(1991) 03 AHC CK 0126

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 533 of 1980

Upper Ganges Sugar Mills Ltd. and Another — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 10

Citation : (1991) 33 ECC 288 : (1991) 38 ECR 174

Hon'ble Judges : B.P. Jeevan Reddy, C.J;Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, C.J.—Heard Sri Rishi, Ram, learned Counsel for the petitioners and Sri AK. Gupta, learned Additional Standing Counsel for the Central Government.

2. This writ petition is directed against a notice dated 9.9.1980 issued by the Superintendent, Customs, and Central Excise, MOR II Dhampur, District Bijnor, calling upon the petitioners to show-cause as to why they should not be made liable to pay a duty in a sum of Rs. 23,489.93 under Rule 10 of the Central Excise Rules, 1944.

3. The petitioner, Upper Ganges Sugar Mills Limited, is engaged in manufacture of sugar. Bagasse is a by-product. The petitioners'' case is that a Company by name Alcho-Chem. Limited owned a distillery at Sheohara and that by virtue of the order of the Calcutta High Court dated 19.4.1977 in Company Petition No. 60 of 1977. M/s Alcho-Chem. Limited was merged with the petitioners'' company with effect from 1.4.1976. It is, therefore, submitted that the distillery at Sheohara came to be owned by the petitioner-company. The petitioners submit that the bagasse which is produced by the Sugar Mill, was supplied to their distillery at Sheohara and, therefore, it is exempted from duty by virtue of Notification No. 118/ 75-CE dated 30.4.1975 issued by the Government of India

under Rule 8(1) of the Central Excise Rules, 1944. The said Notification is extracted in paragraph No. 11 of the writ petition. The Notification says that in case of goods falling under T.I. 68 of the First Schedule to the Act, manufactured in a factory and intended for use in the same factory or in another factory of the same manufacturer, they are totally exempt from duty. The petitioners say that the bagasse supplied to Sheohara Distillery is thus exempted totally from duty. In spite of the same, petitioners complain, the impugned show-cause notice was given where under the duty is sought to be levied on bagasse supplied to Sheohara Distillery during the period 1.3.1979 to 31.3.1980.

4. No counter affidavit has been filed in the writ petition. A short affidavit was, however, filed by the respondents in support of their application to vacate the interim stay order granted in this writ petition. In that affidavit, it is submitted, inter alia, that the petitioners are not entitled to the benefit of the aforesaid exemption Notification. It is also stated that since the bagasse was supplied to a separate unit, namely to a Distillery known as M/s Alcho-Chem. Limited, the petitioners are not entitled to the benefit of the said Notification.

5. It is evident from a reading of the exemption Notification that it is applicable only in the case of products or goods dutiable under Tariff Item 68 of the Schedule to the Act, as it was in force at the relevant time. We are not sure, under which Tariff item bagasse was chargeable. It appears probable that the respondents were not aware, or were not made aware, of the order of the Calcutta High Court referred to in the writ petition. In the circumstances, we think that the proper course, to adopt in this case, is to direct the petitioners to submit their explanation to the impugned showcase notice. The Assistant Collector, Central Excise, Bijnor shall look into the said explanation and dispose of the matter in accordance with law. In particular, the Assistant Collector, Central Excise shall determine whether bagasse was dutiable under T.I. 68 (then in force) and also look into the judgment and order of the Calcutta High Court (which shall be produced by the petitioners before him) and determine whether the petitioners are entitled to the benefit of the said exemption Notification or not. Pinal orders shall be passed within three months from the date of the filing of the explanation by the petitioners. The explanation shall be filed by the petitioners within one month from today, along with a copy of the order of Calcutta High Court and such other material, as they may choose to.

6. The writ petition is, accordingly, disposed of in the above terms.

No costs.

