(2014) 05 AHC CK 0324

In the Allahabad High Court

Case No : C.M.W.P. No. 1203 of 2007

Triveni Engineering and Industries Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 — Section 2(d), 5

Citation : (2014) 6 ADJ 562 : (2014) 105 ALR 349

Hon'ble Judges : Tarun Agarwala, J;Bachchoo Lal, J

Bench : Division Bench

Advocate : A.P. Mathur and A.B. Mathur, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Tarun Agarwala and Bachchoo Lal, JJ.—The petitioner is a sugar industry engaged in the manufacturing and sale of sugar Molasses is a necessary bye-product which comes out when sugarcane is crushed for manufacture of sugar. Under the Uttar Pradesh Sheera Niyantran Adhiniyam, 1964, it is mandatory for a sugar factory to preserve molasses u/s 5 thereof. The petitioner alleges that on 2nd of April, 2006 a fax message was sent to the authorities as well as a telegraphic message was sent on 3rd April, 2006 intimating them about the auto combustion in steel tank No. 6 where 72283 quintals of molasses was stored. It transpires that the authorities, on investigation, issued a show cause notice dated 6th April, 2006 directing the petitioner to show cause as to why action should not be taken against them for violating the provisions of the Adhiniyam as well as Uttar Pradesh Sheera Niyantran Niyamavali, 1974. The petitioner submitted its reply contending that they may be permitted to dispose of the burnt molasses and that the authorities should take a lenient view in the matter. Accordingly, the petitioner moved an application dated 12th April, 2006 seeking permission to dispose of the burnt molasses. In the said letter the petitioner submitted that they will pay administrative charges @ of Rs. 11 per quintal amounting to Rs. 7,95,122/-. Based on the said application, the Excise

Commissioner issued an order dated 28th April, 2006 permitting the petitioner to dispose of the burnt molasses upon payment of administrative charges @ Rs. 11.50 per quintal. Based on the said direction, the petitioner applied for issuance of Form MF-4 which is prescribed in Rule 25 of the Nimayavali of 1974 which was duly issued and the molasses was disposed of. Thereafter the petitioner has filed the present writ petition praying for refund of the administrative charges.

2. We have heard Sri A.B. Mathur the learned Counsel for the petitioner and Sri U.K. Pandey the learned counsel for the excise department.

3. The contention of the learned Counsel for the petitioner is, that administrative charges is payable only upon the sale of molasses. In the instant case, it was contended by the petitioner that burnt molasses was disposed off which does not have any sugar contents in it and, therefore, it was not molasses but a waste material. Further, the petitioner had only disposed of waste material and had not sold the waste material. Consequently, no administrative charges was payable.

4. Having heard learned Counsel for the petitioner, we find that the contention of the petitioner cannot be accepted. In the instant case, the Court finds that the Commissioner, while passing the impugned order, had also imposed a penalty of Rs. 5,000/- for violating the provisions of law, namely, preserving and safeguarding the molasses which apparently had not been done and which has been admitted by the petitioner. Once the order of penalty has been accepted, the liability to pay the administrative charges becomes apparent. The petitioner himself, in its application, had accepted payment of administrative charges as a pre condition for disposal of molasses. The Commissioner permitted the petitioner to dispose of the molasses on payment of administrative charges. Once the petitioner has acquiesced to the order pursuant to his own application, it was no longer open to him to turn around and say or contend that the administrative charges was not payable in law.

5. Even otherwise, the contention that the administrative charges was not payable is patently erroneous. Section 2(d) of the Adhiniyam defines molasses as under:

"''molasses'' means the heavy, dark colored viscous liquid produced in the final stage of manufacture of sugar by vacuum pan, from sugarcane or gur, when the liquid as such or in any form or admixture contains sugar"

6. A perusal of the aforesaid provision indicates that the molasses is a heavy, dark coloured viscous liquid which also contains sugar. There is nothing to indicate in this petition that the burnt molasses disposed of by the petitioner did not contain any sucrose content. In the absence of such evidence being brought on record, the Court is of the opinion that burnt molasses would still come under the definition of the word "molasses" as defined u/s 2(d) of the Adhiniyam 1964 in the present set of circumstances of the case. Further, Rule 23 of the Uttar Pradesh Sheera Niyantran Adhiniyam, 1974 provide payment of administrative charges. For facility the said provision is extracted hereinunder:

"23. Administrative charges.--Every occupier of a sugar factory shall deposit the amount of administrative charges payable on molasses sold or supplied by him in the Treasury or Sub-Treasury of the district in which the sugar factory is situate and produce the Treasury Challan as evidence of such payment to the Excise Officer in charge of the sugar factory before making actual delivery of the molasses to the purchaser."

7. A perusal of the aforesaid, makes it clear that administrative charges is payable on the sale of molasses. In the opinion of the Court the order for disposal of burnt molasses amounts to a sale of the molasses and consequently administrative charges would be payable under Rule 23. The word "disposal" would be included in the word "sold" as depicted in Rule 23 of the said Rules. In the light of the aforesaid, we do not find any merit in the writ petition and is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

