

Kisan Sahkari Chini Mills Ltd., Ghosi, Mau Vs. State of U.P. and Others

Kisan Sahkari Chini Mills Ltd., Ghosi, Mau Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/454481

Court : Allahabad

Decided On : Sep-05-1997

Reported in : 1998(1)AWC348; 1999(105)ELT36(All)

Judge : S.L. Saraf, J.

Acts : [Constitution of India](#) - Seventh Schedule; [Uttar Pradesh Excise Act, 1910](#); Central Excise Rules, 1994 - Rules 9, 50, 50A, 173B and 173G; [Central Excise Act, 1944](#) - Sections 11A

Appeal No. : C.M.W.P. No. 859 of 1996

Appellant : Kisan Sahkari Chini Mills Ltd., Ghosi, Mau

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Neeraj Sharma, Adv.

Judgement :

S. L. Saraf, J.

1. The petitioner holds a licence P.O. 2 granted by the Excise Commissioner, U. P., Allahabad for manufacturing Industrial Spirit including rectified spirit and denatured spirit in their distillery at Ghosi, district Mau. The industrial alcohol produced by the petitioner distillery is supplied within the State to persons holding licence under the Excise Rules. It is also exported outside U. P, when export authorisation is granted by the Commissioner of Uttar Pradesh. The petitioner sells its product both for industrial use as also for manufacturing potable liquor. On 21st March. 1995 at about 10 p.m., the Distillery Manager was informed that rectified spirit is flowing outside of storage warehouse of the Distillery. The Distillery Manager and other officials immediately rushed to the spot but due to lock of storage of the warehouse, immediate check on flowing of spirit could not be taken. The said warehouse was locked by the Excise Inspector Incharge of Distillery and the keys of all the locks were with him. The Excise Inspector came to the Distillery at about 12.30 p.m, and opened the lack and repair work was done of the storage tank from which therectified spirit was flowing. The General Manager of the Distillery informed the Excise Commissioner, U. P., Allahabad regarding the aforesaid incident. The total wastage of rectified spirit was to an extent of 31331 bulk litres of ethal alcohol (Le., rectified spirit). Admittedly, the strength of rectified spirit stored out was94.4% V.V.

2. Proceedings were initiated by the Central Excise Department who alleged that ethal alcohol (Le., rectified spirit) was cleared without the payment of Central Excise duty and in contravention of Rule 9 of the Central Excise Rules, 1994 (hereinafter referred to as the Rules). It was alleged that the said quantity of ethal alcohol has not been cleared for the purposes of alcohol liquor for human consumption as such attracted the Central Excise Duty at the rate of 20% ad valorem. Accordingly, the Central Excise authorities on the loss of 31331 bulk liters of rectified spirit levied the Central Excise duty of Rs. 47.072 under Rule 9 of the Rules read with

Section 11A of the Central Excise and Salt Act, 1944. They also levied a sum of Rs. 5,000 by way of penalty for violation of Rules 9, 50, 50A, 173B and 173G of the Rules.

3. Proceedings were also initiated by the Additional Excise Commissioner, Licensing, Industrial Development U. p., under the U. P. Excise Act, 1910 for leakage and wastage of rectified spirit which was found to be 94.4% V. V. strength. According to the report of the Excise Inspector, it was found that there was leakage or stock wastage 36,512.3 alcohol litres. It was alleged that there was loss of revenue due to such leakage. The same was calculated at Rs. 45 per alcohol litre on the wastage of 34,124.3 alcohol litres amounting to Rs. 15,35,593.50 P. The said loss of revenue was estimated to be the loss which was likely to be Incurred by conversion of rectified spirit amounting to Rs. 36,512.3 per alcohol litres for potable purposes. It was stated that the quantity of rectified spirit which was lost was due to sheer negligence of the appellant and the same was likely to be used for the manufacture of Indian made foreign liquor. In that view of the matter, the petitioner was asked to pay a sum of Rs. 15,35,593.50 P, by way of loss of revenue.

