

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : April 27, 2007
Date of Decision : June 15, 2007

+ LPA 292/2001 & CM 1437/2004

Union of India & Ors. **Appellant**
Through Mr. P.P.Malhotra, Addl. Solicitor General
with Mr.Arvind Sharma, Advocate.

versus

Sir Shadi Lal Enterprises Ltd. & Ors. **Respondents**
Through Mr. Sudhir Chandra, Senior Advocate
with Mr. Trideep Pais, Advocate for R-1 to 8.

CORAM :-

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be allowed to see the order? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

JUDGMENT

Dr. S. Muralidhar, J.

1. This appeal by the Union of India is directed against a judgment dated 4.12.2000 passed by learned Single Judge of this Court in W.P.(C) No.5274 of 2000 filed by the Respondents 1 to 8. While disposing of the writ petition, the learned Single Judge has directed the Respondent sugar producers to pay interest on the excess realisation over the levy price of sugar for the season 1982-83 from 20.2.1996 and not from the actual date of such realisation. This appeal by the Union of India is limited to the extent that the interest should have, in terms of the Levy Sugar Price Equalisation Fund Act ('LSPEF Act') 1984, been directed to be paid from the date of actual realisation of the excess amounts.

2. The facts leading to the filing of this appeal are that for the sugar season 1982-83 the Central Government issued a notification on

27.1.1983 fixing the levy price of sugar at Rs. 277.41 per quintal in accordance with the provisions of Section 3(3)(C) of the Essential Commodities Act, 1955 ('EC Act'). This levy price was challenged by Respondent No.1 Sir Shadi Lal Enterprises Ltd. by W.P.(C) No. 1840 of 1983 before the High Court of Judicature at Allahabad. Similar writ petitions were filed by Respondents 3, 5 and 7. As an interim relief these Respondents sought permission to sell levy sugar stock of the 1982-83 season at the price of Rs. 365.28 per quintal.

3. By an interim Order dated 25.3.1983 the Allahabad High Court permitted the said Respondents to sell sugar to the Central Government at Rs. 298.81 per quintal, i.e. at a price higher than the levy price as interim arrangement subject to the condition that "the petitioners shall furnish Bank guarantee in advance in respect of the difference of the price as fixed by the order dated 27.1.1983 and the price fixed by this Court." The further conditions were that: "In addition an advance Bank guarantee be also given by the petitioners in respect of interest at the rate of 12-1/2 % per annum. In case the petition fails, the respondents shall be entitled to encash the Bank guarantee. The guarantee may be furnished to the satisfaction of the Deputy Director, Government of India, Ministry of Agriculture, Department of Food, Directorate of Sugar, Krishi Bhawan, New Delhi. The Bank guarantee will be kept alive during the pendency of the writ petition and for six months thereafter."

4. Pursuant to the above interim Order, the Respondents furnished bank guarantees to cover the excess realisation. Subsequently, the writ petitions filed by the Respondents were transferred and heard along with certain other writ petitions before the Hon'ble Supreme Court in which the levy price for the sugar season 1974-75 to 1979-80

were under challenge. While disposing of the batch of writ petitions in ***Malaprabha Cooperative Sugar Factory v. Union of India*** (1994) 1 SCC 648 (hereafter ***Malaprabha I***), in respect of the levy price for the season 1974-75 to 1979-80, the Hon'ble Supreme Court issued directions to the Central Government to amend the levy price notification after taking into account the liability of the sugar manufacturer under Clause 5 A of the Sugarcane (Control) (Order) 1996 and re-fix the price of levy sugar having regard to the factors in Section 3 (3C) of the EC Act. However, the Hon'ble Supreme Court did not issue any similar direction in regard to the levy price for the season 1982-83. Consequently, the interim order dated 25.3.1983 passed by the High Court stood automatically vacated.

5. Consequent upon the said judgment of the Hon'ble Supreme Court in ***Malaprabha I***, the Respondent sugar producers were required to refund the excess realisation for the sugar season 1982-83 along with interest to the Levy Sugar Price Equalisation Fund (LPSEF) in terms of Section 2 (b) of the LSPEF Act 1984. Accordingly, the Union of India on 4.9.2000 made a request to the bank for encashment of the bank guarantees to cover the excess realisation to the tune of Rs.79,16,502 along with interest. This led the Respondents 1 to 8 to file W.P.(C) No. 5274 of 2000 in this Court. An interim order was passed on 12.9.2000 staying the encashment of the bank guarantee. Thereafter by the impugned order dated 4.12.2000 while disposing of the writ petition, the learned Single Judge directed that interest on the amount of excess realisation would be payable only from 20.2.1996 and not earlier. The reason given in the impugned order was that the levy price for the sugar season 1982-83 was upheld by the Hon'ble Supreme Court in ***Modi Industries Ltd. v. Union of India*** (1999) 9 SCC 245 by a judgment dated 20.2.1996 and therefore the interest

would be chargeable on the excess amount realised over and above the levy price only from that date i.e. 20.2.1996.

