

Court No. - 1

Case :- MISC. BENCH No. - 7950 of 2018

Petitioner :- U.P. Distillers' Association Through It's Secretary General

Respondent :- Union Of India Through Secy. Finance & Revenue New Delhi & Ors.

Counsel for Petitioner :- Nikhil Agrawal, Vaibhav Pandey

Counsel for Respondent :- C.S.C., A.S.G.

Hon'ble Vikram Nath,J.

Hon'ble Abdul Moin,J.

Heard learned counsel for the petitioner, Shri Alok Mathur, learned counsel for the respondent No.1, Shri H.P. Srivastava, learned Additional Chief Standing Counsel for the State-respondent Nos. 2 to 5.

The petitioner is an Association of the Distillers situate in Uttar Pradesh and has filed this petition seeking to restrain the respondents from levying Administrative Charges on sale and supply of molasses under the provision of the U.P. Sheera Niyantiran Adhiniyam, 1964.

Molasses is an important raw material for distillers, which produces industrial alcohol and raw material for chemical industries in the state of U.P. Earlier, the State was charging Administrative Charges under the 1964 Adhiniyam as also the Trade Tax under the U.P. Sales Tax Act, 1948, later on replaced by U.P. Trade Tax Act, 1948.

Administrative charges was also said to be a tax and as such, petitions were filed before this Court challenging the demand of Trade Tax along with Administrative Charges as being double taxation.

A Division Bench of this Court in the case of **M/S SAF Yeast Company Private Ltd. Vs. State of U.P. & Anr.**, reported in **2008 NTN (Vol. 38) Pg. 296** held that the demand of Trade Tax on purchase of molasses was arbitrary illegal and unjust and accordingly allowed the Writ Petition to that extent. The operative portion of the said judgment is as follows as contained in the paragraphs 19 and 20 of the petition:-

"19. In the result, the writ petition succeeds and is partly allowed. The opposite parties on the basis of the Notification dated 7.9.1981 issued under the provisions of the U.P. Sales Tax Act, 1948 now U.P. Trade Tax Act read with Section 21 of the U.P. General Clauses Act, 1904 shall not realise any trade tax from the petitioner on the purchase of molasses.

20. The opposite parties shall refund the amount of trade tax which was realised by them through the Sugar Mills subsequent to 10.03.2003. The petitioners shall submit the details of the tax which the opposite parties have realised from them subsequent to 10.03.2003 within one month from today and the opposite parties shall refund the amount of trade tax to the petitioners within two months thereafter."

The matter was carried to the Supreme Court by the State of U.P. by way of **Special Leave to Appeal (Civil) No. 16261 of 2009 [State of U.P. & Anr. Vs. M/S SAF Yeast Company Private Ltd.]**. The Supreme Court by order dated 8.3.2010, after condoning the delay, granted leave and passed the following interim order:-

"Delay condoned.

Leave granted.

Hearing expdpedited.

It is made clear that there will be stay of refund. However, in case the assessee succeeds in the appeal, it would be entitled to interest which would be imposed on the State at the final hearing of the matter."

Shri Nikhil Agrawal, learned counsel for the petitioner states that the matter is still pending before the Supreme Court, which is not disputed by the learned counsel for the respondents.

In the meantime, during the pendency of the Special Leave to Appeal (Civil) before the Supreme Court, several petitions were filed, in which this Court disposed off the petitions providing the same protection as granted by the Supreme Court, requiring the parties to maintain separate accounts for sale and purchase of molasses during the pendency of the Special Leave to Appeal (Civil) before the Supreme Court, so that in the event the State succeeds or the Appeal fails, neither the State would be prejudiced nor the distillers would be prejudiced and depending upon the outcome, the tax revenue could be realized.

Some of the orders passed by the different Division Bench have been placed before us, in which the direction was that during pendency of these Special Appeals before the Hon. Supreme Court, the State was restrained from realizing tax on molasses, but would keep an account of molasses' purchased/sold during the pendency of the Appeal so that in any case the Appeal fails by the judgment of the Hon. Supreme Court, the petitioner shall be held liable to pay tax in accordance with law.

These orders have been referable to **Writ Petition No. 3089 (M/B) of 2014 [M/S Lords Distillery Ltd. Through its Manager Vishal Tyagi Vs. State of U.P. through Principal Secretary, Institutional Finance/Tax and Registration]** and **Writ Petition No. 6925 (M/B) of 2013 [A.K. Agro Industries, Through Its Prop. Sri Kalindi Tewari Vs. State Of U.P. Thr. Prin. Secy. Institutional Finance & Another]**.

Goods and Service Tax has been implemented with effect from 1.7.2017 under the 101st Constitutional Amendment and Entry 54 of List II Seventh Schedule of the Constitution has since been amended. It would be worthwhile to record the existing Entry No. 54 and Entry No. 54 before amendment respectively:-

"Entry 54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

"Entry 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I."

Further, in exercise of powers under Article 246A of the Constitution of India and amended Entry 54 of List II of Seventh Schedule, the State Government and the Central Government enacted the UPGST Act, 2017 and Central GST Act, 2017 respectively. Now, as a result of the aforesaid amendments and implementation of the new Acts, GST alone is to be applied on supply or services of all goods.

Before us, the contention is that once the realization of tax has been subject to maintenance of separate accounts, the demand by the respondents of GST, as also Administrative Charges, would again amount to double taxation, although as of date the demand of Trade Tax has already been quashed by this Court in the case of **M/S SAF Yeast Company Private Ltd. (Supra)**.

The petitioners have prayed for stay on the demand of Administrative Charges, as they are ready and willing to pay the GST at the rate of 28% (14% Central GST and 14% UPGST). However, they agree to maintain separate accounts and even the State would make an endeavour to keep a separate account for sale/purchase/supply of molasses.

The matter requires consideration.

All the respondents pray for and are granted a month's time to file counter affidavit. The petitioner will have two weeks thereafter to file rejoinder affidavit.

Since *vires* of the State enactment is under challenge, notice may be issued to the learned Advocate General.

In view of the above, as an interim measure, we provide that the respondents shall not demand any Administrative Charges, provided the members of the petitioner-Association continue to deposit GST as demanded both by the Central and the State Government under the said enactments.

It is further provided that separate accounts for sale/supply/purchase of molasses shall be maintained both by the members of the petitioner-Association as also the State. The same shall abide by final outcome of this Writ Petition.

Order Date :- 20.3.2018/Arnima

(Abdul Moin, J.) (Vikram Nath, J.)