(2003) 01 AHC CK 0066

In the Allahabad High Court

Case No : C.M.W.P. No. 622 of 1989

Rampur Distillery and Chemical Co. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Citation : (2003) 1 AWC 790

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Arun Tandon and S.C. Budhwar, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J. 1. This writ petition has been filed for a writ of certiorari to quash the impugned demand notice dated 30.11.1988 copy of which is Annexure-5 to the writ petition and for a mandamus directing the respondents not to recover any amount towards excess transport wastage on rectified spirit in pursuance of the order of the U. P. Excise Commissioner dated 30.11.1988.

2. We have heard learned counsel for the parties.

3. The petitioner is a Company, which was granted a licence in Form P.D. 2 for manufacture of industrial and potable alcohol as also rectified spirit. The Excise Commissioner, U. P., issued a permit for supply of rectified spirit to the State Trading Corporation of India, Chanderlok, New Delhi, to the extent of 50 Lakhs bulk litres. The said amount of rectified spirit was to be supplied in conformity with I.S.I. specifications and the same was not to be below the strength of 66.0 degree O.P. The consignment was to be routed through the Bonded Warehouses, Budge Budge, in West Bengal. Photostat copy of the said permit has been annexed as Annexure-1 to the writ petition.

4. The petitioner executed a bond in Form P.D. 16 vide Annexure-2 to the writ petition in accordance with the permit. A total quantity of 49,83,203.9 bulk litres

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of rectified spirit was transported from the State of Uttar Pradesh to the Budge Budge port in West Bengal. Out of the aforesaid quantity transported, a total quantity of 49,48,971.2 bulk litres of rectified spirit was received at the Budge Budge port, as a consequence of which there was transit wastage of 34,232.7 bulk litres.

5. Out of the quantity of rectified spirit received at Budge Budge port only 47,95,754 bulk litres could be exported outside India. A total quantity of 1,48,827.2 bulk litres of rectified spirit was left at the Budge Budge port and there was a further loss of 4220 alcohol litres as handling wastage.

6. It is alleged in paragraph 12 of the petition that since transit wastage was well within 5% as prescribed, the bond executed by the petitioner in From P.D. 16 was released in its favour under the order of the Excise Commissioner dated 12.7.1984 vide Annexure-3 to the writ petition. To the surprise of the petitioner on 7.4.1989 it received an order dated 25.3.1989 from the office of the Excise Commissioner, U.P., along with an impugned order dated 30.11.1988. Copies of the same are annexed as Annexures-4 and 5 to the petition.

7. By the aforesaid orders, a total sum of Rs. 7,21,374.50 p. was demanded from the petitioner in respect of alleged excess transit wastage of 13,115.9 alcohol litres of rectified spirit towards excise duty. This excess transit wastage was said to have occurred during transport and handling of rectified spirit at Budge Budge Port, West Bengal, in the year 1983. It is this demand, which has been challenged in this writ petition.

8. The respondents have filed a counter-affidavit and we have perused the same.

9. In paragraph 3 of the same, it is alleged that in the bond, copy of which is Annexure-2 to the petition, the petitioner has agreed that in case of any loss, he shall pay the demand duty at the rate of Rs. 55 per alcoholic bottle of spirit. Copy of the notice served on the petitioners is Annexure-C.A. 1 to the counter-affidavit. In paragraph 5 of the counter-affidavit, it is stated that during the audit and examination of the record by the Accountant General, U.P., India non-realisation of duty on excess transit wastage amounting to Rs. 7.21 lakhs was pointed out, and as a consequence, the impugned demand notice was issued and served on the petitioner on 7.4.1989. It is further stated that while furnishing the bond and entering into a contract with the State Government, the petitioner was committed to pay the contractual amounts which the petitioner has to abide by.

10. In paragraph 8 of the counter-affidavit, it is stated that the rectified spirit was exported outside U. P. for human consumption.

11. A rejoinder-affidavit, has also been filed, in which it is stated that the State of U. P. was not competent to levy duty on rectified spirit. In paragraph 11, it is denied that any report was made by the office of the Accountant General and the said report has not been annexed to the counter-affidavit nor issued to the petitioner. In the same paragraph, it is stated that any condition In the bond

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contrary to law is not enforceable.

12. In Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, a seven member Bench of the Supreme Court held that the State Legislature can only impose excise duty on alcohol which is fit for human consumption. Admittedly, rectified spirit is not fit for human consumption and hence the State Legislature cannot impose excise duty on it.

13. In our opinion, the facts of the case are covered by the decision of the Supreme Court in State of U.P. and Others Vs. Modi Distillery and Others, In that decision, the Supreme Court held that the State is not empowered to levy excise duty on the raw material or input that is in the process of being made into alcoholic liquor for human consumption. This decision specifically related to excise duty on wastage, and hence it squarely applies to the present case in which excise duty is sought to be imposed on wastage of rectified spirit. Since rectified spirit is not fit for human consumption, in our opinion, no excise duty can be imposed on it.

14. As regards the allegation in the counter-affidavit that the petitioner has entered into any contract to pay the said excise duty, in our opinion, no contract can override the statute. Under the Constitutional Scheme, excise duty cannot be imposed by the State Legislature on alcohol, which is not fit for human consumption. Rectified spirit is admittedly not fit for human consumption.

15. In the circumstances the writ petition is allowed. The impugned demand notice dated 30.11.1988 is quashed. No orders as to costs.

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