchase Tax)Act, 1961 (hereinafter referred to as Act) are applicable in the matter of purchase of sugar cane and sale of the produce after crushing of the same by the petitioner. The petitioner factory was served with orders dated 12.6.97, dated 8.12.97 dated 8.12.97 and dated 6.10.98 four in all passed by the Collector/Tax Assessing Authority Bulandshahr wherein it was recorded as follows:

(a) In the month of March, 1997 the petitioner had removed 18897 bags of sugar without deposit of purchase tax as required u/s 3A of the Purchase Tax Rules therefore, penalty to the tune of Rs. 405528/= was being imposed.

(b) In the month of May, 1997 the petitioner had removed 22860 bags of sugar without deposit of purchase tax as required u/s 3A of the Act therefore, penalty to the tune of Rs. 2,64,540/= was being imposed.

(c) In the month of June, 1997 the petitioner had removed 104110 bags of sugar from the go-down without deposit of purchase tax as required u/s 3A of the Act. Therefore, penalty to the tune of Rs. 1249320/= was being imposed.

(d) In year 1996-97 the petitioner had purchased 2765386-20 quintals of sugar cane and in respect there of he paid purchase tax of Rs. 9780/= only. Therefore a sum of Rs. 2755606.26 p. remaining due towards purchase tax has not been deposited. The petitioner upto the month of June, 1997 had removed sugar qua which penalty of Rs. 1919388/= had already levied under the earlier orders (referred to above). For removal of sugar bags not covered by the above orders Rs. 836218-26 was being imposed as penalty.

2. Not being satisfied with the aforesaid four orders the petitioner filed an Appeal u/s 3- A(5) of the Act before the Cane Commissioner. This appeal has been partly allowed. Under the impugned order of the Cane Commissioner the amount of penalty imposed by the Assessing Authority has been reduced by Rs. 852416.62. The amount was lying in deposit with State being the excess purchase tax paid purchase tax in the previous Assessment Year 1995-96. The appellate authority directed adjustment of the said amount against the penalty imposed with reference to the Government Order dated 7.6.1997. Under the appellate order petitioner has been called upon to deposit the balance amount of penalty to the tune of Rs. 19,03,191.64p. The petitioner challenges said orders by means of the present writ petition. He also questions the order dated 6.3.99 pertaining to Assessment Year 1997-98 wherein a penalty of Rs. 217880/= has been levied on the allegation that the petitioner had removed 10894 bags of sugar in the month of December, 1998 without deposit of purchase tax as required u/s 3(A) of the Act. The petitioner has simultaneously challenged 9 orders which were passed for Assessment Year 1997-98 wherein penalty had been imposed for removal of the sugar bags without deposit of the purchase tax as required u/s 3A of the Act. The total penalty imposed under the aforesaid impugned orders works out to Rs. 2450,000/= and odd. Against these orders of the Assessing Authority the petitioner filed an Appeal u/s 3A (5) of the Act before the Cane Commissioner. The appeals have been dismissed by means of two separate orders dated 19.4.99 and 18.8.99.

3. The petitioner thereafter, filed a review application in respect of the orders passed for the Assessment Years referred to above. The review application has also been rejected by the Cane Commissioner by means of order dated 10.2.2000. Hence this petition.

4. The orders passed in respect of the Assessment Year 1996-97 have been challenged on different facts and grounds viz-a-viz raised for challenging the order passed in respect of the Assessment Year 1997-98. The issues raised in this writ petition are therefore being divided into two heads i.e.

(a) orders pertaining to the assessment year 1996-97 and

(b) orders pertaining to the assessment year 1997-98.

Orders pertaining to the assessment year 1996-97

5. On behalf of the petitioner it has not been disputed that purchase tax u/s 3 of Purchase Tax Act is payable at the rate prescribed and is to be deposited in the manner prescribed in terms of Section 3(2) of the Act. It is further not in dispute that purchase tax in the manner so prescribed during the relevant period had not been deposited. The petitioner proceeded with the crushing of the sugar cane purchased without deposit of purchase tax and manufactured sugar which was stored in his go-down.

