

The West Pakistan Sugarcane (Development) Cess Rules, 1964

Notification No~ SOF (Sugar)-13 (35)/64 (Part 11)3—In exercise of the power conferred by section 12 read with section 17 of the Finance Act, 1964 (XXXIV of 1964), the Governor of the Province concerned is pleased to make the following rules, namely:--

1. Short title, extent and commencement.-(1) These rules may be called the West Pakistan Sugarcane (Development) Cess Rules, 1964.

(2) They shall come into force at once.

2. Definitions.-In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:--

- (a) "Act" means the Finance Act, 1964;
- (b) "Cane", "Cane Commissioner" "Cane grower", "crushing season" and "purchasing agent" shall have the same meanings as respectively assigned to them in the Sugar Factories Control Act, 1950 (*ante*);
- (c) "Cess" means the sugarcane development Cess, levied under section 12 of the Act;
- (d) "Form" means a form appended to these rules;
- (e) "Fund" means the Sugarcane Development Fund constituted under rule 8;
- (f) "Mill management" means the person or persons managing the affairs of a sugar mill, and shall include the Manager, General Manager, the Resident Director and the Managing Director of a sugar mill or any other person acting on behalf of any of these;
- (g) "prescribed" means prescribed by these rules;
- (h) "purchasing centre", "weigh bridge" and "year" have the same meanings as respectively assigned to them in the Sugar Factories Control Rules, 1950 [*ante*];
- (i) "Sugar Mill" means any premises, including the precincts thereof, wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar by means of vacuum pans is being carried on, or is ordinarily carried on, with the aid of power;
- (j) "Occupier of a factory" means the person who has ultimate control over the affairs of a sugar mill; and
- (k) "Seller" means a person selling sugarcane to a sugar mill and includes the authorised agent of such person.

3. **Time and manner of payment.**—

(1) The portion of the Cess payable by the seller (*six paisa per maund* of sugarcane) shall be covered from the seller by the mill management while making payment of the price of cane to him.

(2) The mill management shall contribute to the portion of the cess recovered from the seller under sub-rule (1), an equal amount, and deposit the total amount of the cess together with the whole of the cess due in respect of any quantity of cane obtained from the Mill's own sugar farms or from the farm of the occupier of the factory in the nearest Government Treasury in the manner prescribed in sub-rules (3) and (4).

(3) The cess shall be deposited in the Government Treasury within five days of the close of each fortnight, that is, by the fifth and twentieth of each month.

(4) Each payment into the Treasury shall be for the full amount of the cess as due to the Government in respect of the preceding fortnight on the entire quantity of cane purchased by the Sugar Mill or obtained by it from its own sugar farms or farm of the occupier of the factory during that fortnight, irrespective of the payment of the price of cane by the mill management or the recovery of the seller's share of the cess:

(5) A copy of the receipted challan along with a return in form S.C.R. 1 shall be forwarded by the mill management to the Cane Commissioner or any other officer authorised in this behalf by the Government within seven days from the date of deposit of the cess in the Government Treasury.

4. Procedure in case of non-submission of returns.-

(1) If the return referred to in sub-rule (5) of rule 8 is not submitted or if in the opinion of the Cane Commissioner the return is not correct and complete and the cess has not been paid or has not been paid in full, the Cane Commissioner shall, after giving the mill management, a reasonable opportunity of being heard, determine the amount of the cess, and order its payment accordingly.

(2) Government or any other officer so authorised by the Government may call for and examine the relevant records and accounts and such other evidence as it may consider necessary for the purpose of determining the amount of the cess payable under sub-rule (1),

(3) Any mill aggrieved by the order passed under sub-rule (1) above may, within thirty days of the order, prefer an appeal against such order to Government.

5, Penalty.--(1) If a sugar mill does not deposit the cess due into the Government Treasury by the prescribed date, the Cane Commissioner or any other officer, authorised in this behalf, may in pursuance of section 14 of the Act, impose on the management a penalty not exceeding the amount of the tax:

Provided that such penalty shall not be imposed without giving the mill management an opportunity of being heard.

(2) Any sugar mill aggrieved by an order passed under sub-rule (1) above may, within thirty days of the order, prefer an appeal to Government.

(3) On expiry of thirty days from the order made under sub-rule (1) or after decision of the appeal under sub-rule (2), the mill management shall be required by the Cane Commissioner, by a notice in form S.C.R. I., to deposit the penalty imposed under this rule and the amount of the Cess which remains unpaid.

(4) In case of default, the amount of the cess and the penalty or such part thereof as remains unpaid shall on a certificate to that effect by the Cane Commissioner, be recoverable as arrears of land revenue.

