(2012) 09 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1913 of 2012

M/s India Glycols Ltd. — APPELLANT

Vs

State of Uttarakhand and Others — RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:
Uttar Pradesh Excise Act, 1910 — Section 40(1), 40(2)

Citation : (2012) 09 UK CK 0031

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Dinesh Dwivedi, Assisted by Mr. Prateek Dwivedi and Mr. S.K. Posti, for the Appellant; Paresh Tripathi, Additional Chief Standing Counsel, for the Respondent

Judgement

Hon''ble Sudhanshu Dhulia, J.—The petitioner, which is a Public Limited Company, is engaged inter alia in the manufacture of Industrial Alcohol (Extra Neutral Alcohol and Rectified Spirit). An export fee was being imposed by the State of Uttarakhand under the U.P. Excise Act, and the Rules framed therein. The Division Bench of this Court vide its judgment dated 09.01.2012 passed in WPMS No. 1202 of 2007 has held the imposition of this export fee to be unjustified. Subsequently, thereafter the State Government made an amendment in the year 2012 in the United Provinces Excise Act (Section 40). Since this was nothing but a repetition of earlier provisions which were held to be wrong by the Division Bench of this Court, a learned Single Judge of this Court vide order dated 24.05.2012 in WPMS No. 990 of 2012 restrained the respondents from realizing this export fee. Now the State Government (Uttarakhand) has made an amendment in the U.P. Excise Act by way of passing following order:-

THE UTTARAKHAND EXCISE (AMENDMENT) ACT, 2012

(UTTARAKHAND ACT NO. 03 OF 2012

An

Act

Further the amend the United Provinces Excise Act, 1910 (Act No. 04 of 1910)(as applicable to the State of Uttarakhand)

Enacted by the Uttarakhand State Legislative Assembly in the Sixty-third year of the Republic of India, as follows:-

Short title and Commencement 1. (1) This Act may be called the Uttarakhand Excise (Amendment) Act, 2012.

Amendment of Section 40 2. (2) After sub-section (1) of section 40 of the United Provinces Excise Act, 1910 (Act No. 04 of 1910)(as applicable to the State of Uttarakhand), a proviso shall be inserted as follows:-

Provided further that the rule tenure Uttar Pradesh Excise Export, Import and Kept in possession of Rectified Sprit (23rd Amendment) Rules, 1999 published with notification No. 129/13-2004 dated 13 March, 1931 be deemed to and always to have been in force from 01 April, 2007 to the context of the State of Uttarakhand.

The net result of this amendment would be that earlier rules of the year 1999 stands now revived and the State Government has got power again to impose an export fee of Rs. 2.50 on per litre of industrial alcohol.

2. Inter alia the counsel for the petitioner Mr. Dinesh Dwivedi, Senior Advocate says that this could not have been done as the State has no powers to do so as held earlier by a Division Bench of this Court.

3. Prima facie this Court is also of a view that the State Government cannot do indirectly what it cannot do directly. In view of the above, until further orders of this Court, the respondents are restrained from imposing the export fee on the petitioner provided the petitioner gives a bank guarantee of a Nationalized Bank to the State Government for a sum of Rs. 1.5 crores (Rupees One crore and fifty lacs only) within three weeks i.e. on or before October 5, 2012.

4. Learned counsel for the respondents shall file counter affidavit within a period of three weeks. Rejoinder affidavit thereto, if any, be filed within three weeks thereafter. List the matter on 31.10.2012 in the daily cause list.

