
(1980) 07 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 7073 and 7074 of 1978

Dr. Sahai's Laboratory Pvt. Ltd. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-07-1980

Acts Referred:

Citation : AIR 1980 All 364

Hon'ble Judges : N.D. Ojha, J;K.M. Dayal, J

Bench : Division Bench

Advocate : V.C. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ petitions raise common questions and are being decided together. Homoeopathic dilutions and tinctures were seized from the possession of the petitioners of these two writ petitions. This seizure has been challenged on the ground that the respondents had no authority under law to make the said seizure. Some questions which were raised in these two writ petitions were also raised in Vir Narain Tyagi Vs. State of U.P. and Others, . In view of the decision of Vir Narain's case (supra), the learned counsel for the petitioners has not pressed those points and in our opinion rightly. Those points stand decided by the said case.

2. What has been urged by the learned counsel for the petitioners is that there was no provision entitling the respondents to seize the Homoeopathic dilutions and tinctures from the possession of the petitioners. For the respondents it has been urged that the Homoeopathic dilutions and tinctures fell within the definition of the term "spirituous preparations" as defined u/s 2(d) of the Spirituous Preparations (Inter-State Trade and Commerce) Control Act, 1955 (hereinafter referred to an Act No. 39 of 1955) and that since the petitioners were found in possession of these Homoeopathic dilutions and tinctures which fell within the definition of "spirituous preparations," it was a case covered by

Section 11 of Act No. 39 of 1955. There was a presumption, unless proved to the contrary by the petitioners, that they had committed an offence under the said Act or Rules made thereunder in respect of "spirituous preparations" possessed by them and seized from their custody. According to the respondents the petitioners had not obtained any licence contemplated by Section 3 of the said Act and Rules framed thereunder for import of Homoeopathic dilutions and tinctures in their possession. By importing the same they have consequently committed an offence under Act No. 39 of 1955 and in this view of the matter the respondents were entitled to seize these Homoeopathic dilutions and tinctures by virtue of the power conferred on them by Section 8 of the Act No. 39 of 1955.

3. Having heard the learned counsel for the parties, we are of the opinion that there is substance in the submission made by the Standing Counsel for the respondents. In view of the definition of the term of "Spirituous Preparations" contained in Section 2(d) of Act No. 39 of 1955 and the decision of this Court in *Vir Narain Tyagi Vs. State of U.P. and Others*, we have no doubt that Homoeopathic dilutions and tinctures seized from the possession of the petitioners fell within the definition of the term "Spirituous Preparations" as contained in Section 2(d) of the aforesaid Act. The respondents in the absence of any proof to the contrary were entitled to raise the presumption contained in Section 11 of Act No. 39 of 1955. No material on the record of these two writ petitions has been brought to our notice by the counsel for the petitioners to indicate that the Homoeopathic dilutions and tinctures seized by the respondents were imported by the petitioners prior to the commencement of Act No. 39 of 1955. In this view of the matter the provisions of Section 8 of the Act No. 39 of 1955 were on the face of it attracted to the facts of these two cases.

4. Relying on the notification, a copy whereof has been filed as Annexure 1 to the writ petition, it was urged by the counsel for the petitioners that Homoeopathic preparations stood exempted from the operation of Act No. 39 of 1955. We have gone through the said notification. Reliance was placed on Clause (2) of this notification by which medicines containing alcohol enumerated at Serial No. 2 (iii) to the Schedule of Medicinal and Toilet Preparations (Excise Duties) Act, 1955 were exempted from the operation of Act 39 of 1955. The Schedule contained in the original Act was substituted by Section 64 of the Finance Act of 1964. Clause 2 (iii) of the Schedule specified "all others containing alcohol which are prepared by distillation or to which alcohol has been added." This clause, however, deals with medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicinal preparations. It does not deal, with Homoeopathic preparations containing alcohol. This category namely, the Homoeopathic preparations containing alcohol is enumerated in Clause 3 of the Schedule. Apparently, therefore, Homoeopathic preparations containing alcohol were not exempted from the operation of Act No. 39 of 1955 by the Notification relied on by the counsel for the petitioner, a copy whereof has been filed as Annexure 1 to the writ petition.

5. Lastly, it was urged by the counsel for the petitioner that the reference in the Notification (Annexure 1 to the writ petition) of Clause 2 (iii) to the Schedule to Medicinal and Toilet Preparations (Excise Duties) Act, 1955, was to the Schedule to the said Act as it stood in 1955 and not as it stood after its being substituted by the Finance Act of 1964. This argument is based on the circumstance that the year of the Act mentioned in the notification is 1955. We are unable to appreciate this submission. It is well-known that even after a particular Act has been amended by a subsequent Act the year of the Act for purposes of reference would be the same in which it was enacted. Simply because in the Notification referred to above the year was mentioned as 1955, it is not possible to hold that the reference to the Schedule to the Act was to the one which stood in the original Act and not the one which stood substituted by the Finance Act, 1964. After the Schedule being substituted by the Finance Act, 1964, it is the new schedule which would be the part of the Act. The Notification relied on by the counsel for the petitioner is dated 28th June, 1975. It is the schedule as it stood on this date which has to be seen to find out as to what is contained in Clause 2 (iii) of the Schedule. We have already referred to the contents of this clause which does not include Homoeopathic preparations containing alcohol. In this view of the matter it is apparent that Homoeopathic dilutions and tinctures seized from the possession of the petitioners were not exempt from the operation of Act No. 39 of 1955 and it is not possible to hold that notwithstanding the provisions of Act 39 of 1955 referred to above the respondents had no authority to seize the aforesaid Homoeopathic dilutions and tinctures.

6. In the result each of these two writ petitions fails and is dismissed but there will be no order as to costs.