

Court No. - 21

Case :- WRIT TAX No. - 828 of 2018

Petitioner :- L.H. Sugar Factories Ltd.

Respondent :- State Of U.P. And 2 Other

Counsel for Petitioner :- Nishant Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari,J.

Hon'ble Ashok Kumar,J.

We have heard Sri Nishant Mehrotra, learned counsel for the petitioner and Sri A. C. Tripathi, learned counsel for the respondent-State.

The issue being raised in this petition is in respect of imposition of administrative charge being levied on captive consumption of molasses. This administrative charge is being levied under Clause 2(d-1) and 8(5) of the U.P. Sheera Niynatran Adhiniyam as amended by U.P. Act No. 10 of 2009.

It is undisputed that the amended Rule became subject matter of challenge in a bunch of writ petitions. The leading writ petition being Writ Petition No. 11959 (M/B) of 2009 (M/s Triveni Engineering and Industries Ltd. & another vs. State of U.P. and another) and other connected writ petitions. The aforesaid writ petition along with other connected writ petitions came to be decided on 17.03.2011 declaring the amendment is invalid. Consequently, proceedings undertaken under the amended provisions by the authorities against the petitioners of the said writ petitions were declared illegal and set aside. Imposition of administrative charges on molasses were being charged and realise on the basis of executive orders which were subject matter of challenge in another writ petition being Writ Petition 2175 of 1986 along with other connected matters. A Division Bench of this court vide judgment and order dated 20.05.2011 relied upon the judgment rendered in Writ Petition no.11959 (MB) of 2009 declared the imposition and realization of administrative charges on molasses per se illegal. It may be pertinent to quote the following observations from the said judgement.

"When the Rules permitting imposition and realization of administrative charges, has been found to be invalid, imposition/realization of such administrative charges by executive orders was altogether illegal and without authority.

For the reasons aforesaid and in view of the judgment rendered by the Division Bench of this Court in the case of M/s Triveni Engineering & Industries Ltd. & another Vs State of U.P. & another and other connected matters (Supra), this bunch of writ petitions deserves to be allowed. The

executive orders issued for the purpose are quashed.

The proceedings initiated for realization of administrative charges on molasses, if any, are declared per se illegal and are set aside.

In case any administrative charges have been realized from the petitioners, the same shall be refunded to them, forthwith. The bank guarantees furnished by the petitioners shall stand discharged.

With the aforesaid directions, all the writ petition are allowed. No order as to costs."

The Division Bench judgment dated 17.03.2011 rendered in Writ Petition No.11959 (MB) of 2009 along with other connected writ petitions was challenged by the State of U.P. before the Hon'ble Apex Court by filing Special Leave to Appeal (Civil) No.12922 of 2011 which was dismissed vide order dated 30.04.2013.

Despite the order dated 17.03.2011 was produced before the authority thus bringing the law laid down by this Court, we are surprise that benefit has not been extended as he was not a party of the writ petition. It appears that the District Excise Officer, Pilibhit passed the impugned order does not even have basic common sense. A law declared is applicable to all concerned and not only to the parties to the lis.

In view of the aforesaid facts and discussion, the impugned order dated 15th May, 2018 (Annexure-9 to the writ petition) stands quashed. The writ petition is allowed.

Registrar General is directed to forward a copy of this order to the Excise Commissioner, Allahabad, who shall ensure the compliance of the law laid down by this Court by all concerned.

Order Date :- 23.5.2018

A.Kr.*

[Ashok Kumar, J.]

[Krishna Murari, J.]