

(1986) 07 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 839 of 1985

Dabur (DR. S.K. Burman) Private Limited

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Citation : (1986) 10 ECC 260

Hon'ble Judges : R.R. Misra, J;N.D. Ojha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—The petitioner is manufacturing medicinal preparations including Pudín Kara. It made an application to the State Government of Uttar Pradesh for permission to manufacture Pudín Hara in the State of Uttar Pradesh. By letter of the year 1979, a copy whereof has been filed as Annexure 4 to the writ petition, the Excise Commissioner informed the Collector, Ghaziabad, that the petitioner had been granted permission to prepare certain medicines, inter alia, subject to the condition that it shall supply samples as contemplated by Rule 60(3) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, hereinafter referred to as "the Rules". Its copy was forwarded to the petitioner also. It further appears that the petitioner brought it to the notice of the Excise Commissioner that it had been manufacturing Pudín Hara from before 1st April, 1957 and consequently as contemplated by Sub-rule (1) of Rule 60 of the Rules Pudín Hara was to be considered to be an unrestricted preparation. The Excise Commissioner by his letter dated May 16, 1979, a copy whereof has been filed as annexure 6 to the writ petition, permitted the petitioner to pay duty on the basis of the aforesaid representation that Pudín Hara was being manufactured from before 1st April, 1957, treating it to be unrestricted medicine. It was, however, specifically stated in that letter that the decision as to whether Pudín Hara was to be placed in the category of restricted or unrestricted preparations, shall be decided subsequently. By an order dated 1st June, 1985, a copy whereof has

been attached as annexure 7 to the writ petition, the Excise Commissioner, U.P. required the petitioner to pay duty on the basis that the Pudina Hara was a restricted preparation on the ground that the components of the Pudina Hara which was being manufactured by the petitioner within the State of Uttar Pradesh from the year 1978-79 were different from the components of the Pudina Hara prepared by it presumably in West Bengal from before the said date. Apparently, the view taken by the Excise Commissioner was that the components of Pudina Hara, which was being manufactured in the State of Uttar Pradesh since 1978-79, being different, it could not be said that this Pudina Hara was being manufactured by the petitioner from before 1st April, 1957 so that it may be treated as unrestricted medicine within the meaning of Sub-rule (1) of Rule 60 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. It is this order which has been challenged in the present writ petition. Counter and rejoinder affidavits have been filed.

2. Both the respondents to the writ petition are represented by the Standing Counsel and there is no private party to be served. On the facts of the instant case we are of the opinion that this writ petition deserves to be finally decided at this very stage as contemplated by the second proviso to Rule 2 of the Second Chapter of the Rules of Court. We have accordingly heard the Learned Counsel for the petitioner and the Standing Counsel on the merits of the writ petition;

3. One of the pleas raised in the present writ petition is that the impugned order dated 1st June, 1985, was passed by the Excise Commissioner without giving the petitioner any opportunity of hearing and thus being in violation of the rules of natural justice is liable to be quashed on this ground alone. The necessary averment in this behalf is contained in paragraph 35 of the writ petition. The reply to this paragraph of the writ petition is contained in paragraph 30 of the counter affidavit of Sri K.C. Bhandari. What has been stated in paragraph 30 of the counter affidavit is that in view of the facts stated in the proceeding paragraphs issue of show cause notice was not necessary for the claim made under Rule 11. Reference to Rule 11 in the counter affidavit is obviously to Rule 11 of the Rules. Rule 11 of the Rules reads as follows :--

11. Recovery of duties or charges short levied or erroneously refunded.--When duties or charges have been short levied through inadvertence, error, collusion or misconstruction on the part of an excise officer, or through misstatement as to quantity or description of such goods on the part of the owner, or when any such duty or charge, after having been levied, has been, owing to any such cause erroneously refunded, the person chargeable with the duty or charge, so short levied, or to whom such refund has been erroneously made, shall pay the deficiency or repay the amount paid to him in excess, as the case may be, on written demand by the proper officer being made within six months from the date on which the duty or charge was paid or adjusted in the owner's account-current, if any, or from the date of making the refund.

4. On a plain reading of Rule 11 it is apparent that recovery of dues

contemplated by the said rule can be made only if one of the conditions referred therein is satisfied. Whether or not those conditions are satisfied is a question essentially of fact and can appropriately be decided only after giving an opportunity of hearing to the person from whom recovery under Rule 11 is sought to be made. In *S.L. Kapoor Vs. Jagmohan and Others*, , it was held by the Supreme Court that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that he person who has been denied justice is not prejudiced.

5. In this view of the matter we are of the opinion that the assertion made in the counter affidavit that, it was not necessary to issue any show cause notice because it was not considered to be necessary by the authority concerned cannot be sustained.

6. In view of the foregoing discussion the impugned order dated 1st June, 1985, deserves to be quashed with a direction to the Excise Commissioner, Allahabad, to pass fresh orders after giving an opportunity of hearing to the petitioner. Counsel for the petitioner states that since the petitioner now knows the stand taken by the Excise Commissioner, it will not be necessary for the Excise Commissioner to issue a formal notice of show cause in pursuance of this order. What the petitioner really wants is that some date be fixed before the Excise Commissioner on which date the petitioner may appear and have his say in the matter. If that is done it will constitute sufficient compliance of the rules of natural justice.

7. In the result this writ petition succeeds and is allowed. The impugned order dated 1st June, 1985 passed by the Excise Commissioner, U.P., Allahabad is quashed and he is directed to decide the matter afresh after giving the petitioner an opportunity of hearing. The petitioner shall obtain a certified copy of this order and produce the same before the Excise Commissioner on 1st August, 1986. On that date the Excise Commissioner shall fix a date for hearing and hear the petitioner on the date so fixed before passing final orders. In the circumstances of the case there shall be no order as to costs.

8. A certified copy of this order may be supplied to the counsel for the petitioner today on payment of necessary charges.