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CONSOLIDATED COFFEE LIMITED AND ANR.

v.

COFFEE BOARD AND ANR.

NOVEMBER 22, 1994

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[B.P. JEEVAN REDDY, N.P. SINGH AND S.B. MAJMUDAR, JJ.]

Karnataka Sales Tax Act, 1957—Section 6—Coffee Act, 1942—Sections 25, 26, 30, 31 and 32—Payment of Purchase Tax—Liability of Coffee Board to pay—Application of Pool Fund—Whether Coffee Board was entitled to make payment of Purchase Tax out of Pool Fund maintained u/s 30—Held, Yes.

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The appellants the growers of coffee filed writ petitions for injuncting the Coffee Board from making any payment under the head 'Purchase Tax' out of the Pool Fund maintained u/s 30 of the Coffee Act, 1942. According to the appellants, the Board cannot discharge its liability in respect of payment of 'Purchase Tax' to the State Government, under the provisions of the Karnataka Sales Act, 1957 out of the Pool Fund.

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The High Court held that growers/producers were not liable u/s 5(3) (9) of the Karnataka Sales Tax Act to pay the tax in respect of the sales of coffee by them to the Coffee Board. It also held that the Board was liable to pay the 'Purchase Tax' u/s 6 of the Act and the Board was authorized in law to pay the tax out of the Pool Fund. On that finding, the writ petitions, filed on behalf of the appellants, were dismissed.

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These appeals have been filed by the appellants against the finding of the High Court. According to the appellants, the action of the Board in making payments of 'Purchase Tax' to the State Government under the provisions of the Act, is without any authority in law and in contravention of the mandate of sub-section 2 of Section 32 of the Coffee Act. It was pointed out that the High Court was not justified in holding that any such payment of 'Purchase Tax' shall be part and parcel of marketing by the Board and as such covered by Section 32 (2) (b) of the Act. According to the appellant, the expression 'marketing' used in sub-section 32 (1) (b) refers to the process of marketing after the coffee has been delivered by the growers for inclusion in the Surplus Pool and is stored and cured by the Board; the expression 'marketing' shall not include the process of purchase from the growers

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which precedes the delivery of coffee to the Board for inclusion in the surplus pool. A

On behalf of the Board, it was pointed out that the contention of the appellants that the payment of the 'Purchase Tax' should be made from the General Fund as maintained u/s 31, should not be accepted because the General Fund does not have capacity to pay the 'Purchase Tax' after meeting the general expenses of the Board under different heads. B

Disposing of the matter, this Court

HELD 1.1 In such a case the appellants have to establish that in the process of making payment from the Pool Fund any right or interest of the growers like appellants were being affected. Any balance left in the Pool Fund should not be available to the growers like appellants. Sub-section 6 of Section 25 of the Coffee Act specifically says that after the coffee has been delivered for inclusion in the Surplus Pool, the registered owner whose coffee has been so delivered shall have no right in respect of such coffee except his right to receive the payments referred to in Section 34 of the Coffee Act. Proviso to sub-section 2 of Section 32 also says that if after the requirements of clauses of that sub-section have been met and there remains an excess in the Pool Fund, the board may with previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the General Fund. In the instant case, the appellants could not point out as to how the growers have any say in the matter of application of the Pool Fund including for payment of the 'Purchase Tax' by the Board, except that in this process the interest of the growers to receive the payment in accordance with Section 34 of the Act is not affected. In view of Section 34, the Board has to make payment to the registered owners who have delivered coffee for inclusion in the Surplus Pool. The expression 'as it may think proper' obviously means that the payment is made on reasonable basis to the growers in respect of coffee delivered by them for inclusion in the Surplus Pool. A procedure has been prescribed to determine the rate of payment to the registered owners who have delivered coffee for inclusion in the Surplus Pool. The appellants have not questioned that procedure. (640 D-G, 641 D) C
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1.2 The registered owners who grow coffee and deliver the same for inclusion in the Surplus Pool are entitled to the payment on some reasonable basis and their interest cannot be defeated or put in jeopardy by any act or omission on the part of the Board. A direction is H

- A made to the Board to perform its statutory duty in respect of payment for the coffee delivered to them by the registered owners in accordance with the provisions of the Coffee Act and to make payment to the growers at the rate which in the facts and circumstances prevailing in any particular year can be held to be just and reasonable and which should cover costs of production of the concerned coffee and reasonable percentage of profit thereon. (642 C, E)

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1841-42 of 1991.

- C From the Judgment and Order dated the 16th September, 1988 of the High Court of Karnataka at Bangalore in writ petition of 9601 and 9602 of 1988.

WITH

Writ Petition (C) No. 899/90 and 66/91.

- D Dr. Debiprasad Pal, G.B. Rai, P.P. Boppana, Ms. Priya Hingorani and N. Ganapathy for the Appellants.