6. Section 3A of the U.P. Sugarcane (Purchase Tax)Act, 1961 provides that no sugar shall be removed for sale or consumption outside the factory unless the owner of the factory has paid the tax levied u/s 3A. For ready reference Section 3A reads as follows:

3A. Payment of tax before removal of sugar from factory.--(1) No owner of a factory shall remove, or cause to be removed any sugar produced in the factory on or after the first day of October, 1941 hereinafter referred to as the said date, either for consumption, or for sale, or for manufacture of any other commodity in or outside the factory, until he has paid towards the tax levied u/s 3 a sum specified under sub-section (2), sub-section (3) or sub-section (4), as the case may be:

Provided that such ("sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses)" may be deposited without payment of any such sum in a godown or other place of storage approved by the assessing authority and where it is so deposited it shall not be removed therefrom until the sum as aforesaid has been paid:

Provided further that nothing in this sub-section shall be construed to affect the liability of such ("sugar or ethanol(directly produced from the sugarcane juice or B-Heavy molasses)" to sale at the instance of any bank in exercise of its rights as pawnee in respect of any advance made to the owner of the factory on the security of (sugar or ethanol(directly produced from the sugarcane juice or B-Heavy molasses) produced or to be produced in the factory.

(2) Before the beginning of each crushing season or so soon thereafter as may be, and in the case of crushing season beginning on the said date (so soon as may be after the commencement of this Section), the assessing authority shall work out and specify the provisional rate of payment to be made (per bag of sugar or per sixty litres of ethanol (directly produced from the sugarcane juice or B-Heavy molasses) under sub-section (1) by correlating the quantity of sugarcane purchased for the factory to the sugar produced in the factory during the last preceding crushing season in which the factory was under production.

(3) At the end of crushing season or as the case may be, immediately after the closure of the factory for the crushing season the assessing authority shall workout and specify a revised rate of payment per bag of sugar or per 60 liters of ethanol (directly produced from the sugarcane juice or B-Heavy molasses) by taking into account the quantity of sugarcane purchased for the factory and the sugar or ethanol (directly produced from the sugarcane juice of B-Heavy molasses) produced in the factory during the current crushing season, and where the rate is reduced or increased on such revision, the excess paid of the shortfall, as the case may be, shall be spread over the remaining stock of the said-sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses), and the amount to be paid before removal of each such remaining bag of sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses), be refixed accordingly, and if no such sugar or ethanol remains in stock then the owner shall be entitled to a refund or pay the balance, as the case may be.

(4) If at any time it appears to the assessing authority that a part of the stocks of the said (sugar or ethanol (directly produced from the sugarcane Juice or B-Heavy molasses) has been removed, or is for any other reason no longer available, and the payment towards tax due against such part under this section has not been made, the assessing authority may direct the short fall to be recovered by spreading it over the (sugar or ethanol(directly produced from the sugarcane Juice or B-Heavy molasses) in stock at that time.

(5) In relation to the tax levied u/s 3, in respect of purchase of sugarcane on or after the said date,-

(a) Sub-section(2) and (3) of Section 3, shall not apply and the tax shall be deemed due on the date of purchase of sugarcane or the date of commencement of this section, whichever is later.

(b) sub-section (4) of that section shall apply with the modification that where the assessing authority is satisfied that the owner of a factory has removed or caused to be removed any sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses) in contravention of the provision of this section or has failed to account fully for the sugar produced or ethanol (directly produced from the sugarcane juice or B-Heavy molasses) in the factory or deposited by him under the first proviso to sub-section (1) the person liable to pay the tax shall in addition to the amount payable under -sub-section (1) in respect of the quantity of sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses) so removed or unaccounted for, be also liable to pay by way of penalty a further sum not exceeding one hundred percent of the sum so payable."

(c) the provisions of this section shall be in addition to an not in derogation of the provisions of sub-section (4) (modified as aforesaid) and sub-sections (6) (7) (8) and (9) of that section, so, however, that a certificate under subsection (8) of that section

shall not, save for exceptional and adequate reasons to be recorded, be issued, unless the officer or authority referred to in that sub-section is of opinion that any circumstance referred to in Cl.(b) exists;

(d) the provisions of Section 7 shall apply with the substitution of references therein to the Sugar Commissioner by reference to the assessing authority.

