(1992) 12 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1535/81

Mewar Sugar Mills Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 49, 9
Constitution of India, 1950 — Article 226
Finance Act, 1982 — Section 51

Citation : (1993) 63 ELT 612

Hon'ble Judges : R.S. Verma, J;N.K. Jain, J

Bench : Division Bench

Advocate : D.S. Shishodia and H.L Kela, for the Appellant; P.P. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks to quash the order dt. 21st August, 1981 passed by the respondents and to direct the respondents to refund the amount of duty already paid by the petitioner for the period February, 1981 to June, 1981. The petitioner has also prayed for a writ or order prohibiting the respondents from collecting any excise duty under Item 15CC of the 1st Schedule to the Central Excises and Salt Act, 1944 and has further prayed for declaring the amending Notification No. 20/82 dt. 20-2-1982 and Section 51 of the Finance Act ultra vires of the Constitution whereby Rules 9 and 49 of the Central Excise Rules have been amended.

2. The petitioner No. 1 M/s. Mewar Sugar Mills Ltd. (hereinafter referred to as the petitioner Company) is an existing company which manufactures sugar through vacuum pan process and also manufactures alcohol in distillery. The petitioner company in the process of manufacture of sugar, crushes sugarcane and extracts juice from it, which after passing through certain processes goes to centrifugal in the form of ''Massecuite'' whereby centrifugal force white crystal

sugar is separated and along with other waste material burnt sugar, which is known as molasses, is produced as a by-product. Earlier the molasses was a non-excisable product but on 1st March, 1975, the Union Government for the first time imposed excise duty on the manufacture and production of molasses under Item No. 68 of First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to be as the Act). On 30th April, 1975, a subsequent Notification No. 118/75 was issued by the Central Government whereby it has 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 the Finance Act, 1980 w.e.f. 18th June, 1980, the Central Government included molasses in the First Schedule to the Act as Item No. 15C and levied excise duty on molasses @ Rs. 30/ - per Metric ton. During the pendency of the writ petition by Section 51 of the Finance Act, 1982, Rules 9 and 49 of the Central Excise Rules have been amended by which the manufacturer is required to pay the excise duty on every intermediate stage and this amendment has been given retrospective effect from 28-7-1944, and the petitioner by an amended writ petition has also challenged vires of Rules 9 and 49 of the Central Excise Rules.

3. This writ petition is pending since 4-8-1981 and it has come up before us today.

4. Mr. Choudhary, learned counsel appearing for the Union of India has submitted that this case is squarely covered by the decision of their lordships of the Supreme Court in J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors, He has also relied on Oudh Sugar Mill Ltd. Vs. Union of India (UOI) and Others, Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, and Kesar Sugar Works Vs. Union of India (UOI) and Others, On the other hand Shri Shishodia contends that an SLP is already pending with the Apex Court against judgment in Oudh Sugar Mills case (supra).

5. In J.K. Cotton Spinning and Weaving Mills Limited and Anr. v. Union of India (supra), their lordships of the Supreme Court have observed as under :-

"It is manifestly clear from Rule 9 that it contemplates not only removal from the place where the excisable goods are produced, cured or manufactured or any premises appurtenant thereto, but also removal within such place or premises for captive consumption or ''home consumption'' as it is called. Thus if a commodity which is manufactured in such a place or premises and is used for manufacture of another commodity then it will be case of removal for the purpose of payment of excise duly...The decisions which have taken the view that if a commodity manufactured within the factory in one plant is transferred to another plant for the purpose of production of another commodity will be removal for the purpose of excise duty are, in our opinion correct."

6. It may be stated at the very outset that as Hon''ble the Supreme Court has

already upheld the validity of Rules 9 and 49 observing that the amendments to Rules 9 and 49 are quite legal and valid. Further Section 51 of the Finance Act, 1982 giving retrospective effect to the said amendments is also legal and valid, and Mr. Shishodia, learned counsel for the petitioner has not disputed the above position. In view of this, pendency of SLP against the decision rendered in Oudh Sugar Mills (supra) is of no avail particularly when in the order of Division Bench of Allahabad High Court which has been appealed it is clearly mentioned that "the other pleas including the plea that molasses is a waste product was given up." Therefore, it is not necessary for us to deal contention regarding vires as the vires has already been upheld and it stands concluded in view of the aforesaid Supreme Court decision.

7. The only grievance of the petitioner is that since waste molasses is not marketable, excise duty cannot be imposed. Mr. Shishodia has placed reliance on 1991 (54) ELT 221 Kirloskar Oil Engines Ltd. v. Union of India 1991 (51) ELT 229 and Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay,

8. We have heard learned counsel for the parties and perused the material on record and have also gone through the case law cited at Bar along with the relevant provisions of law very carefully.

9. The principle underlying as enunciated in the case law cited by the petitioner is that unless the material in question, is marketable, it cannot be made excisable and it is the duty of the Revenue to adduce evidence or proof that articles in question are goods. But in the instant case admittedly the petitioner Company has not raised a plea in the writ petition that molasses is not marketable. Therefore, there was no occasion for the respondents to adduce evidence or to show otherwise as enunciated by their lordships of the Supreme Court. Furthermore, a perusal of letter Anx. R-2 which is on record makes it clear that the petitioner company made a request for permitting it to use storage tank for storing the molasses arrived in the company from outside. Under the circumstances, it cannot be presumed that molasses is not saleable, so it is a question of fact as to whether molasses is saleable or not. Therefore, as stated above in the absence of any plea having been raised by the petitioner and keeping in view that it is a question of fact, the contention raised by the petitioner cannot be gone into in writ jurisdiction and the case law cited by the counsel for the petitioner is not helpful and even if it is assumed to be a waste as argued by the counsel for the petitioner still it is excisable in view of the decision of Supreme Court in Khandehval Metal''s case (supra). In this view of the matter when the case is fully covered by the decision of the Supreme Court, we are not inclined to interfere in the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. Accordingly, this writ petition has no force, so it is hereby dismissed. The stay order also stands vacated.

