(2011) 07 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (MB) No. 1202 of 2007

India Glycols Limited — APPELLANT

Vs

State of Uttarakhand and Another — RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (2011) 2 UD 8

Hon'ble Judges : Barin Ghosh, C.J;Servesh Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—In the instant case, we are concerned with levy of excise duty on alcohol fit for human consumption manufactured in the State of Uttarakhand to be exported outside Union of India for the purpose of sale thereof outside the territory of Union of India. The power to levy excise duty is not governed by Article 286 of the Constitution of India. We, accordingly, need not look into that Article of the Constitution of India. Item 51 of the State List in the Seventh Schedule of the Constitution authorizes the State to impose duty of excise on alcoholic liquors for human consumption manufactured or produced in the State. The right to impose duty of excise on alcoholic liquors for human consumption is a recognized right of the State, inasmuch as the State has exclusive privilege of manufacturing and producing alcoholic liquors for human consumption. The consideration for parting with such exclusive privilege is reflected in the duty of excise to be levied by the State.

2. In the instant case, Petitioner approached the Excise Commissioner and sought permission to export alcoholic beverages for human consumption, manufactured in State of Uttarakhand and to be sold, upon export, in territories outside Union of India. The Excise Commissioner granted permission to export. While doing so, an export fee @ Rs. 2.50 per bulk litre was levied. Nowhere in the body of the petition it has been contended that the Petitioner, having been permitted by the license to manufacture and produce alcohol fit for human

consumption in the State of Uttarakhand, as obliged to, has paid or is required to pay excise duty on the quantity proposed to be exported, and in addition thereto, export fee @ Rs. 2.50 per bulk litre is being claimed. In other words, it is not the contention in the writ petition that the export fee @ Rs. 2.50 per bulk litre is in addition to excise duty leviable on the quantum of alcoholic beverages to be exported by the Petitioner. In that background, the meaning of export fee has to be gathered.

3. Inasmuch as alcohol would be exported, the word ''export fee'' has been used, but otherwise the same denotes the duty leviable on production and manufacture of alcohol in the State, which the State is otherwise entitled to levy in terms of Item 51 of the State List contained in the Seventh Schedule of the Constitution, and to that effect, has already made appropriate laws. The State of Uttarakhand has not only adopted the U.P. Excise Act, 1910 and the there under, but has also amended the adopted Rules. While doing so, it has provided what shall be the duty in respect of alcohol fit for human consumption to be produced and manufactured in the State of Uttarakhand, while the same is to be sold in the State of Uttarakhand as well as when the same shall be sold outside the State of Uttarakhand.

4. By referring to the definition of ''export'', contained in the Act, it was submitted that export is limited to export from the State to another State within Union of India. It is true that the definition of ''export'' limits export within the territory of India. However, the fact remains that the purpose of defining export in the Act was primarily to mean taking out from the State. When a commodity is taken out from the State and used up in another State within Union of India, will have the same effect when the commodity is used up outside Union of India. If excise duty is a tax, contemplated under Article 286 of the Constitution of India, then, of course, what the Petitioner is contending is correct. It is true that excise duty is in the nature of tax and, accordingly, if imposition of the duty was to tax on the sale or purchase of the subject goods, in course of export of goods outside the territory of India, then, of course, the impugned levy is unauthorized. However, the fact remains that the levy is on account of production and manufacture of excisable alcohol. If such alcohol is exported, even then the State is empowered to levy excise thereon. That being the situation, the levy, in question, is not governed by Article 286 of the Constitution. We are, therefore, not inclined to interfere with the matter. We, accordingly, dismiss the writ petition.

5. Before parting with, it is our duty to point out that the permission to export was with a condition attached. In so far as the condition is concerned, Petitioner obtained an interim order, and exported the goods purporting to be under the permission. We fail to appreciate how the Petitioner could do so. The permission to export was a composite order and, accordingly, if the Petitioner was aggrieved by a part thereof, by obtaining an interim order in regard thereto, he could not act on other parts of the said composite order.