7. It appears that the petitioner in addition to non payment of statutory taxes also committed default in payment of dues to the farmers qua the price of sugar cane so purchased. The controversy in that regard may not detain the Court for long. The petitioner had approached the Supreme Court by means of Civil Appeal No. 3512-3513 of 1997 seeking permission to remove the sugar for sale so that the dues of the farmers may be cleared. The Supreme Court considering the request made by the petitioner permitted the sale of the sugar so manufactured by means of an order dated 1.5.1997. The relevant directions issued by Hon''ble Supreme Court are being re-produced here-in-under below:

The District Collector, Bulandshahr is directed to assess as to what is the quantum of the Sugar Stock in hand would be sufficient to meet the payment of price of the sugarcane together with interest to all the cane growers towards the sugarcane supplied them for all the crushing seasons as also the Societies Commission. It would be a first charge and recordable against the Stock of sugar. On so assessing, he would permit the appellant to sell that quantum of stock of sugar. The sale proceeds thereof, when received from the appellant, are directed to be credited to an account to be opened by the Collector in a nationalized Bank towards this amount. The Collector is directed to depute a responsible officer of his collectorate to be present at the time of sale. The officer would ensure that the sale would be made only of the permitted stock and that the sale proceeds are credited to the said account directed to be opened in that behalf. On the amount being so deposited, the entire amount due shall be paid to the cane growers.

After the sale thus is effected an payment made to the cane growers, it would be open to the appellant to file an application before the Collector stating as to what amount it is liable to pay towards excise duty and arrears of wages to the employees etc. On the statement so made, the District Collector is directed to assess as to what quantity of sugar from the remaining stock-in-hand would meet the above requirements; he would accordingly allow the release of that part of the stock-in-hand for sale by the appellant for liquidation of Excise duty, arrears of wages etc.

The above exercise would be done within a period of two months from the date of receipt of this order. In the event of the appellant succeeding in the writ petition, appropriate directions may be given by the High Court in the main writ petition for mutual adjustment of any amount repayable by the cane growers. The order of attachment would stand lifted after compliance of these directions. If there is any

difficulty in the implementation of this order, liberty is given to the appellant to approach this Court. Pending implementation of this order we hope and trust that no further coercive steps will be taken and no officer who are members of the appellant company or shareholders of the company would be detained.

Appeals are accordingly disposed of. No costs.

8. According to the petitioner since under the said order of the Supreme Court the sale proceeds were liable to be adjusted towards payment of the farmers and for liquidation of the excise duty and arrears of wages to the employees etc. Non deposit of the purchase tax as contemplated by Section 3 -A of the Act before removing of the sugar cannot be said to be deliberate so as to entail a penalty u/s 3A(5) of the Act. It is contended that it is to be presumed that the State was aware of the permission to remove the sugar from the factory premises under the orders passed by the Supreme Court without any direction for deposit of the purchase tax as required u/s 3A of the Act. The petitioner having been granted such liberty by the Apex Court cannot be said to have committed any default so as to entail penalty as has been done in the facts of the present case.

9. It is then contended that for delayed payment of purchase tax as required u/s 3 of the Act penalty has been provided under sub-section 5 read with Rule 17 of The Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 at the maximum of 10% of the total amount of tax not paid. He submits that the authorities are not justified in falling back upon Section 3A(5) for levy of the penalty at 100% of the purchase tax which was not paid.

10. In alternative he submits that the levy of penalty is to be judicial exercise of power and imposition of maximum penalty in a routine manner as has been done in the present case which discloses non application of mind and is unsustainable. He has placed reliance upon the judgment in M/s Rampur Distillery and Chemical Co. Ltd. Rampur v. Commissioner of Sales Tax, (1987) UPTC 1665.

