

(2015) 03 AHC CK 0180
In the Allahabad High Court
Case No : Misc. Bench No. 2100 of 2015

Balrampur Chini Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 5A(1)

Citation : (2015) 323 ELT 271

Hon'ble Judges : Rajiv Sharma, J; Rakesh Srivastava, J

Bench : Division Bench

Advocate : Rahul Agarwal, Jai Prakash Tripathi and Sudeep Kumar, for the Appellant; Deepak Seth, Advocates for the Respondent

Judgement

1. Shri Deepak Seth, Advocate has accepted notice on behalf of respondent Nos. 1 to 3. He prays for and is allowed three weeks' time to file counter affidavit. List immediately after three weeks. The petitioner is engaged in the manufacture of V.P. Sugar, which is being categorized under the Heading No. 1701 11 90, whereas molasses falling under the Heading 1703 10 00. The molasses emerges as a by-product during the manufacture of sugar in the sugar unit is transferred to the distillery unit for being used in the manufacture of alcohol. In exercise of powers under Section 5A(1) of the Central Excise Act a notification was issued exempting the goods falling in the First Schedule of the Central Excise Tariff Act, 1985, and as such, prior to 28-2-2005 the benefit of exemption of the aforesaid notification dated 16-3-1995 was also extended to the petitioner's unit as per procedure under Rule 6 of the Cenvat Credit Rules. After the introduction of sub-heading Ethyl Alcohol and other spirits other than denatured of any strength was chargeable to "NIL" rate of duty and denatured spirit was chargeable at the applicable rate mentioned in the tariff. Thus, Rectified Spirit, ENA, etc., are excisable items, whereas Ethyl Alcohol and other spirits, denatured of any strength, continued to be exempted by virtue of notification dated 24-2-2005. Subsequently, notification dated 24-2-2005 was superseded by notification dated 17-3-2012, but no change in the status of spirits was made, meaning thereby, all

spirits other than denatured Ethyl Alcohol of any strength continued to be exempted to NIL rate of duty. As the petitioner is manufacturing denatured Ethyl Alcohol, which is dutiable final product, and is also manufacturing spirits other than Denatured Ethyl Alcohol, which are subject to NIL rate of duty, and accordingly, the petitioner fulfils the obligation as provided under Rule 6 of the Cenvat Credit Rules. The petitioner, in furtherance thereof, files monthly return declaring the quantity of molasses transferred from its sugar unit to the distillery unit for captive consumption, and in view of the provisions of Rule 6 of the Cenvat Credit Rules the assessing authority did not raise any objection, but without any rhyme or reason notice has been issued on 27-9-2012 and in view of the decision of the Hon''ble Supreme Court in the case of Pahwa Chemicals Private Limited v. Commissioner, 2005 (189) E.L.T. 257 (S.C.) in which the Apex Court has held that mere failure to declare some facts does not amount to willful mis-declaration or willful suppression, but there must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression. As the period of limitation, as prescribed under the Act, was beyond time, as such the petitioner has filed the writ petition, which was numbered as Writ Petition No. 9339 (MB) of 2012, and the same was entertained and an interim was passed. The said interim order was extended from time to time. The writ petition was disposed of on 10-7-2014 and the matter was remanded back to the adjudicating authority. Pursuant to the decision, the order impugned in the instant writ petition has been passed, which is being assailed inter alia on the ground that the adjudicating authority failed to take into account the object of the Central Excise Tariff (Amendment) Bill, 2004 as well as the statement of objects/reasons appended to the Bill. The adjudicating authority has also overlooked the fundamental principle of interpretation, thus, the order, so passed, by the adjudicating authority is non-speaking order. It has further been submitted that it is not open for the subordinate authority to refuse to give effect to binding judgments of higher quasi-judicial authorities without assigning reasons.

2. Prima facie of interim relief is made out. Considering the facts and circumstances of the case, the operation of the impugned order dated 4-2-2015 passed by respondent No. 2 (Annexure 1 to the writ petition) shall remain stayed till the next date of listing.