

Hindustan Sugar Mills Ltd.

Vs

State of U. P. and Others

Civil Appeal No. 324 of 1981, With C.A. Nos. 455, 2795, 1604, 1607 of 1980, 624, 625, 125 of 1981, SLP (C) Nos. 4297-98 of 1980, C.A. No. 2777 of 1981

(S. Mohan, N. Venkatachall JJ)

26.04.1994

ORDER

1. This is a sequel to the judgment of this Court in *Synthetics & Chemicals Ltd. v. State of U. P.* ((1990) 1 SCC 109, 158 : 1989 Supp 1 SCR 623, 682). The At SCR p. 682 it was observed : (SCC pp. 158, 159, para 88)

"On an analysis of the aforesaid decisions and practice, we are clearly of the opinion that in respect of industrial alcohol the States are not authorised to impose the impost they have purported to do. In that view of the matter, the contentions of the petitioners must succeed and such impositions and imposts must go as being invalid in law so far as industrial alcohol is concerned ..."

On this view it was further declared at pp. 682-683 : (SCC p. 159, para 89)

"We must, however, observe that these imposts and levies have been imposed by virtue of the decision of this Court in *Synthetics & Chemicals Ltd.* case ((1990) 1 SCC 109, 158 : 1989 Supp 1 SCR 623, 682). The State as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu. In that view of the matter, it would be necessary to State that these provisions are declared to be illegal prospectively. In other words, the respondent States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made."

2. Therefore, what Mr. Anil B. Divan, learned Senior Counsel, contends is the order made by a Bench of three Judges of this Court in Writ Petition Nos. 7452 of 1981 and 3571 of 1982, *Sachid Hussain v. State of U. P.* (Writ Petition Nos. 742 of 1981 and 3571 of 1982) must apply. According to him, the appellants would not be entitled to refund but at the same time they cannot be subject to liability at present.

3. In opposition to this, it is submitted that because of the stay granted by this Court, the State could not effect recovery. No doubt, on and from 25-10-1989 the appellants may not be liable; but in view of the prospective overruling in *Synthetics & Chemicals* ((1990) 1 SCC 109, 158 : 1989 Supp 1 SCR 623, 682) the levy prior to that period is not, in any manner, affected. As a matter of fact, this Court in several cases has permitted the levy of vend fee prior to 25-10-1989.

4. On a consideration of the above, we are of the view that there is a conflict in regard to the power of the State as to the levy of vend fee prior to 25-10-1989. The above extract by us will clearly indicate that on and from 25-10-1989, namely, the date of the judgment in Synthetics & Chemicals ((1990) 1 SCC 109, 158 : 1989 Supp 1 SCR 623,682) the levy of vend fee on industrial alcohol will be clearly illegal but the question is what about the period prior to 25-10-1989 ? In writ petition Nos. 7452 of 1981 and 3571 of 1982 (Sachid Hussain v. State of U. P. (Writ Petition Nos. 742 of 1981 and 3571 of 1982)) this Court quashed the recovery order dated 14-9-1981 issued by the Excise Inspector for a sum of Rs. 68,200 against the petitioners therein and the respondents (State of U.P. and others) were directed to recover the said amount towards the vend fee for the period from 9-4-1975 to 14-4-1978. This order was passed by a Bench of three Judges.

5. However, there are orders passed by a Bench of two Judges in Civil Appeal No. 485 of 1979 and other connected matters (H. M. Ishaque & Sons v. State of U. P. (Civil Appeal No. 485 of 1979)) holding thus :

"We may clarify that the effect of the above judgment is that the levy of vend fees in respect of industrial alcohol will become unconstitutional only from the date of the judgment i.e. 25-10-1989. The levy of any vend fee relating to a date prior to 25-10-1989 will be valid and would be recoverable if not already recovered and will not be refundable if already recovered. However, any collection of vend fee relating to a period on or after 25-10-1989 will be unconstitutional as declared by this Court."

To the same effect is the order made by this Court in Interlocutory Application No. 1 of 1990 in SLP (C) No. 10175 of 1991 dated 11-12-1991. Here again A division Bench held :

"The contention that the steps for realisation of the vend fee for the period prior to 25-10-1989 the date on which the decision in Synthetics and Chemicals Ltd. v. State of U. P. was rendered by this Court declaring the levy as unconstitutional cannot be proceeded with has to be rejected. The clear directions in the aforesaid judgment paragraph 89, is that the restraint from enforcing the levy is only prospective and the declaration does not affect any realisations already made.

Learned counsel for the State has pointed out that in this case an attachment had already been levied and the recovery steps had been stayed only on the application of the petitioner who was directed to furnish bank guarantee and it is not therefore a case of levy being enforced after the decision of this Court. We have been referred to the order in Civil Appeal Nos. 2191-2193 of 1989 that there is no scope for holding that the applicants have been absolved of the vend fee for the earlier period for which bank guarantee were offered.

We do not therefore, see any merit in this petition. It is accordingly dismissed."

6. This conflict, in our considered view, will have to be decided by an appropriate Bench in order that there may be uniformity. Hence, we direct the papers be placed before My Lord the Chief Justice for appropriate orders.

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