(1991) 01 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1014 of 1990

Pratappur Sugar and Industries Ltd. APPELLANT

Vs

Assistant Collector RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Citation : (1991) 33 ECC 287 : (1991) 38 ECR 34 : (1992) 58 ELT 452

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Judgement

R.R. Misra, J.—Learned counsel for the parties have been heard.

2. The petitioner is a company doing the business of manufacture and sale of sugar. During the course of production of sugar the petitioner obtains molasses as a by product. The production of molasses is a dutiable item and attracts Central Excise duty. The production, sale, supply and distribution as well as preservation of molasses is regulated under the U.P. Seera Niyantran Adhiniyam, 1964 and the Rules made thereunder. Under the said U.P. Seera Niyantran Adhiniyam the Controller of Molasses exercises complete control over the production, sale, supply and distribution of molasses. On an application made for the supply of molasses the Controller of Molasses allots the quantity to the needy persons. That is how the molasses is removed from the factory but before that Central Excise duty is also paid thereon. For the crushing season 1987-88, no doubt, molasses was produced by the petitioner but it was produced in excess quantity. Record of the case establishes that for stocking the said molasses various requests in writing were made to the Controller of Molasses but of no effect. The Resident Excise Officer also knew of the same. The fact that the molasses produced were in excess of the storage capacity and also the further fact that the said molasses had overflowed has not been disputed by the opposite parties, rather on the other hand the District Magistrate has by his letter dated 12-2-1988 wrote to the Controller of Molasses about the said overflow of molasses and for passing necessary orders for its storage, yet no action was

taken in the matter. The Central Excise Authorities, however, after notices and obtaining the explanation of the assessee imposed Central Excise duty on the said quantity of molasses which had overflowed. Aggrieved, the assessee filed appeal before the appellate authority. A perusal of the order dated 26-6-1989 passed by the appellate authority shows that the appellate authority was convinced that the shortage of molasses was due to lack of storage space and that the penalty was reduced by the said appellate authority on the ground that there was no mala fide intention on the part of the assessee, yet so far as the levy of excise duty was concerned, the appeal was dismissed. Further aggrieved, the petitioner filed a revision before the Govt. of India, which has been disposed of by the impugned order dated 23-7-1990 on the two short grounds, (1) that the fact of overflow of molasses although was taken up with the said excise authorities, yet at no point of time the same was brought to the notice of the Central Excise authorities and secondly that no convincing case has been made out in favour of the petitioner regarding the loss that occurred due to overflow of molasses. Having heard learned counsel for the parties I agree with the contention of the learned counsel for the petitioner that the impugned orders passed by the authorities below including that of the revising authority are arbitrary and deserve to be quashed, more so all the necessary facts in the case are a pointer to the fact that the overflow of molasses, in fact, had taken place and the same occurred under the circumstances which were beyond the control of the petitioner and the Controller of Molasses did not take any action on the repeated requests of the petitioner as well as of the District Magistrate. In this view of the matter the impugned orders passed by the opposite parties levying central excise duty on the said loss of molasses, in my opinion, are not warranted by law.

3. In the result, the writ petition succeeds and is allowed with costs which are assessed at Rs. 200/-. The impugned orders passed by the opposite parties seeking levy of central excise duty on the said loss of molasses are hereby quashed and it is held that the petitioner is not liable to pay any central excise duty on the same. The amount paid, if any, in pursuance of the interim order passed by this court may be refunded to the petitioner.

