
(2004) 11 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 874 of 2004

Jubilant Organosys Ltd.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 40(1), 40(2)
Uttar Pradesh Excise Act, 1940 — Section 40(1), 40(2)

Citation : (2005) 5 AWC 4324

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, Nikhil Agrawal and Shubham Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

1. This writ petition has been filed for a writ of certiorari to quash the impugned notification dated 31.3.2004 issued by the State of U.P. framing rules u/s 40 (1) and (2) of the U.P. Excise Act, 1940 known as the Uttar Pradesh Excise Import, Export, Transport and Possession of Denatured Spirit (Twenty Fourth Amendment) Rules, 2004 (Annexure-1 to the petition). The petitioner has also prayed for quashing of the impugned order dated 16.6.2004 issued by respondent No. 3, and has further prayed for quashing the impugned demand notice dated 18.6.2004 issued by respondent no.5 demanding payment of import permit fee @ Rs.1.50 per l e, vide Annexure-IX. The petitioner has also prayed for a mandamus directing the respondents not to take any proceedings in pursuance of the impugned notification dated 31.3.2004, order dated 16.6.2004, and demand notice dated 18.6.2004 requiring the petitioner to obtain a permit for import of denatured and specially denatured spirit within the State of Uttar Pradesh and/or requiring the petitioner to deposit an import fee of Rs.1.50 paise per litre on such import.

2. Heard Sri Bharat Ji Agrawal, learned Senior Counsel and Sri Nikhil Agrawal,

learned counsel appearing on behalf of the petitioner as well as the learned Standing Counsel for the respondents. We have also perused the counter affidavit, supplementary counter affidavit and the rejoinder affidavit.

3. The petitioner is a Public Limited Company registered under the Indian Companies Act having its registered office and works at Bhartiya Gram, Gajraula, District Jyotiba Phule Nagar, Uttar Pradesh. The petitioner is engaged, inter alia, in the business of manufacture and sale of organic chemicals, such as acetic acid, acetic anhydride, vinyl acetate etc. The main raw material for the manufacture of the aforesaid organic chemicals is ethyl alcohol industrial grade. Alcohol is manufactured from molasses at the petitioner's plant in Gajraula. Apart from the aforesaid, the petitioner is also importing denatured spirit and specially denatured spirit from outside the country. The entire production of industrial alcohol at the petitioner's distillery as well as industrial alcohol procured from outside sources is used by the petitioner at its chemical plant for producing organic chemicals mentioned above. It is alleged that the industrial alcohol is neither potable nor fit for human consumption.

4. The State of Uttar Pradesh in purported exercise of power u/s 40 (1) and (2) of the U.P. Excise Act, 1910 amended the rules relating to import, export, transportation and possession of denatured spirit. These rules are known as the Uttar Pradesh Excise Import, Export, Transport and Possession of Denatured Spirit (Twenty Fourth Amendment) Rules, 2004. The relevant portion of the Rules as substituted by (Twenty Fourth Amendment) Rules, 2004 has been quoted in paragraph 12 of the writ petition. Copy of the said notification dated 31.3.2004 has been annexed as Annexure-1 to the petition.

5. It is alleged by the petitioner that in view of the Constitution Bench decision of the Supreme Court in Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, , the State Legislature/State Government has no jurisdiction over denatured spirit and specially denatured spirit, as they are industrial alcohol and unfit for human consumption. It is alleged in paragraph 16 of the writ petition that the petitioner imported the denatured and specially denatured spirit from abroad to cater to its requirement for the manufacture of chemicals in its plant.

6. The petitioner, vide letter dated 31.3.2004 sought permission from the State Government for importing specially denatured spirit from outside the country. True copy of the said letter dated 31.3.2004 has been annexed as Annexure-V to the petition. Thereafter the petitioner sent reminders dated 22.4.2004 and 27.4.2004, vide Annexure-VI to the petition. The respondent no.3-Deputy Excise Commissioner, U.P. Allahabad, vide his order dated 18.5.2004 granted permission to the petitioner to import specially denatured spirit from Brazil to the extent of 600 lakhs bulk litre subject to the terms and conditions mentioned therein. True copy of the said order dated 18.5.2004 is Annexure-VII. Pursuant to the permission in the order dated 18.5.2004 the petitioner started importing the specially denatured spirit from Brazil to its works at Bhartiya Gram, Gajraula, District Jyotiba Phule Nagar. It is alleged in paragraph 20 of the writ petition that

subsequently the petitioner was shocked and surprised to receive an order dated 16.6.2004 issued by respondent no.3 amending the terms and conditions of the permission granted, vide order dated 18.5.2004. By the said amendment as contained in the order dated 16.6.2004, respondent no.3 directed the petitioner to import the specially denatured spirit from Brazil subject to the payment of Rs.1.50 per bulk litre as import permit fees. True copy of the order dated 16.6.2004 is Annexure-VIII. On the basis of the said amendment, respondent no.5 has issued a demand notice to the petitioner dated 18.6.2004 calling upon the petitioner to deposit a sum of Rs.34,44, 798/- towards import permit fees for the quantity of specially denatured spirit already imported by the petitioner. True copy of the said demand notice dated 18.5.2004 is Annexure-IX. Respondent no.5 by the said order has further called upon the petitioner to pay import permit fee @ Rs. 1.50 per litre before transportation of the imported denatured spirit. Aggrieved this writ petition has been filed.

7. We have perused the counter affidavit, supplementary counter affidavit as well as the rejoinder affidavit.

8. In our opinion, the facts of this case are squarely covered by the Division Bench decision of this Court in Bindal Agro Chemical Ltd. v. State of U.P., 2004 UPTC 563. Against that decision a SLP (SLP) was filed in the Supreme Court being Special Leave to Appeal (Civil) No. 11341 of 2004: State of U.P. V.. Bindal Agro Chemical Ltd., which was dismissed on 16.7.2004.

9. Following the aforesaid decision, this petition is allowed. The impugned notification dated 31.3.2004 (Annexure-1 to the petition) is quashed. Condition nos. 1 and 2 in the order dated 16.6.2004 as well as the order dated 18.6.2004 are also quashed. A mandamus is issued to the respondents restraining them from demanding any import duty or licence fee on denatured or specially denatured spirit. Any amount realised from the petitioner in this connection will be refunded within two months. No order as to costs.