

(2000) 04 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 3303 of 1989

Harinagar Sugar Mills Ltd. and another	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 47, 49, 9

Citation : (2000) 3 PLJR 76

Hon'ble Judges : Ravi S. Dhavan, C.J.;Aftab Alam, J

Bench : Division Bench

Advocate : Ramesh Kumar Agrawal, Anil Kumar, for the Appellant; Ajay Kumar Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J. & Aftab Alam, J.—The decision of the tribunal, that is the Customs, Excise & Gold (Control) Appellate Tribunal dated 6.6.1988 is assailed by this writ petition. The issue as raised in the writ petition is in fact academic. The subject matter is molasses. The petitioner M/s. Harinagar Sugar Mills Limited admittedly manufactures sugar and molasses is a subsidiary product. On removal of molasses from the place of production central excise duty admittedly was chargeable. As the place of storage and/or the store room had to be approved by the Collector, Central Excise, under the law, an exception had been made for the petitioner company to temporarily store and remove molasses in Kuchcha place. No sooner such condition had been granted, it had been withdrawn. By law the petitioner was under an obligation to store molasses removed from the place of production in an approved place of storage. The rest of the facts are available from the order of the Assistant Collector, dated 27.2.1984. As excise duty had not been paid on the molasses in question, a demand had been raised. The petitioner gave an explanation to the effect that they were unable to store the entire molasses in proper storage due to bumper production and high cost of building steel tanks. In so far as the later part is concerned, making arrangement

for storage of molasses appropriately or in steel tanks is the obligation of law. The petitioners were put under notice and remained so under notice for seventeen months. The Assistant Collector was of the opinion that despite the fact that the petitioners had about seventeen months to make arrangement for storage of the molasses appropriately, they did not do so.³ Under the circumstances, the petitioners were required to pay central excise duty on molasses as also penalty. By the time the petitioners went in appeal before the Collector of Central Excise (Appeals), the penalty part had been set aside. In so far as the payment of central excise duty on molasses was concerned, it was stated before the tribunal that a substantial portion of the duty had been paid and in this regard certain documents were placed before the tribunal.

2. The tribunal upheld the orders of the assessing authority and the Collector (Appeals) and declined to interfere in the matter or grant any relief to the petitioners to exempt them from payment of central excise duty on manufactured molasses. The tribunal was of the opinion that duty is clearly payable in terms of rule 9 read with rules 47 and 49 under the Central Excise and Salt Act, 1944.

3. Basically the question in the writ petition had become academic. Subsequently certain record has been appended to the petition that the molasses in question was destroyed or atleast admitted to be destroyed after seeking permission from the Collector, Central Excise, Patna. This aspect is not relevant. What is relevant is that excisable goods once produced at the time of being removed from the place of production, can only be removed upon payment of duty.

5. The court does not find any error in the assessment proceedings requiring the petitioners to pay duty on produced molasses. Neither the production nor the removal part is in dispute the assessment. This writ petition is misconceived and is accordingly dismissed.