(2015) 09 AHC CK 0165

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 475 of 2012

Lords Distillery Ltd. APPELLANT

Vs

State of U.P. Ors. RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 10 ADJ 48

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : O.P. Singh, Rajiv Singh and Yogendra Singh Parihar, for the Appellant

Judgement

Tarun Agarwala, J.—The petitioner is engaged in the manufacture of industrial alcohol as well as potable alcohol and has been granted a licence in Form PD-II under the U.P. United Provinces Excise Act, 1910 (hereinafter referred to as the Act). By a notification dated 9.3.2007, Rule 12 of the Uttar Pradesh Excise (Establishment of Distilleries) Rules (hereinafter referred to as the Rules) was amended, by which the rate of overtime charges to be paid to the Excise staff stationed at the Distillery run by the petitioner had been increased. The impugned notification was challenged by the petitioner in writ petition No. 1327 of 2007 on the ground that the amendment in the rates of overtime charges was without any statutory backing and that the enhancement of overtime charges was without any basis and had no co-relation with the services rendered by the Excise Department. During the pendency of the writ petition, the Excise Department raised a demand of Rs. 29,62,007.45 towards overtime charges for the extra hours for which the distillery on its own request had operated. The said demand was challenged by the petitioner in writ petition No. 348 of 2010. The aforesaid two writ petitions alongwith other writ petitions were dismissed by the judgment dated 26.7.2011. A Division Bench of this Court upheld the vires of the amending Act and further observed:

"We may also observe that prescription of overtime fees is the condition of the license and that by the nature of its imposition it is a fee connected with parting in the privilege to run the distillery."

2. The petitioner alongwith other similarly situated persons filed Special Leave Petition before the Supreme Court, which was entertained and leave was granted by an order dated 9.1.2012 holding that the appeals would be heard. The appeals are still pending disposal before the Supreme Court of India.

3. Thereafter, demand notices dated 22.3.2012 and 27.3.2012 were issued demanding payment of interest on late deposit of overtime charges. The petitioner made a representation and, while the representation was pending, the respondents deducted the amount from the advance excise duty from the account of the petitioner. The petitioner, being aggrieved, has filed the present writ petition praying for quashing of the demand notices and for a writ of mandamus commanding the respondents to refund the amount so recovered as interest.

4. We have heard Sri O.P. Singh, the learned Senior Counsel for the petitioner and Sri Avinash Tripathi, the learned Standing Counsel for the State.

5. Several grounds have been raised in the writ petition, namely, that the respondents had no power to issue the demand notices. It was however contended that the interest could only be charged under Section 38-A of the Act on arrears of excise revenue. It was contended that overtime charges paid under Rule 12 of the Rules is not an excise revenue and, therefore, interest on such overtime charges could not be charged or realised under Section 38-A of the Act. It was also contended that the last paragraph of the judgment of this Court dated 26.7.2011 is an obiter dicta and reliance on that paragraph could not be taken by the respondents.

6. Having heard the learned counsel for the parties, it would be appropriate if we consider the provisions of Section 38-A of the Act under which the interest has been charged. For facility, Section 38-A of the Act is extracted hereunder:

"38- A. Interest on arrears of excise revenue--(1) where any excise revenue has not been paid within three months from the date on which it becomes payable, interest at such rate not exceeding twenty-four percent per annum, as may be prescribed, shall be payable from the date such excise revenue becomes payable till the date of actual payment.

Provided that until a higher rate is prescribed, the rate of interest will be eighteen percent per annum;

Provided further that in respect of an excise revenue which became payable before the commencement of the Uttar Pradesh Excise (Amendment). Act, 1985 interest at the said rate shall be payable from the date of such commencement if the excise revenue is not paid within 3 months of the said date.

Explanation--Nothing in this subsection shall be construed to affect act the payment of interest under an agreement, the terms of an auction or, a decree of the Court, passed before the date of commencement of the Uttar Pradesh Excise (Amendment) Act, 1985 or which may be passed after the date of such commencement, in suits or proceedings filed before the said date.

(2) Provisions of Section 39 shall mutatis mutandis apply to realisation of such interest as they apply to realisation of excise revenue."

7. A perusal of the aforesaid provisions indicates that where any excise revenue has not been paid within three months from the date on which it becomes payable, interest would then become payable. The words "Excise Revenue" has been defined under Section 3(1) of the Act, which is as under:

3(1)"excise revenue" means revenue derived or derivable from any duty, fee, tax, fine (other than a fine imposed by a Court of law), or confiscation imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs;"

8. According to the learned Senior Counsel, excise revenue means any duty, fee, tax, fine or confiscation imposed or ordered under the provisions of the Act and submitted that the overtime charges is not an excise revenue as it is neither a duty, fee, tax or fine. The learned Senior Counsel consequently, submitted that the interest under Section 38-A of the Act is, accordingly, not payable nor can it be charged by the respondents.

9. In the first flush, the submission made by the learned counsel for the petitioner appears to be attractive but the same cannot be accepted on account of the fact that in the case of the petitioner while questioning the validity of the amendment made in Rule 12 of the Rules, a Division Bench of this Court held in its judgment dated 26.7.2011 that Rule 12 of the Rules was made in exercise of powers under Section 41 of the Act and such overtime charges required to be paid under Rule 12 of the Rules is in fact for grant of any exclusive or other privilege granted under Section 24 or Section 24-A of the Act, or for storing any intoxicant. The Division Bench held that prescription of overtime charges was a condition of the licence and that by the nature of its imposition it is a fee connected with parting in the privilege to run the distillery.

10. In the light of the aforesaid decision of the Division Bench in the case of the petitioner, overtime charges has been held to be a fee. Therefore, if excise revenue is not paid within the stipulated period, then interest becomes leviable under Section 38-A of the Act. We are of the opinion that so long the decision of this Court dated 26.7.2011 stands and is not set aside by the Supreme Court, the imposition of interest by the respondent is justifiable under Section 38-A of the Act. The contention that the operative portion of the judgment dated 26.7.2011 is an obiter dicta is erroneous. The Division Bench after considering the provisions of the Act and the Rules, gave a definite finding that overtime charges is a fee under the Act. Consequently, for the reasons stated aforesaid, we do not find any reason to interfere in the impugned demand notices. The writ petition is dismissed.