6. It is stated by the Union of India that subsequent to the impugned judgment of the learned Single Judge it encashed the bank guarantees and recovered the excess realisation together with interest with effect from 20.2.1996. The present appeal has been filed to the extent of recovery of the remaining interest amount in terms of the LPSEF Act 1984, i.e, for the period from the date of excess realisation till 20.2.1996.

7. In the cross objections filed by the Respondents here a prayer has been made that the appellants should be restrained from encashing the bank guarantees furnished for the year 1982-83 or charging any interest at all and in any event that it should be declared that the appellants are entitled, in terms of the judgment of the Hon'ble Supreme Court in ***Malaprabha I*** to encash only 50% of the principal amount covered by the bank guarantees.

8. The contention on behalf of the appellant Union of India is that in terms of the LSPEF Act 1984 an amount representing the difference between the levy price and the price actually collected is required to be credited to the LSPEF within 60 days of the realisation of the said amount. The rate of interest as per the LSPEF Act is 12-1/2% p.a. from the date on which such excess amount was realised. It is submitted that learned Single Judge did not notice the provisions of the LPSEF Act and therefore erred in directing that interest would be payable only from the date of the judgment in ***Modi Industries*** case.

9. On behalf of the Respondents it is sought to be pointed out that

while disposing of the writ petition, the learned Single Judge had taken note of the submission that even the judgment in ***Modi Industries*** case did not account for the liability of the manufacturer under Clause 5(A) of the Sugarcane (Control) Order while disposing of the levy price for the year 1982-83 as mandated by ***Malaprabha I***. Therefore the learned Single Judge to be “just and fair” directed the Respondents to pay interest only from the date of the judgment in ***Modi Industries*** case. Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***Godavari Sugar Mills Ltd. v. Union of India*** JT 2001 10 SC 527 in which the Hon'ble Supreme was dealing with the challenge to the levy sugar price for the year 1985-86. While negativing the challenge, the Hon'ble Supreme Court had “in view of the special facts and circumstances of the case” directed that the sugar producer would refund the excess amount to the Central Government within six months “but without any interest.” It is accordingly prayed that in the present case also no interest is liable to be paid to the Central Government.

10. It is further contended by the Respondents that since their petitions were heard along with the other writ petitions in ***Malaprabha I***, the judgment in ***Malaprabha I*** would govern them and they are not liable to pay any interest at all “not even from the date of the decision in ***Modi Industries*** case and to that extent the judgment of the learned Single Judge is not correct and is liable to be modified.”

11. However, in the written submission filed by Respondents 1 to 8 they have stated that they are confining their case now only with regard to the question of interest payable to the central government

and are not pressing their claim for re-fixation of the levy sugar price for the year 1982-83.

12. On the pleadings in the present case, the following issues arise for determination:

(i) Are the Respondents right in their contention that their writ petitions challenging the levy price for the sugar season 1982-83 stand covered by the judgment of the Hon'ble Supreme Court in **Malaprabha I** and not by the subsequent pronouncement in **Modi Industries?**

(ii) On the question of payment of interest on the excess realisation, what is the effect of the LSPEF Act, 1984 and is the impugned judgment of the learned Single Judge sustainable in terms of the said statute?

Issue No.(i)

13. Although in their written note, the Respondents 1 to 8 appear to have given up their challenge to the validity of the levy price for 1982-83, it requires to be reaffirmed that the said question stands answered against the Respondents 1 to 8 by the judgment of the Hon'ble Supreme Court in **Modi Industries**. In **Gangeshwar Ltd. v. Union of India** 135(2006) DLT 13(DB), a Division Bench of this Court was dealing with a challenge to the levy price for 1984-85. This Court took note of the fact that the Hon'ble Supreme Court had clarified in **Malaprabha Cooperative Sugar Factory Ltd. v. Union of India** (1997) 10 SCC 216 (**Malaprabha II**) that “the ratio of **Malaprabha I** would be applicable only to the sugar season 1974-75 to 1979-80. It appears that all of its observations were only in the context of these years and not the subsequent ones.” This Court also noted that the

subsequent orders in ***Bharat Sugar Mills Ltd. Union of India*** (1999) 9 SCC 246 and ***Union of India v. Triveni Engineering Ltd.*** (1999) 9 SCC 244, both of which concerned the levy price for 1982-83, followed the order in ***Modi Industries*** and negated the challenge. The decision in ***Godavari Sugar Mills Ltd. v. Union of India*** (supra) also makes no difference to this position.

