(1992) 05 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2804 of 1986

Satish Kumar APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 05-05-1992

Acts Referred:

Citation : (1992) 1 RLW 710 : (1992) 3 WLC 476 : (1992) 1 WLN 305

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has prayed that by an appropriate writ, order or direction the non- petitioners may be directed to release the Bank guarantee and solvent security submitted by the petitioner. It is also prayed that in view of the division bench judgment given in the case of D.B. Civil Special Appeal No. 116/79: State of Rajasthan v. Mahalaxmi Paints Industries, Ajmer decided on March 21,1986, whatever security in the nature of Bank guarantee or otherwise submitted by the petitioner may be deemed to have been discharged and a declaration to this effect may be given.

2. The petitioner filed the present writ petition praying that the State Legislature has no power to legislate any law controlling and restraining business of Thineer or imposing any excise duty or tax or fee on denatured spirit and denatured spiritious preparations like Thinner. It is submitted that in view of the judgment of the Division Bench of this Court in the case of Mahalaxmi Paints Industries [supra) wherein this Court has held that Thinner denatured spirit is not excisable under the Rajasthan Excise Act and, therefore, the State cannot compel the petitioner either to give solvent security or Bank guarantee on denatured spirit and denatured spiritious preparation like Thinner etc. and the security in the nature of Bank guarantee and whatever amount has been deposited by the petitioner under protest against the excise duty on the above articles may be refunded. It is submitted that the petitioner submitted a bank guarantee to the

tune of Rs. 1,30,000/- and solvent security to the tune of about Rs, 16 lacs as well as paid excise duty in cash to the tune of Rs. 36,158.20 paise under protest on various occasions. The petitioner after the decision of the Division Bench submitted to the respondent vide letter dated 22.4.1986 that the amount may be refunded and the bank guarantee and security may be discharged, but without any result. Therefore, the petitioner filed the present writ petition.

3. A reply has been filed by the State and a stand has been taken by the respondent State is that the petitioner is not entitled to the refund and in this connection, reference has been made to the decision of their Lordships of the Supreme Court given in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, In this connection, my attention was also invited to the decision given in SLP filed by the State of Rajasthan in the case of M/s Mahalaxmi Paints Industry, Ajmer and Ors. against the judgment given by this Court before the Hon''ble Supreme Court and the Hon''ble Supreme Court disposed of the matter with these observations which read as under-

However, learned Counsel for the appellants bring to our notice paragraph 89 of the judgment of this Court . In this paragraph, it has been stated that the said levy has been declared to be illegal only prospectively. In other words, the respondents-States therein were restrained from imposing the said levy any further but they were not liable to refund any duty already paid or collected. We direct the appellants here to keep this in mind and abide by the terms of the declaration of this Court that the levy is declared illegal prospectively but the duties collected already will not be refunded to the parties concerned.

4. Therefore, it is submitted that in view of the observations made in the case of Mahalaxmi Paints Industry relying on the decision given in the case of Synthetics and Chemicals Ltd. [supra] the Hon''ble Supreme Court has held that levy already collected shall not be refunded. Therefore, in these circumstances, it is submitted that releasing of bank guarantee, solvent security and undertakings furnished by the petitioner prior to the judgment of the Hon''ble Supreme Court dated 25.10.89 cannot be refunded.

5. Similar matter also came up before this Court and the Hon''ble Chief Justice in the case of Jaipur Minerals and Chemicals v. State of Rajasthan S.B. Civil Writ Petition No. 2092 of 1980 decided on 25.3.1991 as well as Hon''ble J.R. Chopra, J. in the case of Pesticides India v. The State of Raj. and Ors. S.B. Civil Writ Petition No. 1628/1980 decided on 4.10.1991 has negatived the refund. The reason given by the Hon''ble Court in both the cases was that the petitioner has already adjusted this levy and passed it on to the consumers. Therefore, the petitioner cannot be permitted to enrich by this refund of duty which has been passed by it to consumers. Since the ultimate duty has been passed on to the consumers, the petitioner is not entitled to have the same.

6. The petitioner in this writ petition has not alleged that he has not recovered this duty from the consumers. In this case, it has not been stated by the

petitioner in the writ petition that this duty has not been collected from the consumers and the petitioner has paid it from his own pocket. If it has been stated then that would have been something different. In the present case, there is no such averment whatsoever and in the normal commercial transaction duty is passed on, to the consumers. Therefore, the view taken in both the cases referred to above holds the field and I have no reason to take a different view from the view taken by the two coordinating benches.

7. Thus, in this view of the matter, I do not find any merit in this writ petition and the same is dismissed.

