
(1993) 12 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Special Appeal No. 230 of 1992

Satish Kumar Sethi

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 21-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) WLN 574

Hon'ble Judges : Rajendra Saxena, J;N.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—This special appeal has been filed u/s 18 of the Rajasthan High Court Ordinance, 1949 against the order of learned Single Judge dt. 5.5.92 whereby he has dismissed the writ petition.

2. The facts which are necessary to be noticed for the disposal of this special appeal in brief are that the petitioner is dealing in denatured spirit and denatured spirituous preparations like Thinner which is a denatured spirituous preparation and under the head of denatured spirituous preparation, duty was charged on Thinner considering that to be a denatured spirituous preparation. It was alleged that in lieu of excise duty, the non-petitioners started taking bank guarantee and solvent security in view of the order of Single Judge of this Court holding that the State Legislature is not competent to impose excise duty or counter-vailing duty on denatured spirit and denatured spirituous preparations. It was also alleged that the petitioner presented bank guarantee to the tune of Rs. 1,30,000/- and solvent security to the tune of about 16 lacs as well as paid excise tax in cash to the tune of Rs. 36, 158/- under protest. The petitioner submitted a representation but the same was of no avail.

3. Thereafter the petitioner preferred a writ petition under Article 226 of the Constitution contending that in view of the Division Bench judgment of this Court

rendered in the case of State of Raj. v. Mahalaxmi Paints Industries (D.B.C. Spl. Appeal No. 116/79) decided on 21.3.1986 amount may be refunded and the bank guarantee and security may be discharged.

4. The learned Single Judge vide his order dt. 5.5.92 dismissed the writ petition. Being aggrieved with the order of learned Single Judge, he has filed this special appeal.

5. Mr. Joshi, learned Counsel for the petitioner-appellant has submitted that the excise duty imposed by the State has been declared to be illegal by this Court in State of Raj. v. Mahalaxmi Paints Industries (supra), therefore, the petitioner-appellant cannot be compelled to pay the same and as such, the learned Single Judge has erred in denying refund of the amount deposited by the petitioner against excise duty as also in not discharging the bank guarantee and solvent security. He has relied on Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others,

6. The contention of Mr. Joshi that the excise duty imposed by the State has been declared illegal by this Court in State of Rajasthan v. Mahalaxmi Paints (supra) which has been upheld by their lordships of the Supreme Court has not been disputed by Mr. Maheshwari, but he has submitted that even in that case their lordships have refused to refund the duty so deposited, therefore, the petitioner is not entitled for refund and discharge of bank guarantee. He has relied on M/s. Pesticides India v. The State of Raj. (S.B.C.W.P. No. 1628/80) decided on 4.10.91. He has further submitted that the learned Single Judge after considering the cases cited has rightly dismissed the writ petition and the impugned order calls for no interference. Mr. Maheshwari has lastly submitted that in view of M/s. Geeta Enterprises v. State of Raj. (D.B.C.W.P. No. 6033/92) decided on 28th May, 1993 the special appeal deserves to be dismissed.

7. We have heard learned Counsel for the parties and perused the impugned order as well as the case law cited before us.

8. The learned Single Judge while dealing with the question of refund after considering the cases of Jaipur Minerals and Chemicals v. State of Raj. (S.B.C.W.P. No. 2092/80) decided on 25.3.91 and M/s. Pesticides India v. State of Raj. and Ors. (supra), wherein the claim of refund was negated as in those cases levy was passed to the consumers, has repelled the demand of refund. The learned Single Judge also observed that in this case it has not been pleaded by the petitioner in the writ petition that this duty has not been collected from the consumers and the petitioner had paid it from his own pocket.

9. In State of Raj. and Ors. v. Mahalaxmi Paints Industries, Ajmer and Ors. (Civil Appeal Nos. 1744-48 of 1987) decided on 25.10.90 following the view taken in Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, whereby the levy of excise duty on certain spirituous preparations under the Rajasthan Excise Act levied by the State Legislature was declared invalid. The following observations of the Apex Court was also relied upon:

However, learned Counsel for the appellants brings 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 on prospectively. In other words, the respondents-State therein were restrained from imposing the said levy and 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.

10. In *M/s. Geeta Enterprises and Anr. v. The State of Raj. and Ors.* (supra), the Division Bench of this Court while deciding the similar issue has refused to refund the excise duty and after considering the case of *Synthetic & Chemicals Ltd. and Ors. v. State of U.P. and Ors.* (supra) has held that the respondent will not be liable for any refund of the excise duty or the counter-vailing which has been recovered or has become recoverable prior to 25.10.1989.

11. In view of the aforesaid decisions, it is not in dispute that the levy imposed by the State on denatured spirit and denatured spirituous preparations has been declared illegal prospectively but their lordships of the Apex Court as well as this Court have refused to refund the same to the concerned parties. Therefore, the learned Single Judge has not committed any illegality or error in disallowing refund to the petitioner-appellant. In our opinion, impugned order calls for no interference.

12. It has been next contended that since the excise duty was not leviable the petitioner-appellant did not charge it from the customers, therefore, he is entitled for refund. In support of his contention, an affidavit was also filed on 31.5.92. This contention in our considered opinion is not sustainable for the reason that despite there being clear stand of the respondent in their reply that the petitioner who has already realised the component as a part of raw material by adding the same in the goods manufactured by him and realising the same from others and ultimate burden has already been passed to the consumers, and further that the petitioner has not stated that he has not passed the component of excise duty to his customers, the petitioner-appellant neither filed any counter nor agitated the same before the learned Single Judge. Under these circumstances, the appellant cannot be permitted now to agitate this point for the first time particularly when the learned Single Judge has himself observed that in this writ petition petitioner has not alleged that he has not recovered this duty from the consumers and further that if it has been stated then that would have been something different. Therefore, the cases cited by the counsel for the appellant are of no help to him. In this view of the matter and in view of the decisions of this Court so also of the Supreme Court, we do not find any error or illegality in the order passed by the learned Single Judge and the impugned order calls for no interference.

13. In the result, this special appeal has no force, so it is hereby dismissed.