

(2010) 12 UK CK 0049

In the Uttarakhand High Court

Case No : Writ Petition No. 1865 of 2001 (M/B)

Himachal Pradesh General Industries Corporation Ltd. and
Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Citation : (2011) 1 UD 33

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C. J.

1. Petitioner No. 1 is an Undertaking of the Government of the State of Himachal Pradesh. Respondent No. 3 is a Unit of U.P. State Sugar Federation, which is wholly owned by the State of Uttar Pradesh. Respondent No. 3 applied for and obtained permission to export 16,000 bulk litres of rectified spirit. Petitioner No. 1 obtained sanction of the Excise Commissioner to obtain supply thereof. On 18th February, 1994, under Excise Pass No. 1018 dated 18th February, 1994, the consignment of 16,000 bulk litres of rectified spirit was transported to its destination, namely, to Petitioner No. 1. On 19th February, 1994, the tanker, which was carrying the consignment, met with an accident at Ambala Cantonment, in the State of Haryana. The accident caused the rectified spirit to leak out, spill over and lost. The same was informed to the Deputy Excise and Taxation Commissioner, Ambala, by the transporter by a letter dated 21st February, 1994. On 21st February, 1994, a spot inspection was done by the Excise Inspector of the State of Haryana, whereupon, it was reported that the entire quantity of rectified spirit has been lost. However, Excise Inspector, in-charge of the distillery from where the consignment was sent, issued a letter on 18th May, 1994 asking to show-cause why duty to the tune of Rs. 6,82,560/- be not realised because of loss as alleged due to accident. The said letter was

followed by a letter of the District Excise Officer, Nainital, dated 20th May, 1994. Those were forwarded to Petitioner No. 1 with a direction that the amount, mentioned in the said letters, be paid, or else, the necessary duty on the same be got waived. On 13th June, 1994, the distillery called upon the Petitioner No. 1 to deposit the amount, failing which, it was held out that it would deposit the same with the Government treasury. In the circumstances, on 30th June, 1994, an application was filed by Petitioner No. 1 before the Excise Commissioner stating that the demand of excise duty is not justified. Before, however, the order on the said application was passed, Respondent No. 3 deposited the sum of Rs. 6,82,560/- towards excise duty on the subject consignment and, simultaneously, deducted Rs. 6,82,560/- from the advances given by Petitioner No. 1. Petitioner No. 1, therefore, asked for refund of the excise duty, thus paid, from the Excise Commissioner, followed by a letter dated 17th November, 1994. The Finance Commissioner / Secretary, Industries, Government of Himachal Pradesh requested for refund of the said sum. The Accountant General of the State of Himachal Pradesh also raised objection with regard to deduction of the said sum by Respondent No. 3. On 21st October, 1995, Excise Commissioner, by an order, purported to contend that the sum of Rs. 6,82,560/- has been recovered under the bond executed by Respondent No. 3 for safe supply of rectified spirit to its destination. On the strength of the said order dated 21st October, 1995, Respondent No. 3 held out that it is not obliged to refund the money adjusted by it from the advance given by Petitioner No. 1. Petitioner No. 1, accordingly, filed a Review Application before the Commissioner, which was decided by an order dated 23rd January, 1996. In that, it was contended that since Excise Pass bearing No. PD26 was not received back after due verification, the amount was liable to be paid as penalty under Rule 633(7) of the Excise Manual. The stand, thus taken, is the subject matter of challenge in the instant writ petition.

2. The Excise Act as well as the Rules and Regulations framed thereunder are applicable to excisable goods. What are excisable goods, have been mentioned in Item 51 of List II of Schedule Seven to the Constitution of India. Rectified spirit is not excisable goods in terms of the provisions contained therein. However, since alcoholic liquors for human consumption are excisable goods in terms of the provisions contained in Item 51 of List II of Schedule Seven to the Constitution, a dispute arose whether rectified spirit can also be treated as alcoholic liquors for human consumption. The matter reached the Hon''ble Supreme Court and a constitution Bench of the Hon''ble Supreme Court, in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, , held in no uncertain terms that rectified spirit is not alcoholic liquors for human consumption and, accordingly, the State has no authority to make any law in relation thereto to impose excise duty.

3. In such circumstances, the demand made by the Excise Inspector, in-charge of the distillery, for payment of excise duty to the tune of Rs. 6,82,560/- is per se bad in law. Payment of the said sum by Respondent No. 3, on the basis of the said demand, is, therefore, not justified. At the same time, the order of the

Excise Commissioner dated 21st October, 1995, to the effect that the sum of Rs. 6,82,560/- has been recovered under the bond executed by Respondent No. 3 for safe supply of rectified spirit at its destination, is also per se illegal and, similarly, the order of the Excise Commissioner dated 23rd January, 1996 that since Excise Pass PD26 was not received back after due verification, the amount was liable to be paid as penalty under Rule 633(7) of the Excise Manual, is also unsustainable, illegal and without any jurisdiction.

4. If the State Legislature had no competence to impose excise duty on rectified spirit, as has been pronounced by the Hon'ble Supreme Court, it must be deemed that the Excise Act and all Rules and Regulations framed thereunder were and are not applicable to rectified spirit and, accordingly, by taking recourse to any of those provisions, nothing could be recovered or realised from Petitioner No. 1. If what has been done in the instant case is permissible, then the State is entitled to impose excise duty even on potatoes and onions.

5. We, accordingly, allow the writ petition, set aside the demand dated 18th May, 1994 and all follow-up actions thereon as well as the orders of the Commissioner of Excise dated 21st October, 1995 and 23rd January, 1996 and direct the Respondent State to forthwith refund illegally collected excise duty of Rs. 6,82,560/- to Petitioner No. 1 together with interest at the rate of 6 per cent per annum. Let above refund be effected as quickly as possible, but not later than one month from the date of service of a copy of this order upon the Revenue Secretary of the State.