
(1998) 08 AHC CK 0163

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 945 of 1994

Basti Sugar Mill Co. Ltd.

APPELLANT

Vs

ACCE

RESPONDENT

Date of Decision: Aug. 12, 1998

Citation: (1998) 78 ECR 511

Hon'ble Judges: S.L. Saraf, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.L. Saraf, J.

The petitioner is a manufacturer of sugar and gets molasses as by-product. Molasses is also classified under sub-heading 1703.10 and it is an excisable goods. Molasses manufactured by the petitioner is stored inside the factory premises in tanks. In the tank sometimes molasses undergo chemical reaction resulting in auto-combustion due to which, the molasses stored de-composes and converts into a carbonised solid state. The same becomes unfit for distillation and consumption and wholly non-marketable. This solid state carbonised molasses is a burnt molasses and is also known as "Black Solid Mass" which is a waste. The case of the petitioner is that on 29.5.1992 and 4.7.1992, molasses stored in tanks No. 2 and 4 were subjected to auto-combustion which resulted in decomposition. The petitioner immediately informed the Central Excise Authorities and reported the said decomposition through a telegram dated 5.7.1992 and also by a subsequent letter dated 7.7.1992. The total quantity of molasses stored in the aforesaid two tanks was 1486.302 Metric Tons.

2. The petitioner vide letter dated 10.10.1992 applied to the Excise Authorities to allow clearance of burnt molasses without payment of any duty. Out of total 1486.302 M.T. of molasses, according to the petitioner, only 676.315 M.T. of Black

Mass remained which was cleared from the factory and inadvertently, the petitioner paid duty on the said clearance of the goods. The balance quantity of burnt molasses was completely destroyed and nothing could be sold. The case of the petitioner is that since the balance quantity of 1486.302 M.T. of molasses was totally destroyed and could not be sold or cleared from the factory premises, therefore, no excise duty was leviable thereon.

3. Learned Standing Counsel appearing for the Department has submitted that the finding of the authority below that it was due to the negligence of the petitioner on account of which there was auto-combustion in the molasses stored in tanks No. 2 and 4. As such, the petitioner was not entitled to take the benefit of the proviso to Rule 49(1) of the Central Excise Rules, 1944 and as such, excise duty is leviable on the entire molasses including 1486.302 M.T.

4. I have considered the rival contentions of the parties and the relevant provisions of the Central Excise Rules, 1944. I set out Rule 49(1) of the Central Excise Rules, 1944:

Rule 49. Duty chargeable only on removal of the goods from the factory premises or from an approved place of storage. (1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under Rule 47:

Provided that the manufacturer shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room or other approved premises:

Provided further that the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or of marketing subject to such conditions as may be imposed by the Collector by order in writing.

5. The said Rule makes it abundantly clear that the Excise duty is payable only on clearance of the goods. The Excise authorities may not demand excise duty on goods not cleared, nor shortages of the goods accounted for or properly explained that the same was lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room. In the present case it is admitted that the molasses stored in the storage in Tanks no. 2 and 4 were destroyed. The loss occurred due to internal combustion. It is not disputed by the Excise Authorities that such loss was due to internal combustion. What is, however, alleged is that there is no proper precaution taken by the petitioner to avoid such combustion in relation to Tanks no. 2 and 4 and in order to support this contention it is said that there was no natural combustion in Tank no. 1 and 5. The logic of the Excise Authorities appears to me to be totally fallacious and unjustified. If any natural

combustion takes place in a particular storage in a tank, it does not mean that the same chemical reaction would take place in all the tanks. In that view of the matter, I hold that the petitioner had not cleared the balance of burnt molasses of 1476.302 M.T. The said quantity of burnt molasses will not be liable to duty of excise.

6. In view of the above discussion, the order of the Joint Secretary to the Government of India, dated 4.1.1994 passed in revision, stands set aside. The orders of the other authorities below are also set aside.

7. In the result the writ petition succeeds and is allowed. However, this order will not entitle the petitioner to get any refund of duty paid on account of sale of 676.315 M.T. black mass of molasses, which was cleared from the factory premises and duty was paid thereon. There will be no order as to costs.