14. The submission of the Respondents that the judgment of the Hon'ble Supreme Court in ***Malaprabha I*** will govern the writ petitions filed by them challenging the levy price for 1982-83 appears to have been rejected even by the learned Single Judge in the impugned Order. The learned Single Judge observed that the High Court was bound by the judgment in ***Modi Industries*** case. The relevant observations are as under:

"My difficulty is that in view of the judgment in ***Modi Industries Ltd. & Ors. Case*** (supra) the price as fixed by the respondent for 1982-83 has been taken as correct by the Supreme Court, I have no other alternative except to take the price as determined in terms of ***Modi Industries Ltd. & Ors.'s*** case (supra) for 1982-83 which is not calculated in terms of judgment of Shri ***Malaprabha Coop. Sugar Factory Ltd.'s*** case (supra). To the similar effect the matters relating to pricing of 1982-83 has come up before Supreme Court in ***Bharat Sugar Mills Ltd. & anr.'s*** case (supra) and before Allahabad High Court as well in the ***Reliance Jute & Industries Ltd. & anr. v. the Union of India & Ors.*** Civil Misc.Writ Petition No.,5785/1983 decided on 22.10.1997 and ***Bagpat Coop. Sugar Mills Ltd. & anr. v. the Union of India & ors.*** Civil Misc. Writ Petition No. 5956/183 decided on

22.10.1997 which has been disposed of in view of **Modi Industries Ltd. & ors.'s** case (supra). I am bound by the price of 1982-83 as has been approved by the Supreme Court in **Modi Industries Ltd. & ors.'s** case (supra)."

15. On this aspect, this Court fully concurs with the view expressed by the learned Single Judge. In view of the legal position emerging from the above discussion it is clear that the challenge by the Respondent to the levy sugar price for the season 1982-83 must be taken to have failed and the consequential directions would ensue. Issue No. (i) is accordingly decided in favour of the appellant and against the Respondents.

Issue No.(ii)

16. The provisions of the LSPEF Act have not been discussed anywhere by the learned Single Judge in the impugned judgment. This Act, first enacted in 1976 and later amended in 1984 was made with the specific purpose of avoiding any loss to the exchequer on account of the late refund to the Central Government of the excess price collected by sugar manufacturer over and above the levy price. The idea was to ensure that "the price of levy sugar may be uniform throughout India." The Act acknowledges the fact that the delay in the realisation of the additional price was invariably on account of the interim orders passed by the courts. The relevant provisions of the said LPSEF Act 1984 read as under:

3. Levy Sugar Price Equalisation Fund.

(1).....

(3) Save as otherwise provided in sub-section (5), every producer shall--

(a) in the case of an excess realisation made before the

commencement of this Act, within thirty days from such commencement,

(b) in the case of an excess realisation made after such commencement, within thirty days from the date on which such excess realisation was made,

credit to the Fund, the amount representing such excess realisations, together with interest due thereon at the rate of twelve and a half per cent per annum, from the date on which such amount was realised by him.

"Provided that--

(a) the interest due on so much of any amount of any excess realisation made before the date of commencement of the Levy Sugar Price Equalisation Fund, (Amendment) Act, 1984, as is not credited to the Fund together with interest at the aforesaid rate of twelve and a half per cent per annum before the expiry of sixty days from the date of such commencement; and

(b) the interest due on so much of the amount of any excess realisation made on or after the date of such commencement as is not credited to the Fund together with interest at the aforesaid rate of twelve and a half per cent per annum within sixty days from the date on which such amount was realised;

shall be at the rate of 15% per annum from the date such amount was realised by the producer.