- E M.L. Verma, (For Union of India) A.K. Ganguli (Attorney General) Santosh Hegde, A. Subba Rao, Dalip Tandon, Ms. Sushma Suri, Dr. A.M. Sanghvi, Chandran, R.N. Karanjawala, Bhaskar Pradhan, Ms. Vidula, Ms. Manik Karanjawala, Kh. Nobin Singh, M. Veerappa, Bharat Sangal (N.P.), Mrs. Lalita Kaushik (N.P.) and Ashok Mathur (N.P.) for the Respondents.

The Judgment of the Court was delivered by

- F N.P. SINGH, J. The appellants are the growers of coffee. They filed writ petitions for injuncting the Coffee Board respondent no.1 (hereinafter referred to as 'the Board') from making any payment under the head 'Purchase Tax' out of the Pool Fund maintained under Section 30 of the Coffee Act, 1942. According to the appellants, the Board cannot discharge its liability in respect of payment of 'Purchase Tax' to the State Government, under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as 'the Act') out of the Pool Fund.

- G The High Court held that growers/producers were not liable under Section 5 (3) (a) of the Act to pay the tax in respect of the sale of coffee by them to the Coffee Board. It also held that the Board was liable to pay the 'Purchase Tax' under Section 6 of the Act. But according to the High Court, the Board was authorized in law to pay the tax which it is liable to

pay to the State Government, out of the Pool Fund. On that finding, the writ petitions, filed on behalf of the appellants, were dismissed. A

Section 5 (3) (a) of the Act provides that the tax under the Act shall be levied in the case of sale of goods mentioned in Column No.2 of the Second Schedule to that Act by the first or the earliest of the successive dealers in the State who is liable to tax under the said Section, on the taxable turnover of sale of such dealer in each year relating to such goods. The coffee is included in Entry 43 of the Second Schedule in the Act. The expression 'dealer' has been defined in Section 2 (k) of the Act. The relevant portion of the definition along with exception is as follows:- B

“2 (k) ‘dealer’ means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes.— C

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Exception:- An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause”. E

It need not be pointed out that in view of the exception aforesaid, as the growers of the coffee are statutorily required to sell the coffee to the Board, they shall not be liable to pay the Sales Tax as prescribed under Section 5 (3) (a) of the Act. However, the purchasers which in the present case, shall include the Board, are made liable to pay the tax under Section 6 of the Act. The relevant part of Section 6 says:- F

“6. *Levy of purchase tax under certain circumstances:-* Subject to the provisions of sub-section (5) of Section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax under Section 5 is leviable on the sale price of such goods, and G

(i) either consumes such goods in the manufacture of other goods for sale or otherwise (or consumes otherwise) or disposes of such goods in any manner other than by way of sale in the State, or H

A (ii) despatches them to a place outside the state except as a direct result of sale or purchase in the course of inter-state trade or commerce,

B shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under Section 5."

There was a controversy as to whether the Board shall be liable to pay the Purchase Tax Under Section 6 of the said Act. However, that was settled by this Court in the case of *Coffee Board v. Commissioner of Commercial Taxes, Karnataka*, AIR (1988) SC 1487 = [1988] 3 SCC 263.

C It was held by this Court that Section 6 was applicable to the transactions entered into between the Board and the growers of the coffee and the Board was liable to pay the 'Purchase Tax'.

D The controversy, with which, we are concerned is as to whether the Board was entitled to make payment of the 'Purchase Tax' out of the Pool Fund required to be maintained under Section 30 of the Coffee Act. The relevant part of Section 25 is as under:-

E "25. (1) All coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to that estate (or when no internal sale quotas have been allotted to estates, all coffee produced by the estate) shall be delivered to the Board for inclusion in the surplus pool by the owner of the estate or by the curing establishment receiving the coffee from the estate.

F Provided that where no internal sale quotas have been allotted to estates, the Chairman may allow the owner of any estate to retain with himself for purpose of consumption by his family and for purpose of seed, such quantity of coffee as the Chairman may think reasonable;

G Provided further that where the Central Government is satisfied that it is not practicable for any class of owners producing coffee in any specified area to comply with the provisions of this sub-section on account of the small quantity of coffee produced by them or on account of their estates being situated in a remote locality, the Central Government may, in notification in the Official Gazette

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exempt such class of owners from the provisions of this sub-section. A

(2) Delivery shall be made to the Board in such places (at such times) and in such manner as the Board may direct, and such directions may provide for partial delivery to the surplus pool at any time whether or not at that time the internal sale quota has been exceeded and the coffee delivered shall be such as to represent fairly in kind and quality the produce of the estate. The Board may reject any consignment offered for delivery which does not satisfy this requirement; but shall not reject any consignment merely for a defect in curing. B C

(3) Coffee delivered for inclusion in the Surplus Pool shall upon delivery to the Board remain under the control of the Board which shall be responsible for storages, curing where necessary, and marketing of the Coffee. D

... ..

