

(1994) 09 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 899 of 1994

Baidyanath Ayurved Bhawan Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11A(1)
Constitution of India, 1950 — Article 226

Citation : (1995) 75 ELT 472

Hon'ble Judges : T.P. Garg, J;A.P. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.P. Mishra, J.—Heard learned counsel for the petitioner and learned Standing Counsel for the Union of India.

2. The petitioner seeks quashing of notice dated 28th July, 1994 (Annexure 1 to the writ petition) and further directing the said respondent not to proceed further or take any action in pursuance of the same.

3. The impugned show cause notice is issued u/s 11A of the Central Excises and Salt Act, 1944 read with the provisions of the Central Excise Tariff Act, 1985, by virtue of which the petitioner has been asked to pay excise duty amounting to Rs. 53,79,299/- under the Central Excise Act for the period July, 1989 to February, 1994.

4. The petitioner has challenged the said notice on the grounds of it being barred by time and also being without jurisdiction. According to the case of the respondent as spelt out from the impugned notice on the basis of information, an officer of the Central Excise visited the premises of the petitioner on 18th, 24th and 25th January, 1994, and studied the manufacturing process of Ayurvedic medicines manufactured, obtained relevant records for further study and scrutiny. Later, when the process of manufacture was furnished by the petitioner

pertaining to the manufacture of Asav, Aristha and Prawahi Kwath the authorities on the perusal of the process of manufacture and also in accordance with the Ayurvedic books mentioned in the drug licence and on the basis of production register stock and bank register, it was observed that the final product, viz. the Ayurvedic medicine which the petitioner is manufacturing is completed in two distinct steps; first, the extract of the toritous herbs and shrubs are extracted in water solvent by boiling in moderate fire and subsequent filtration, and the second, the extract so obtained are put to the process of fermentation as a result of which the final Ayurvedic medicine comes into existence. The impugned notice spells out that the extracts of various herbs and shrubs manufactured by the parties are distinct goods liable to classification under sub-heading 1301.90 of CETA attracting Central Excise Duty at specified rates. It has also raised a number of other grounds for which a show cause notice has been given, which we need not refer to. The said notice further records violation of proviso to Section 11A(1) and has further stated that the party has suppressed the facts, viz. the process of manufacture [of] an intermediary product which itself is excisable goods used as a raw material for the manufacture of final product with intent to evade payment of duty.

5. Learned counsel for the petitioner vehemently urged that the liquid which comes out as an intermediary product is kwath and that itself is a medicament and exempt under Chapter 13 of the Central Excise Tariff. It is contended, even if kwath is an excisable goods it is exempt under sub-heading 3003.30 by virtue of notification dated 1-3-1989. On the question raised by the petitioner we would not like to enter into lest it might prejudice the proceedings pending before the authority below. The contention raised by the learned counsel for the petitioner is that since it is a jurisdictional question this Court has ample power to exercise its jurisdiction under Article 226 of the Constitution and the party need not be sent before the authority concerned. Admittedly, the present petition is directed against a show cause notice only. The question whether the intermediary product could be said to be liquid or in other words the stand of the petitioner is whether the intermediary product is kwath or not or if it is kwath, it is of medicinal value is all in the realm of question of fact, which we feel, could not appropriately be examined in proceedings under Article 226 of the Constitution. The further question whether kwath as excisable goods is exempt under sub-heading 3003.30 under the aforesaid notification, is again a question, which it would be appropriate that the petitioner may raise all these grounds before the said authority in response to the show cause notice, which shall decide it in accordance with the Act and Rules.

6. Learned counsel for the petitioner then urged, since the seizure has been made in January, 1994 and the matter is pending since long he may be permitted to raise apart from the aforesaid grounds the ground to decide some of the issues as preliminary issues, we leave the matter on the said authority to decide whether the question raised by the petitioner should be preliminary issue or not and the petitioner is at liberty to raise such issues as he deems just and

proper before the said authority to be treated as a preliminary issue. It is for the authority to decide in case whether it is or it is not prejudicial to the revenue, to treat such issues if it goes to the root of the matter as a preliminary issue.

7. In view of the aforesaid, we decline to exercise our discretion under Article 226 of the Constitution.

8. With the aforesaid observations, this petition is dismissed.