4. The said order of the Commissioner is challenged in the writ petition on several grounds. It was urged on behalf of the petitioner that the 'Industrial alcohol not for human consumption' was not a State subject and as such the State cannot levy any duty on the said product. The State Legislature is only competent to levy duty on alcohol liquor for human consumption. To understand the argument of the petitioner, the following entries are relevant:

Entry 8 and 51 of List II- '8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

51. Duties of Excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other Narcotic Drugs and Narcotics but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.'

Entry No. 84 of List I- '84. Duties of Excise on tobacco and other goods manufactured or produced in India except- (a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other Narcotic Drugs and Narcotics, butIncluding medicinal and toilet preparation containing alcohol or any substance included in sub-paragraph (b) of this entry.'

5. From a perusal of the aforesaid entries, it is made absolutely clear that rectified spirit which is not fit for human consumption cannot be a subject-matter for levying any duty by the State authority. On the issue of the rectified spirit or alcoholic liquor for human consumption, several decisions of the Supreme Court have extensively dealt with the matter, such as Synthetic Chemicals Ltd. v. State of U. P, and others, 1990 (1) SCO 109 : State of U. P, and others v. Modi Distillery etc., JT 1995 (6) SCO 523 ; Vam Organic Chemicals Limited v. State of U. P, and others, 1997 (2) AWC 984 and Bihar Distillery and another v. Union of India and others. 1997 (2) AWC 879.

6. From a perusal of these decisions, it is made clear that upto the stage of the rectified spirit which is not fit for human consumption, the Central Government would have exclusive Jurisdiction to control and manage the same. They are entitled to levy excise duty on the said produce and the State Government cannot have any right to levy excise duty on the said product. After the said product is cleared or removed from the factory premises for potable purposes for producing liquor fit for human consumption, the duty is to be levied by the State Government, it necessarily follows that no excise duty can be levied on the wastage that occurred during storage of high strength rectified spirit of 94.4% V. V, from the warehouse of the Distillery. The stage which attracts excise duty is still far away and no excise duty could be levied on wastage of rectified spirit. In this connection. I refer to the decision of this Court in Civil Misc. Writ Petition No. 146 of 1990, M/s. Pikhani

Distillery and Chemical Works v. Excise Commissioner, U. P., decided on 8th January, 1991, The State Government cannot levy any excise duty on the wastage of rectified spirit of 94.4% V, V, strength of liquor which is not fit for human consumption. The liquor which was under the storage was admittedly rectified spirit and not an alcoholic liquor for human consumption, as such the respondents are not entitled to levy excise duty in respect of wastage occurring in the storage. No duty can be levied on the basis of the calculation of potable liquor that could be produced from the rectified spirit and the so-called loss of revenue that the authorities may have to suffer. Admittedly, what was lost was the rectified spirit lying in the storage of high strength of 94.4% V. V, and the same not being an excisable item under the U. P. Excise Act of 1910, the loss occurring to the spirit of high strength cannot be treated as such and taxed by the State on the facile argument of conversion of rectified spirit for potable purposes. The goods have to be cleared or removed for potable purpose, then the same become excisable under the State Excise Act, 1910, prior to that storage no duty under the State Excise Act can be levied. There was no conversion of rectified spirit nor the same was cleared or removed at the time of its wastage from the storage, as such there was no question of loss of revenue to the State that has to be estimated in terms of para 709 of Excise Manual. The loss of revenue in paragraph 709 of the Excise Manual refers to loss of alcohol for human consumption but since there was no alcohol for human consumption which was not, the question of applying paragraph 709 does not arise.

7. In the premises, this petition succeeds and is allowed. The order passed by the Commissioner dated 10th October, 1996 levying Rs. 15,35,593.50 P, is quashed and set aside. There will be no orders as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com