Orders pertaining to the assessment year 1996-97

11. It is contended that the State Government by means of Notification dated 17.3.98 provided that all those sugar factories which cleared the dues of the farmers alongwith Government dues within the time specified as per the Schedule they would become entitled to rebate of Rs. 1/= per quintal in the rate of purchase tax to be levied u/s 3 of the Act. This Government Order was modified by a subsequent Government Order dated 29.5.1998 wherein it was provided that benefit of such rebate of Rs. 1 /= per quintal in the rate of purchase tax would also be admissible to the sugar factories who clear at least 80% of the dues of the farmers and Government dues by 31st May, 1998.

12. According to petitioner 30.5.98 was Sunday and time provided under the Notification 31.5.98 expired on 1.5.98. The time provided for clearing the 80% of the

dues of the farmers and to the Government was too short and practically unreasonable. This results in denial of benefit of rebate of Rs. 1/= per quintal in the purchase tax. The petitioner who could not clear 80% of the dues by 31.5.98 because of time provided being too short to the extent of being unfair. The petitioner made a representation to the State Government on 4.6.1998 which has gone unheard. A further plea has been raised that imposition of 100% of the amount of purchase tax not paid, as penalty being exorbitant.

13. Standing counsel on behalf of the respondents submits that the penalty contemplated by Section 3A (5) (b) of the Act is entirely different viz-z-viz the penalty contemplated by Section 3(5) of the Act. The two penalties are attracted in two different situations. The petitioner is not correct in contending that the impugned order are bad as the penalty imposed exceeds the maximum provided u/s 3(5) read with Rule 16 of the The Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961.

14. He clarifies that it was the petitioner who had approached the Supreme Court seeking the permission to remove the sugar bags for payment of dues of farmers and Central Excise. It was statutory obligatory upon the petitioner to have deposited the purchase tax before such removal. The Supreme Court had not permitting the petitioner to remove the sugar without deposit of the purchase tax as required u/s 3A of the Act.

15. The direction issued by the Supreme Court has to be read as per the facts recorded therein. The order cannot be read in a manner to suggest that the petitioner factory was permitted to remove the sugar in violation of the statutory provisions. If the petitioner has done so he has done it at his own risk. The statutory consequences which flow because of violation of Section 3A of the Act has to be borne by the petitioner.

16. He submits that in the facts of the case non-payment of the purchase tax was writ at large on the record, for which hardly any explanation is available. Removal of the sugar bags for sale was done in violation of Section 3A of the Act, therefore the authorities are justified imposing penalty u/s 3(5) of the Act

17. In respect of assessment year 1997-98 it is stated that the Government Order dated 29.5.98 in fact was to the benefit of the sugar factories in as much as under the earlier Government order dated 17.3.98 the sugar factories could avail exemption of one percent of purchase tax only if payment of 100% of the dues of the farmers alongwith the Government dues had been cleared. By means of the subsequent order dated 29.5..98 this amount was reduced to 80% only. The factories could therefore avail the benefit of one percent if they had deposited only 80% of the former dues alongwith Government dues. The plea that the time provided under the Government Order dated 29.5.98 was too short has no legs to stand.

18. I have heard counsel for the parties and have examined the records of the present writ petition.

19. In order to appreciate the controversy raised by means of the present writ petition it would be appropriate to state Purchase Tax is charged u/s 3(1) of the Act. Sub-section 2 of Section 3 of the Act provides that the tax levied under sub-section 1 of the Act shall be payable by the owners of the factory or owner of the unit as the case may be and shall be paid on such date and at such place and in such manner as may be prescribed. From a reading of the said section it is apparently clear that the tax is attracted immediately on purchase of the sugar cane and has to be deposited by the factory owner within the time and at the place specified. Admittedly the petitioner failed to deposit the purchase tax in accordance with the statutory provisions on the purchase of the sugarcane so made. In respect of such default penalty u/s 3(5) of the Act has been provided at the rate prescribed under Rule 17 of the Rules, 1961.

20. In order to prohibit the sale/removal of the sugar manufactured by the factory owner without deposit of the purchase tax in respect of the sugar cane purchased by it the State Legislature by means of the UP. Act No. 28 of 1974 added Section 3 A to the U.P. Sugar Cane (Purchase Tax) Act, 1961. u/s 3A of the Act it has been mandated that no owner of the factory shall remove, or cause to be removed any sugar produced in the factory on or after the fixed date, either for consumption, or for sale, or for manufacture of any other commodity in or outside the factory, until he has paid towards the tax levied u/s 3 a sum specified under sub-section (2), sub-section (3) or sub-section (4) as the case may be.