(6) When Coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in Section 34. E

Section 26 says:-

“26. (1) The Board shall take all practical measures to market the coffee included in the surplus pool, and all sales thereof shall be conducted by or through the Board. F

(2) The Board may purchase for inclusion in the Surplus Pool coffee not delivered for inclusion in it.”

In view of Section 25 all coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to that estate shall be delivered to the Board of inclusion in the surplus pool by the owner of the Estate. After the coffee is delivered, it is to remain under the control of the Board, which shall be responsible for storages, curing where necessary and marketing of the coffee. In the view of sub-section 6 of Section 25, when the coffee has been delivered for inclusion in the Surplus G H

A Pool, the registered owner shall retain to rights in respect of such coffee except his right to receive the payments referred to in Section 34. Section 26 enjoins the Board to take all practical measure to market the coffee included in the Surplus Pool and all sales thereafter shall be conducted by or through the Board. Section 30 says:-

B “The Board shall maintain two separate funds, General Fund and a Pool Fund.”

Section 31 is as follows:-

“31. (1) To all General Fund shall be credited:

C (a) all amount paid to the Board by the Central Government under Sub- Section (1) of Section 13; and

(b) any sums transferred to the General Fund under the provision of Sub-Section (2) of (Section 32; and)

D (c) all fees levied and collected by the Board under this Act.

(2) The General Fund shall be applied;

(a) to meet the expenses of the Board;

E (b) to meet the cost of such measures as the Board may consider advisable to undertake for promoting agricultural and technological research in the interest of the coffee industry in India;

F (c) for making such grants to the coffee estates or for meeting the cost of such other assistance to coffee estates as the Board may think necessary for the development of such estates;

G (d) to meet the cost of such measures as the Board considers advisable to undertake for promoting the sale and increasing the consumption in India and elsewhere of coffee produced in India; and

H (e) to meet the expenses for securing better working conditions and the provision and improvement of amenities and incentives for workers.”

Section 32 is as follows:-

“32. (1) To the Pool Fund shall be created all sums realized by sales by the Board of coffee from the Surplus Pool.

(2) Subject to the provisions of Sub-Section (4) of 13, the Pool Fund shall be applied only to-

(a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the Surplus Pool;

(b) the cost of storing, curing and marketing coffee deposited in and of administering the Surplus Pool;

(c) the Purchase of coffee not delivered for inclusion in the Surplus Pool;

Provided that where, after the requirements, of the clauses of the Sub-Section have been met there remains any excess in the Pool Fund, the Board may, with previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the General Fund.”

According to the appellants, all sums realized from sales by the Board from the Surplus Pool is credited to the Pool Fund which can be applied only for the objects mentioned clauses (a), (b) and (c) of Sub-Section 2 of Section 32. As none of the aforesaid Clauses authorises or vests power in the Board to incur or to apply any amount out of the Pool Fund for payment of ‘Purchase Tax’, the action of the Board in making payment of ‘Purchase Tax’ to the State Government under the provisions of the Act aforesaid is without any authority in law and in contravention of the mandate of Sub-Section 2 of Section 32. On their behalf, it was pointed out, that the High Court, was not justified in holding that any such payment of ‘Purchase Tax’ shall be part and parcel of marketing by the Board and as such covered by Section 32(2) (b) of the Act. Reading Section 32(2) (b), in its proper context, it obviously means marketing of coffee, which has been deposited in, after curing. reference was also made to Sub-Section 3 of Section 25 where also it has been said in clear and unambiguous words that coffee delivered for inclusion in the Surplus Pool shall be delivered to the Board and shall remain under the control of the Board, which shall be responsible for storages, curing where necessary and marketing of the coffee. In other words, according to appellants, the expression “marketing” used in Sub-

A Section 3 of Section 25 or in Section 32(1) (b) refers to the process of marketing after the coffee has been delivered by the growers for inclusion in the Surplus Pool and is stored and cured by the Board; the expression "marketing" shall not include the process of purchase from the growers which precedes the delivery of coffee to the Board for inclusion in the Surplus Pool.

B On behalf of the Board, it was pointed out that the contention of the appellants that the payment of the 'Purchase Tax' should be made from the General Fund, as maintained under Section 31 of the Act should not be accepted because the said General Fund does not have capacity to pay the 'Purchase Tax' after meeting the general expenses of the Board under different heads mentioned in sub-section 2 of Section 31. In this connection, Dr. Shinghvi, appearing for the said Board, referred to the different amounts received under General Fund in different years and the amounts paid as 'Purchase Tax' during those years.