(5) Where in pursuance of an interim order made by any court, whether before or after the commencement of this Act, any amount representing the difference between the controlled price and the interim price allowed by the court is,-

(a) held by any producer either with himself or with any court, Government, bank or other authority, or

(b) collected and kept by the producer under the cover of any guarantee

such producer shall, on the final disposal of the proceedings of the court aforesaid, credit to the Fund within sixty days from the date of such final disposal, such amount, to the extent it represents together with interest due thereon at the rate of twelve and a half per cent per annum from the date on which

such amount was realised by him:

Provided that-

- (i) the interest due on so much of such amount as was realised before the date of commencement of the Levy Sugar Price Equalisation Fund (Amendment) Act, 1984 and is not credited to the Fund together with interest at the aforesaid rate of twelve and a half per cent per annum before the expiry of sixty days from the date of such commencement, and
- (ii) the interest due on so much of such amount as is realised after such commencement and not credited to the Fund together with interest at the aforesaid rate of twelve and a half per cent per annum within sixty days from the date on which such amount was realised;

shall be at the rate of fifteen per cent per annum **from the date on which such amount was realised by the producer**";

(5A)

(5B) Without prejudice to the provision of sub-section (5), any amount representing the difference between the controlled price and the interim price allowed by the court which-

- (a) is held by any producer with any other person or with any court, Government, bank or other authority referred to in Clause (a) of that sub-section, or
- (b) is under the cover of any guarantee referred to in clause (b) of that sub-section,

shall, as soon as may be after the final disposal of the proceedings of the court aforesaid, be credited, to the extent such amount represents excess realisation together with the interest, if any, which has accrued thereon or been guaranteed in respect thereof, to the Fund by such other person, the court, Government, bank or other authority aforesaid or, as the case may be, by the bank or other person furnishing such guarantee and the amount so credited shall be set off against the amount (including interest) required to be credited by the producer under sub-section (5).

....

(6) For the removal of doubts, it is hereby declared that the obligation to credit amounts representing excess realisation to

the Fund shall be in addition to any penalty which may be imposed for the contravention of any provision of this Act.

(7) The Fund shall be administered, subject to the provisions of section 8, by the Central Government."

17. It is clear from the above provisions that the interest at the rate of twelve and a half per cent per annum is payable "from the date on which such amount was realised by the producer." Therefore there can be no manner of doubt as to the date from which the interest becomes payable. Even in the context of the earlier enactment of 1976, the liability of the sugar producer to pay interest on excess realisation was never in doubt. For instance, in **Bileshwar Khand Udyog Khedut Shahakari Mandali Ltd. v. Union of India** (1999) 2 SCC 518, the Hon'ble Supreme Court negatived the contention of the sugar producers that they were not liable to pay interest in terms of the LSPEF Act, 1976. Following the judgment in **Anakapalle Co-op Agricultural & Industrial Society Ltd. v. Union of India** (1977) 4 SCC 140, the Court held that Section 3 (3) of the 1976 Act which provided for interest on the excess realisation was applicable to the appellants in that case.

18. Turning to the case on hand, not only is there no challenge to the LPSEF Act, but even in the cross objections or the written submissions filed by the Respondents they have not questioned the applicability of the LPSEF Act and the liability to make the payment in terms thereof. The impugned judgment of the learned Single Judge also does not notice the provisions of the LPSEF Act. There is therefore no basis for the contention of the Respondents that the recovery should be restricted to the 50% of the principal amount. In terms of the LSPEF Act, 1984 the direction issued by the learned Single Judge restricting the interest from the date of the judgment in

Modi Industries is unsustainable in law. It has been pointed out in the affidavit dated 11.3.2002 filed on behalf of the Union of India in these proceedings that the loss to the Exchequer in view of the non payment of the excess realisation by the sugar factories including the Respondents herein is in the excess of Rs. 6.13 crores.

19. For all of the above reasons, this Court concludes that in terms of the LSPEF Act 1984 interest is payable by the Respondent sugar producers from the date of the excess realisation and is not restricted to the period after the date of the judgment of the Hon'ble in **Modi Industries Ltd.** To this extent the impugned order dated 4.12.2000 of the learned Single Judge is set aside. The cross objections are without merit and are rejected. The Union of India will now proceed to recover the balance interest on the excess realisation by the Respondent sugar manufactures for the year 1982-83 in terms of the LSPEF Act 1984.

20. The appeal is allowed in the above terms and the cross-objections filed by the Respondents are hereby dismissed. The application is disposed of.

Sd/-
S. MURALIDHAR, J

Sd/-
MUKUL MUDGAL, J

June 15, 2007
dn