(2002) 12 AHC CK 0071

In the Allahabad High Court

Case No : C.M.W.P. No. 744 of 1999

Upper Ganges Sugar and Industries Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:
Uttar Pradesh Excise Act, 1910 — Section 11

Citation : (2003) 1 AWC 444

Hon'ble Judges : Yatindra Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal and Piyush Agrawal, for the Appellant;

Judgement

M. Katju and Yatindra Singh, JJ. 1. Heard learned counsel for the parties.

2. The petitioner had been granted a licence for distillery in Bijnor by the Central Government on 19.5.1956 vide Annexure-1 to the writ petition for manufacture and sale of country liquor, Indian made foreign liquor, and alcohol. Thereafter he was granted P.D. 2 licence by the Excise Commissioner, U. P. vide Annexure-2 to the petition. By order dated 18.9.1991, Annexure-4 to the petition. Clauses 2 and 3 of the P.D. 2 licence were deleted. Petitioner filed application dated 24.9.1991 for recalling of the order, dated 18.9.1991 vide Annexure-5 to the petition. By order dated 5.10.1991, that application was rejected by the Excise Commissioner. The petitioner filed two applications before the U. P. Government through the Principal Secretary, Excise Department, dated 29.5.1998 and 28.7.1999 vide Annexures-10 and 11 to the petition. These applications have not yet been disposed of.

3. In paragraph 15 of the counter-affidavit, it has been stated that in the appeal against the order of the Excise Commissioner, proceedings have been completed and orders are likely to be passed by the appellate authority very soon. This counter-affidavit was filed in April, 2000 but we are surprised that as yet, the appeal has not been decided.

4. Section 11 of the U. P. Excise Act states :

"11. Appeals and revisions.--(1) The Collector, and every other Excise Officer not being the Excise Commissioner shall, in respect of all proceedings under this Act, be subject to the control of the Excise Commissioner and all others passed by Collector or such other Officer under this Act shall be appealable to the Excise Commissioner in the manner prescribed by rules made by the State Government in this behalf:

Provided that no appeal shall be entertained under this sub-section unless it is preferred by the aggrieved person within thirty days from the date of communication of such order and unless the appellant has furnished satisfactory proof of having paid a sum of not less than 35 per cent of the disputed amount of tax, fee, penalty or other dues, if any, as the case may be :

Provided further that the appellate authority may, for special and adequate reasons to be recorded in writing, waive or relax the requirements of the preceding proviso in respect of such disputed amount of tax, fee, penalty or other dues.

(2) The State Government may either suo motu or on application by an aggrieved person call for and examine the records relating to any order passed in any proceedings under this Act, for the purposes of satisfying itself as to the correctness, legality or propriety of any such orders or as to the regularity of such proceedings ; and, if in any case it appears to the State Government that such order or proceedings should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly :

Provided that no order adversely affecting any party shall he passed under this section unless he has been given a reasonable opportunity making his representation.

Provided further that no application under this sub-section shall be entertained unless it is preferred within thirty days from the date of the order of the Excise Commissioner and unless an appeal, where it lies has been filed and disposed of by the Excise Commissioner :

Provided also that no application for revision shall be entertained unless the applicant has furnished satisfactory proof of having paid a sum of not less than 25 per cent of the disputed amount to tax, fee, penalty or other dues, if any, as the case may be :

Provided also that the State Government may, for reasons, to be recorded in writing, waive, or relax the requirements of the preceding proviso in respect of such disputed amount of tax, fees, penalty or other dues."

The above provision gives a clear right of appeal u/s 11 (1) and of revision u/s 11 (2).

5. This petition is, therefore, disposed of with the direction to the appellate

authority to decide the petitioner''s application against the order deleting Clauses 2 and 3 in the petitioner''s licence after hearing the petitioner preferably within two months from the date of production of certified copy of this order. The representations, Annexures-10 and 11 to the petition, shall be treated as appeal/ revision u/s 11.