21. Petitioner factualy did not deposit the purchase tax on the sugar cane purchased by it. It manufactured sugar after crushing the said sugar cane. It is not further in dispute that the petitioner even after getting an order from Hon''ble Supreme Court for sale of the manufactured sugar did not deposit the requisite amount of purchase tax as contemplated by Section 3A of the Act before actual removal/sale of sugar. It is therefore, writ large on record that the removal of the manufactured sugar from the premises of the petitioner factory had taken place in clear defiance to the mandatory provisions of Section 3A of the Act. In respect of such statutory violation penalty is attracted u/s 3A(5) quoted above.

22. Thus penalty has been imposed having regard to the violation of Section 3A of the Act by the petitioner with reference to the provisions of Section 3A(5) in the fact of the case such levy of penalty cannot be faulted with. It is not the case of the petitioner that the penalty has been imposed in excess or what is provided for in Section 3A (5).

23. I am of the considered opinion that once a factory owner commits violation of Section 3A of the Act and removes sugar manufactured from sugar cane for which purchase tax had not been deposited, penalty becomes leviable u/s 3A (5) of the Act.

The levy of penalty in cases when manufactured sugar is removed from the factory premises without payment of purchase tax provided by by Section 3A (5) of the Act. In such cases Section 3 (5) of the Act will have no application.

24. This takes the Court to the issue as to whether under the garb of the order of the Supreme Court the petitioner could plead a license to violate the requirements of Section 3A of the Act and to remove the manufactured sugar for sale without depositing the requisite tax u/s 3A of the Act.

25. I am of the opinion that such plea by the petitioner is based on complete misreading of the order of the Hon''ble Supreme Court. The Supreme Court did not permit the petitioner to violate the law nor any such direction flows from the order of the Apex Court. All orders of Court of law are to be read so as to enforce the law and not in a manner to suggest that it provided a reason to violate the law. Even otherwise the Supreme Court never permitted the petitioner to remove the sugar bags for sale from the factory without complying with the mandatory requirement of Section 3A of the Act. The statutory requirements had to be satisfied by the petitioner before he could remove the manufactured sugar for sale. He has chosen not to do so. Therefore, the authorities are justified in exercising the power for imposing penalty u/s 3 A (5) of the Act. The order of the Supreme Court will not provide a escape route to the petitioner for avoiding the penalty for violating the law.

26. The Court may now record as to whether penalty of 100% of the purchase tax not paid is justified in the facts of the case.

27. From the records of the present case this Court finds that the petitioner not only made huge purchases of sugar cane without depositing the purchase tax for the assessment year 1996-97 he manufactured the sugar there from and ultimately removed the sugar bags from the factory premises without making deposit of the requisite amount of purchase tax. Such action of the petitioner is deliberate and is in clear violation of the statutory provisions. It is not the case of the petitioner that he had any doubt in respect of the payment of purchase tax. In fact as against the levy of purchase tax running into Lakhs of rupees the petitioner factory deposited a meagre sum of Rs. 9780/= only. This Court is of the view that the levy of penalty of 100% in the facts of the case is fair and just.

28. So far as assessment year 1997-98 is concerned this Court finds that the contention raised by the standing counsel that the Government Order dated 29.3.98 was in fact for the benefit of the factory owners in as much at it reduced the payment of total amount of farmers dues and Government dues to 80% which earlier the factory was required to pay 100% of the same dues before the date prescribed for availing the rebate of 1% in tax. The plea that the time permitted under the order dated 29.3.98 was too short has to be rejected for the same reason. In the facts of the case the petitioner has admittedly not deposited the required

amount of dues within time so as to avail the rebate of 1% in the purchase tax under the Government Order dated 29.5.98. No case for interference is made out.

29. In view of the above discussions this Court finds that the writ petition lacks merit. It is dismissed.