(2013) 04 AHC CK 0212

In the Allahabad High Court

Case No : Misc. Bench No. 2802 of 2013

Gogras Indian Feeds — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 — Section 7A

Citation : (2013) 60 VST 15

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Anand Mani Tripathi, for the Appellant; H.P. Srivastava, Additional Chief Standing Counsel, Akhilesh Kalra and J.P. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel. The petitioner is manufacturing cattle feed from molasses, which is raw material being purchased from different sugar mills. The State of U.P. enacted the U.P. Sheera Niyantran Adhiniyam, 1964 (hereinafter referred to as "the Act"). Sub-section (4) of section 7A of the Act provides that the occupier of a sugar factory shall be liable to pay to the State Government in the manner prescribed, administrative charges at such rate, not exceeding five rupees per quintal as the State Government from time to time notify, on the molasses sold or supplied by him. We have been informed that rate of Rs. 5 has been enhanced to Rs. 11 per quintal.

2. The petitioner''s counsel further alleges that the U.P. Sheera Niyantran Adhiniyam, 1964 is the special Act and the same has been enacted for control of storage, gradation and price of molasses produced by sugar factories in the State of U.P. and the regulation of supply and distribution thereof. Sub-section (5) of section 7A of the Act provides that occupier shall be entitled to receive from the person to whom the molasses is sold or supplied an amount equivalent to the

amount of such administrative charges, in addition to the price of molasses.

3. The petitioner''s counsel further alleges that the State Government is already charging taxes from the petitioner under the U.P. Sheera Niyantran Adhiniyam, 1964, which is the special enactment for molasses only and as such, under the U.P. Trade Tax Act or VAT Act, no tax should be realised inasmuch as, it amounts to double tax under two different enactments.

4. The identical matter was the subject-matter before this court and all these writ petitions were allowed by a Division Bench of this court of which one of us (honourable Rajiv Sharma, J.) was a member. The said judgment is reported in Saf Yeast Company Private Limited Vs. State of U.P. and Another, . The relevant portion of the said judgment is reproduced as under:

17. The court has a duty to uphold the Constitution in letter and spirit. If the court comes to the conclusion that the levy of tax is unlawful, the court will direct the Government to return the tax. After the decision of this court in the case of D.S.M. Group of Industries and Another Vs. Chairman, Trade Tax Tribunal and Others, , affirmed by the honourable Supreme Court on March 10, 2003, it cannot be said that the State was unaware that molasses is not taxable under the U.P. Trade Tax Act. The action of the opposite-parties in collecting and realising the trade tax from the petitioner on the purchase of molasses from various sugar mills in the State of U.P. subsequent to the dismissal of SLP (C) No. 8845 of 2002, State of U.P. v. D.S.M. Group of Industries on March 10, 2003 by the honourable Supreme Court is arbitrary, illegal and unjust.

18. We are of the view that the petitioner is entitled for the refund of the trade tax which was illegally realised and collected by the opposite-parties on the purchase of the molasses through sugar mills of the State of U.P. subsequent to March 10, 2003.

19. In the result, the writ petition succeeds and is partly allowed. The opposite-parties on the basis of the notification dated September 7, 1981 issued under the provisions of the U.P. Sales Tax Act, 1948 now U.P. Trade Tax Act read with section 21 of the U.P. General Clauses Act, 1904 shall not realise any trade tax from the petitioner on the purchase of molasses.

20. The opposite-parties shall refund the amount of trade tax which was realised by them through the sugar mills subsequent to March 10, 2003. The petitioners shall submit the details of the tax which the opposite-parties have realised from them subsequent to March 10, 2003 within one month from today and the opposite-parties shall refund the amount of trade tax to the petitioners within two months thereafter.

5. It has not been disputed by Sri H. P. Srivastava, learned Additional Chief Standing Counsel that the controversy in the writ petition is covered by the decision of this court which has been later on, followed by other Division Bench of this court while deciding identical controversy. However, the argument

advanced by learned counsel for the respondents is that administrative charges and tax have to be paid under VAT Act. Argument of learned counsel for the respondents carries weight. Of course, in case administrative charges are not being paid or exempted, then purchaser shall be liable to pay under the VAT Act and other statutory provisions if any. The aforesaid judgment is the subject-matter of the appeal before the honourable Supreme Court in Special Leave to Appeal (Civil) No.(s) 16261 of 2009: State of U.P. v. SAF Yeast Co. P. Ltd. In the said pending appeal, honourable Supreme Court has passed the following order:

Delay condoned.

Leave granted.

Hearing expedited.

It is made clear that there will be stay of refund. However, in case the assessee succeeds in the appeal, it would be entitled to interest which would be imposed on the State at the final hearing of the matter.

(Date: 08:03:2010)

6. Thus, the decision of the Division Bench of this court, has not been stayed by the honourable Supreme Court except providing by interim measure that there will be stay on refund and in case the assessee succeeds in the appeal, it would be entitled to interest which would be imposed on the State at the final hearing of the matter.

7. In view of the above, we dispose of the instant writ petition finally in terms of the Division Bench judgment of this court in the case of Saf Yeast Company Private Limited Vs. State of U.P. and Another, , read with interim order passed by the honourable Supreme Court dated March 8, 2010 (supra). The benefit of the present order shall be subject to final outcome of pending appeal in the honourable Supreme Court. During the pendency of the special appeal before the honourable Supreme Court, we provide that the respondents shall not realise tax on molasses but shall keep an account of molasses purchased/sold during the pendency of appeal so that in any case, the appeal fails by the judgment of honourable Supreme Court, the petitioner shall be held liable to pay tax in accordance with law.