Comments

Constitutional petition - Default in payment of sugarcane cess by the petitioners (Sugar Mills). Provincial Government allowed the petitioners to clear their default in payment of Sugarcane Cess through monthly installments. All the petitioners had faithfully performed their installments agreement but alleged that after a bulk of the over due cess had been cleared by the petitioners each of them had received a notice from the Cane Commissioner demanding payment of penalty for committing default. Validity. Installment agreement between the parties did not contain any term that waived the charge of penalty claimed, Claim of petitioners for waiver of penalty amount was therefore, at best, based upon the omission by the Authorities to claim penalty at any stage prior to or at the time of concluding the installment agreement. Right to charge penalty was not derived from the consent of the parties but emanated from section 14, West Pakistan Finance Act, 1964 that created the charge of penalty and R.5(1), West Pakistan Sugarcane (Development Cess) Rules, 1964 whereby the time, manner and procedure for collection of penalty was spelled out. Liability to pay penalty, therefore, would survive both in the absence of the installment agreement as well as its failure to state the petitioner's non-liability there. Silence on the point in the installment agreement operated to preserve the petitioner's obligation to pay such a charge rather than to extinguish the same.

Constitutional petition. Default in payment of Sugarcane Cess by Sugar Mills.-- Clearance of dues by installments by the Mills under an agreement with the Provincial Government. Penalty for default Quantum Imposition of maximum penalty. Once the liability of the Sugar Mills to pay for their past default to clear Sugarcane Cess dues was determined to exist, the question that remained was as to what quantum of penalty could be recovered from the Mills. Cane Commissioner had discretion to impose penalty that was subject to the maximum ceiling of the amount of tax that was in arrears. Direction given in policy framed for imposing penalty required that pending approval of the policy by the Provincial Government, the terms thereof were to be adhered uniformly by the Authorities as a measure of transparency and reasonableness. Provincial Government, in the present case; had entered into an installment agreement with the Mills acknowledging their entitlement for sufficient reason to pay arrears of Sugarcane Cess development in installments. Factum of such an agreement showed that the Mills demonstrated, within the meaning of the policy, the existence of "unavoidable circumstances" and huge "magnitude of default" by them, which would under the literal adherence to the rule of maximum penalty applicable for default for a period of more than 12 months to be unreasonable. Where the period of default exceed 12 months, policy itself gives a discretionary margin of relief in quantum of penalty to be applied from 51% to 100% of the Sugarcane Cess amount in arrears. Impugned order of the Authorities showed that they had not applied their minds to the said discretionary margin nor did they consider at all the impact of mitigating circumstances of the case under the terms of the policy, which stood acknowledged by the conclusion of the installment agreement. Failure by the Authorities to consider the factors relevant to the imposition of penalty as highlighted in the terms of the Policy and to exercise their discretion in accordance therewith in fixing the quantum of penalty, represented a failure to exercise jurisdiction fairly and reasonable in circumstances of the case. Liability of the Mills to pay penalty for their default to discharge their Sugar Cess dues could not be doubted. However, it was equally clear that the Mills had a good case for a reduced amount of penalty to be imposed in view of the circumstances of the case. Absence of further default in the payment of installments might be another consideration for the Authorities in relaxing the quantum of penalty. Each of such factors provided criteria

for the exercise of discretion by the Authorities. Important standard to be observed by the Authorities whilst exercising the discretionary power to levy penalty was that they must act transparently, reasonably, fairly and uniformly and their assessment of the different criteria impinging upon the quantum of penalty to be imposed must be based upon reasoning and material contained on the record. High Court declared that the impugned assessment of maximum penalty by the Authorities in the case of each Mill uniformly was void and unlawful. Authorities were directed to conduct fresh proceedings for the assessment of the said liability of Mills subject to Mills' depositing 25% of their respective amounts of Sugarcane Cess in default. Mills should also file applications before the Cane Commissioner providing grounds having reference to the terms of Policy for remission in the quantum of penalty payable by them to be determined by the Cane Commissioner in the range between the amount of their down payment to the ceiling fixed by the Policy. Such applications by the Mills shall be disposed of in the light of principles noted in the present judgment after giving an opportunity of fair hearing to the Mills.

6. Keeping of Book or Accounts.--Each Sugar Mill shall keep a separate account containing the following particulars:-

- (1) The amount of cess recoverable from each seller.
- (2) The date of recovery of the amount of the cess referred to in clause (1).
- (3) The quantity supplied by each seller in respect of which the cess has been recovered.
- (4) The mill management share of the cess in respect of the cane purchased.
- (5) The quantity of cane obtained from the mill's own sugar from the farms of the occupiers of the factory.
- (6) The amount of cess payable by the mill management in respect of the sugarcane referred to in clause 5.
- (7) The amount and the date of the deposits made into the Government Treasury on account of the cess.

7. Inspection of Audit Accounts.-- The accounts of the Sugar Mills both in respect of purchases of sugarcane and collection of cess in respect thereof from sellers and credits by the mills from their own funds and deposit into the Government Treasury, shall be subject to inspection and audit by the Government Auditors or any other officer authorised in this behalf by Government.

8. (1) There shall be constituted a Fund to be known as the Sugarcane Development Fund.

(2) All proceeds .of the cess, after deduction of such expenses of the collection thereof as may be directed by the Government shall be credited into the

(3) The Fund shall be utilized by Government for:--

- (a) Special maintenances and development of roads and special plant protection services in the areas comprising the Mill Zones; and
- (b) such other activities directed towards the development of sugarcane productions, as may be approved Government.

(4) The Fund shall be operated upon by Government Dr such officer or authority under Government as may be authorised in this behalf by Government by an order in writing.