

(1982) 09 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 393 of 1980 connected with Civil Miscellaneous Writ No's. 425 and 588 of 1980 and 55 of 1981

Kesar Sugar Works

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-1982

Acts Referred:

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

Citation : (1983) 12 ELT 285

Hon'ble Judges : R.B. Lal, J;K.N. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Seth, J.—These petitions raise a common question and may conveniently be decided by a common judgment.

2. The petitioners are public limited companies and manufacture sugar through vacuum pan process. M/s. Kesar Sugar Works Limited and M/s Upper Ganges Sugar Mills Limited manufacture alcohol also in the distilleries situate within the premises of the sugar mills. The Delhi Cloth and General Mills Company Limited manufacture sugar in Mawana Sugar Works, Mawana and Daurala Sugar Works, Daurala in the district of Meerut. The Daurala Sugar Works also has a distillery for manufacturing alcohol from molasses. Molasses produced at the Mawana and Daurala Sugar Factories is transferred to the distillery situate in the premises of the Daurala Sugar Works, in the petition filed by M/s Amritsar Sugar Mills it is not asserted that the petitioner manufactures alcohol also. In the process of manufacture of sugar molasses is produced as a bye-product which forms the basic material from which alcohol is manufactured. The molasses produced by the sugar mills is consumed in their distilleries. The State of Uttar Pradesh has passed an Act known as U.P. Sheera Niyantran Adhiniyam, 1964. Under the aforesaid Act the Excise Commissioner, U.P. is the Controller of Molasses, who exercises full power over the production, sale, preservation and price of

molasses. On 1st March, 1975 the Central Government for the first time imposed excise duty on the manufacture and production of molasses under Item No. 68 of the Schedule to the Central Excises and Salt Act. On 30th April, 1975, however, the Central Government issued Notification No. 118/75-CE whereby it exempted molasses from payment of excise duty manufactured in a factory and intended for use in the factory in which it is manufactured or in any other factory of the same manufacturer. By Finance Act, 1980 the Parliament introduced Tariff Item No. 15CC in the First Schedule to the Central Excises and Salt Act and imposed an excise duty at the rate of Rs. 30/- per metric ton. On 19th June, 1980 the Central Government issued Notification No. 86/80-CE exempting molasses from payment of excise duty which was not produced in the manufacture of sugar by the vacuum pan process.

3. The grievance of the petitioners is that they have been directed by the respondents to pay excise duty at the rate of Rs. 30/- per metric tonne plus special excise duty amounting to five per cent of the basic excise duty under Notification No. 86/80-CE dated 19th June, 1980 on the stock of molasses that the petitioners had in their factories on the date Item No. 15CC was introduced in the First Schedule to the Central Excises and Salt Act. The petitioners objected to this demand but without any success. They have prayed for quashing the demands raised by the respondents. The Delhi Cloth and General Mills Company Limited, which has paid the duty demand by the respondents, has prayed for refund of the excise duty paid by it. Certain other prayers have been made in these petitions but since no argument was addressed in support thereof, they need not be set out here.

4. It was urged that since excise duty is essentially a tax on production and manufacture of excisable goods, no duty could be levied in respect of goods manufactured and produced during the period when excise duty was not leviable. According to the petitioners molasses produced prior to the date when Item No. 15CC was introduced in the Schedule to the Central Excises and Salt Act was exempt from excise duty under the notification dated 30th April, 1975. The demands made by the respondents are illegal. We find no merit in the contention. It is true that an excise duty by its very nature is on the production or manufacture of goods but as pointed out by the Supreme Court, in *Mcdowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad*, the excise duty can be levied at a convenient stage so long as the character of the impost, i.e., it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience. Laws are to be found which impose a duty on excise at stages subsequent to the manufacture or production.

5. Rule 9 of the Central Excise rules provides that no excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this

behalf, whether for consumption, export, or manufactures or any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in the rules or as the Collector may require. Rule 9-A provides that the rate of duty and tariff valuation, if any, applicable to any excisable goods shall be the rate and valuation in force (i) in the case of goods cleared from the premises of a curer on payment of duty on the date on which the duty assessed ; and (ii) in the case of goods cleared from a factory or a warehouse, subject to certain other rules, which are not relevant for our purpose, on the date of the actual removal of such goods from such factory or warehouse. Rule 49 also makes it clear that excise duty is chargeable on removal of the goods from the factory premises or from an approved place of storage. It clearly provides that payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under Rule 47. These rules leave no room for doubt that excise duty is leviable not with reference to the date of manufacture of the excisable goods but at the time and at the rate on the date of removal of goods from the place of manufacture or from the approved place of storage. Thus the duty is linked in point of a time to the date of removal and not to the date of manufacture. The fact that in the present cases molasses was produced prior to 18th June, 1980 would not affect the liability of the petitioners for excise duty on the stock of molasses available with the petitioners when excise duty was levied on the molasses under the Finance Act, 1980.

6. It was urged that molasses manufactured by the petitioners was exempt from excise duty under the Notification dated 30th April, 1975 and since that notification has not been withdrawn, the petitioners were entitled to claim exemption from excise duty. The argument is untenable. By the aforesaid notification the Central Government exempted goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act in certain circumstances. At that stage molasses was not listed as a separate item in the Schedule but was treated to fall under residuary Tariff Item No. 68 of the Schedule. When the Finance Act, 1980 brought molasses under a specific item (No. 15-CC) it ceased to fall under the residuary Tariff Item No. 68 with the result that the notification dated 30th April, 1975 ceased to apply to molasses. No advantage can, therefore, be taken of the exemption granted under the aforesaid notification which has ceased to cover molasses now.

7. Sri Sudhir Chandra appearing for the Delhi Cloth and General Mills Company Limited contended that since molasses in question was produced at the time when it was exempt from excise duty and the Finance Act of 1980, under which molasses was introduced as a specific item in the Schedule, did not give retrospective operation, this stock could not be subjected to excise duty. Learned counsel, however, could not point out any provision in the Act or the Rules that excise duty was leviable with reference to the date of production. As pointed out

earlier, although excise duty is on the production or manufacture of goods, it can be imposed at a stage subsequent to the manufacture or production as held in A.B. Abdul Kadir and Others Vs. State of Kerala, . This dictum has been approved in the case of M/s McDowell & Company Limited (supra).

8. In the result the petitioners are not entitled to any relief. The petitions are accordingly dismissed with costs.