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Court : Allahabad

Decided On : Nov-03-1987

Reported in : 1989(20)ECC103

Judge : R.M. Sahai ; and Om Prakash, JJ.

Appeal No. : Civil Misc. Writ Petition No. 734 of 1987

Appellant : Harendra Kumar Sharma

Respondent : The Excise Commissioner

Disposition : Appeal allowed

Judgement :
ORDER

Om Prakash, J.

1. The petitioner seeks a direction from this Court that the respondent No. 1 be directed to issue a no objection certificate.

2. The petitioner owns a khandsari unit, molasses of which is a by-product. For the export of the molasses, the petitioner applied to the Excise Commissioner for obtaining no objection certificate vide application dated 20th August, 1987, Annexure 10 to the writ petition. The petitioner contends that he approached the Excise Commissioner time and again but he failed to dispose of the application

dated 20th August, 1987. It is contended that the Excise Commissioner told the petitioner that he had no control over the export of the molasses and hence he cannot grant the no objection certificate.

3. The counter affidavit has been filed for the respondent No. 1.

4. The question for consideration is whether or not the khandsari unit of the petitioner is governed by the Molasses Control Order, 1961. Section 11 of the order, 1961 says that the provisions of this order shall apply to and in relation to molasses prepared by the open pan process. The question is whether khandsari unit manufactures sugar/molasses by open pan process. The term 'khandsari sugar' is defined under Section 2(f) of the U.P. Khandsari Sugar Manufacturers' Licensing Order, 1967 meaning as sugar containing more than 90 per cent sucrose and manufactured by open pan process including bels. Section 2(g) of the Order, 1967 defines 'khandsari unit' meaning as unit engaged or ordinarily engaged in the manufacture of khandsari sugar from sugarcane juice or rab. From these definitions, it is clear that khandsari unit manufsures sugar by open pan process. Therefore, there is no doubt that by virtue of Section 11 of the Molasses Control Order, 1961, khandsari units are governed by the said Order, 1961 and, therefore, the Excise Commissioner has legally erred in abdicating his jurisdiction over the khandsari units. Since he has the jurisdiction over the khandsari units he is under legal obligation to consider the petitioner's application dated 20th August, 1987, Annexure 10 to the writ petition.

5. The petition is, therefore, allowed and the respondent No. 1 is directed to dispose of the petitioner's application dated 20th August, 1987, Annexure 10 to the writ petition, within a week from the date a copy of this order is served on him and issue 'No objection certificate, when there is any own good reason not to do so.' (sic).

6. Let a copy of this order be supplied to the petitioner within 3 days on payment of usual charges.