

State of Rajasthan and Others

Vs

Hindustan Copper Ltd.

Civil Appeals Nos. 5440-43 of 1993

(S. C. Agarwal, B. N. Kirpal JJ)

27.11.1997

ORDER

1. By order dated 11-10-1993, leave has been granted confined to the direction in the impugned judgment of the High Court regarding refund of the amount of excise duty that has been paid by the respondent to the appellant on the import of rectified spirit for use in the manufacture of copper by the respondent. The High Court has held that the State Legislature was not competent to impose excise duty on rectified spirit since it is not fit for human consumption. Shri Aruneshwar Gupta, the learned counsel appearing for the appellants, sought to reopen the order granting special leave to appeal by raising the question about the correctness of the judgment of the High Court regarding the competence of the State Legislature to impose excise duty on the import of rectified spirit by the respondent. He has invited our attention to the decision of this Court in *Vam Organic Chemicals Ltd., v. State of U.P.* ((1997) 2 SCC 715) and has submitted that since rectified spirit after adding of water can be made fit for human consumption, excise duty can be levied on the same. Since leave has been granted limited to the question of refund only, we are not persuaded to go into the question that is sought to be raised by Shri Gupta.

2. On the question of refund, an affidavit of Shri Prashant Swarup, authorised representative of the respondent, has been filed wherein it has been stated that there is no question of any unjust enrichment of the respondent as a result of the refund of the excise duty paid on rectified spirit because the respondent has not passed on the duty to any consumer of the final product, viz., copper, manufactured by the respondent. It has been stated in the said affidavit that the price of copper has always been fixed by the Mineral & Metal Trading Corporation (MMTC) on the basis of the prevailing price fixed by the London Metal Exchange (LME) and this was done not only for the period in question but also for prior and subsequent period and that only such price could be charged and that no part of the duty in respect of rectified spirit captively consumed in the manufacture of copper could be added to the price of copper which was fixed on the basis of the LME prices. We have no reason to doubt the correctness of the aforesaid statement contained in the said affidavit. In the circumstances, no case is made out for interference with the direction contained in the impugned judgment of the High Court regarding refund of excise duty paid by the respondent on import of rectified spirit used in the manufacture of copper. The appeals are, therefore, dismissed. No order as to costs.