D But before this aspect is examined in detail, the appellants have to establish that in the process of making payment from the Pool Fund any right or interest of the growers like appellants were being affected. We fail to appreciate as to how the appellants are concerned with the Pool Fund. Any balance amount left in the Pool Fund shall not be available to the growers like appellants. Sub-section 6 of Section 25 specifically says that after the coffee has been delivered for inclusion in the Surplus Pool, the registered owner whose coffee has been so delivered shall have no right in respect of such coffee except his right to receive the payments referred to in Section 34. Proviso to Sub-Section 2 of Section 32 also says that if after the requirements of Clauses of that sub-section have been met and there remains any excess in the Pool Fund, the Board may with previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the General Fund. In spite of repeated queries, the learned counsel appearing for the appellants, could not point out as to how the growers have any say in the matter of application of the Pool Fund including for payment of the 'Purchase Tax' by the Board, except that in this process the interest of the growers to receive the payment in accordance with Section 34 of the Act is not affected. Section 34 Says:-

"34. (1) The Board shall at such times as it thinks fit make to registered owners who have delivered coffee for inclusion in the surplus pool such payments out of the Pool Fund as it may think proper.

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(2) The sum of all payments made under Sub-Section (1) to any one registered owner shall bear to the sum of the payments made to all registered owners the same proportion as the value of coffee delivered by him out of the year's crop to the surplus pool bears to the value of all coffee delivered to the surplus pool out of that year's crop. A

Provided that in calculating the sum of all payments made under Sub-Section (1) and the value of coffee delivered to the surplus pool out of the year's crop, respectively, any payment accepted by a registered owner as final payment in immediate settlement for coffee delivered by him for inclusion in the surplus pool and the value of any such coffee shall be excluded." B C

In view of Section 34, the Board has to make payment to the registered owners who have delivered coffee for inclusion in the surplus pool. The expression 'as it may think proper' obviously means that the payment is made on reasonable basis to the growers in respect of coffee delivered by them for inclusion in the Surplus Pool. We are informed that a procedure has been prescribed to determine the rate of payment to the registered owners who have delivered coffee for inclusion in the Surplus Pool. The appellants have not questioned that procedure. On behalf of the Board, our attention was drawn to the stand taken on behalf of the Board, in para 47 of the Counter Affidavit, filed on behalf of the Board, in the connected Writ Petition (Civil) No. 899 of 1990. It says:- D E

"47. The payments made to the growers for their coffees is always above the cost of production with a reasonable margin of profit as determined by Cost Studies regularly carried-out by the Cost Accounts Branch of the Ministry of Finance and/or by the Board. The reserve price fixed for the "Pool Open Auction" is based on this Minimum Release Price. For the Export Auctions the reserve price is based upon the prevailing international price as the export of coffee from the country has to be competitive in the international market and it cannot be made to depend only on the domestic cost of production. For over 20 years, the international price of coffee has been very much above the domestic cost of production although for the last about a year and half the price of several varieties of coffee in the international market have been less than the domestic cost of production. Pool payments declared by the Board is on the basis of per point (100 points = 50 Kgs. of Fair Average H

A Quality Plantation 'A' Coffee). The value per point so declared has always been above the cost of production - in many years almost twice the cost of production."

B During the hearing of the appeals an apprehension was expressed on behalf of the appellants that the Board while discharging its liability towards payment of 'Purchase Tax' may first deduct the amount for payment of the 'Purchase Tax' out of the Pool Fund and the Board shall then make payment to the registered owners as required by Section 34 of the Coffee Act and in any particular year sufficient funds may not be left in the Pool Fund, to enable the Board to make payment of reasonable amount to the registered owners which shall affect and jeopardize the interest of the appellants and other growers of the coffee. It need not to be impressed that C the registered owners who grow coffee and deliver the same for inclusion in the Surplus Pool are entitled to the payment on some reasonable basis and their interest cannot be defeated or put in jeopardy by any act or omission on the part of the Board. But in view of the stand taken by the Board itself in the para 47 of the counter affidavit filed in the connected writ petition before this Court, the appellants, need not be apprehensive about their D payments.

E Accordingly, the appeals are disposed of with a direction to the respondent - Board to perform its statutory duty in respect of payment for the coffee delivered to them by the registered owners in accordance with the provisions of the Act and to make payment to the growers at a rate which in the facts and circumstances prevailing in any particular year can be held to be just and reasonable and which should cover cost of production of the concerned coffee and reasonable percentage of profit thereon. In the facts and circumstances of the case, there shall be no orders as to cost.

F *WRIT PETITION NOS. 899 OF 1990 AND 66 OF 1991.*

Dr. Devi Pal, Senior Advocate, after some arguments sought permission to withdraw the Writ Petitions. Accordingly, the Writ Petitions are permitted to be withdrawn. There shall be no orders as to cost.

A.G.

Appeals and Petitions disposed of.