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(2007) 05 AHC CK 0142

In the Allahabad High Court

Hamdard (Wakf) Laboratories APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Constitution of India, 1950 — Article 226
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 3

Citation : (2007) 121 ECC 372 : (2007) ECR 372

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner M/s. Hamdard (Wakf) Laboratories, Ghaziabad seeks the following reliefs.:

i) issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned order dated 15th November, 2000 passed by the respondent NO.3(Annexure No.7 to the writ petition),

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to recover any amount from the petitioner in pursuance of the impugned order dated 15th November, 2000.

iii) issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case,

iv) Award cost of the petition in favour of the petitioner.

2. Briefly stated facts giving rise to the present writ petition are as follows:

3. According to the petitioner, it is engaged in the manufacture and sale of Unani Medicines. It has its laboratory at B-1/2, Industrial Area, Meerut Road, Ghaziabad. It has been granted licence for manufacture of Unani medicines by

the Drug Controller of the State of DP. under the provisions of Drug s and Cosmetics Act. The licence has been granted by the Director, Ayurvedic Evam Unani Medicines, U.P. Luc know. In some of the drugs manufactured by the petitioner, it uses Poppy Heads and Codeines. It has also been issued a licence in form L-1 under the provisions of the Medicinal and Toilet Preparations (Excise Duties)Act,1955 hereinafter referred to as the 1955 Act. The petitioners has also been issued a requisite licence for manufacturing drugs/Ayurvedic medicines. It is liable to pay duty u/s 3 of the 1955 Act at the rates specified in the schedule. During the period 1991-92 to 99-2000, for some unavoidable circumstances, the petitioner did not deposit the excise duty in respect of the following three medicines.:

(i) Long Sapistan, (ii) Shanpat Sa Sadan and (iii) Saduri.

4. On coming to know that the excise duty has not been Deposited for such a long period by one of its employees the petitioner deposited a sum of Rs. 20 lacs immediately. On 2nd of June, 2000, the petitioner also took action against its erring employee. On 8th of June, 2000, it deposited a further sum of Rs. 20 lacs. The total figure of excise duty in paid/short levied worked out to Rs. 79,86,517.36. The balance amount of excise duty was deposited by the petitioner within one month thereafter.

5. The District Excise Officer, Ghaziabad had passed an order on 15thof November, 2000 calling upon the petitioner to pay interest @ 18% per annum on the amount of excise duty short paid/short levied under the 1955 Act. The demand of interest has been raised by invoking the provisions of Section 38-A of the U.P. Excise Act, 1910 hereinafter referred to as U.P. Act. The notice of demand dated 15thof November, 2000 is under challenge in the present writ petition.

6. We have heard learned Counsel for the parties.

7. Learned Counsel for the petitioner submitted that under Entry 84(b) of List-1 of the Seventh Schedule, namely the Union List, the Parliament alone has the power to make law regarding levy of excise duty on Medicinal and Toilet Preparations containing alcohol, opium, Indian hemp and other narcotic drugs and narcotics. The duty la respect of medicinal preparations manufactured by the petitioner is being levied under 1955 Act. The 1955 Act does not contain any provisions of levy of interest on the outstanding amount of excise duty and, therefore, the provisions of Section 38A of the U.P. Excise Act could not be invoked in the present case.

8. On the other hand, the learned Standing Counsel submitted that in Section 38A of the U.P. Act, the State of U.P. has made provisions for levy of interest on excise revenues which are outstanding or has been deposited beyond time. Referring to the definition of the word "excise revenue" given in Sub-section 1 of Section 3 of the U.P. Act and Clause 3 of Sub-section 12 of Section 3 which defines "intoxicating drugs" he submitted that any amount of duty which is due

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the U.P. Act or under any other law for the time being in force is to be treated as "Excise Revenue" and Section 38-A of the U.P. Act would be applicable. He, therefore, justified the demand notice.

9. We have given our anxious considerations to the various pleas raised by the learned Counsel for the parties. We find that under the 1955 Act which refers to Entry 84 of List I of the seventh schedule, i.e., Union List, the Central Government has been empowered to levy excise duty on medicinal preparations. Section 3 of the 1955 Act provides for levy and collection of excise duty. Sub-section 3 of Section 3 provides for collection of duties in the prescribed manner. Under the Rules framed under 1955 Act, namely Medicinal and Toilet Preparations (Excise Duty) Rules, 1956, hereinafter referred to as the Rules, under Rule 9 of the Rules, time and manner of payment of duty has been provided. The Excise Commissioner appointed by the State Government has been authorized to confer power on Excise Officer sub-ordinate to him. The duty is to be paid to the State Government. In other words, even though, the duty is levied by the Parliaments to be collected by the State Government.

10. We have gone through the provisions of 1955 Act and the Rules framed thereunder. We find that no provision has been made regarding charging of interest on duty short paid or outstanding or on delayed payments either in the 1955 Act or the Rules. Section 38 A of the U.P. Act, which was inserted by U.P. No. 7 of 1985 is to be confined in its application to excise revenues payable under the U.P. Act or under any other law for the time being in force. It will not apply to levy on duty under Central Act in respect of items on which the State has no competence to levy any excise duty as the Parliament alone has the competence to legislate in respect of medicinal and Toilet Preparations containing alcohol or narcotics falling under Entry 84(b) of List I of the seventh schedule.

11. In the case of India Carbon Ltd. etc. Vs. State of Assam, the Apex Court, while considering the provisions of Section 9(2) of the Central Sales Tax Act, 1956 which provided for exercise of all powers by the State which they had under the general sales tax law of the State inter alia for charging or payment of interest has held that such a provision does not enable the State Government 10 levy and charge interest on short/delayed payment of Central Sales Tax in the absence of substantive provision in the Central Sales Tax Act, 1956. The Apex Court has held as follows.:

12. There is no substantive provision in the Central Act requiring the payment of interest on Central sales tax. 7 hare is, therefore, no substantive provision in the Central Act winch obliges the assessee to pay interest on delayed payments of Central sales tax.

12. Now, the words "charging or payment of interest in Section 9(2) occur in what may be called the latter part thereof. Section 9(2) authorises the sales tax authorities of a State to assess, reassess, collect and enforce payment of the Central Sales tax payable by a dealer as if it was payable under the State Act;

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this is the first part of Section 9(2). By the second part thereof, these authorities are empowered to exercise the powers they have under the State Act and the provisions of the State Act, including provisions relating to charging and payment of interest, apply accordingly. Having regard to what has been said in the case of Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, it must be held that the substantive law that the States'' sales tax authorities must apply is the Central Act. In such application, for procedural purposes alone, the provisions of the State Act are available. The provision relating to interest in the latter part of Section 9(2) can be employed by the States'' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax, the States'' sales tax authorities cannot, for the purpose of collecting aid enforcing payment of Central sales tax, charge interest thereon.

13. The same principles would be applicable in the present case. In the 1955 Act, there is no substantive provision for levy and charging of interest. Therefore, recourse to Section 38A of U.P. Act cannot be taken for demanding interest in respect of outstanding duty under the 955 Act.

14. In our considered opinion, provisions of Section 38-A of the UP. Excise Act cannot be pressed into service for levying interest on the outstanding amount of duty payable under 1955 Act, in the absence of my provision empowering the State Government to demand interest in unpaid/short paid amount under 1955 Act.

15. In view of the foregoing discussions, the order dated 15thNovember, 2000 can not be sustained and is hereby set aside.

16. The writ petition succeeds and is allowed. However, on the facts and in the circumstances of the case, the parties are left to bear their Own Costs.

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