

# SUPREME COURT OF INDIA

Kopargaon Sahakari Sakhar Karkhana Ltd.

Vs.

State of Maharashtra

C.A.No.5409 of 2002

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

05.08.2008

## ORDER

The appellants are Co-operative Sugar Factories in the State of Maharashtra engaged in the business of producing sugar and allied products including rectified spirit and country liquor. They claim that the State Government has granted licences to them for manufacturing country liquor from the rectified spirit produced by them and that their units producing rectified spirit and country liquor are situated in the same premises. It is their contention that the rectified spirit is not "transported" but moved from one part of their factory to another through an internal pipeline. It is also their contention that as there is no transportation of the rectified spirit, the State does not render any service related to the transportation or supervision of transportation of rectified spirit and there is no justification for levy of any transport fee under the Bombay Rectified Spirit (Transport in Bond) Rules, 1951 (The 'Rules' for short).

2. Rule 5(2) of the Rules prescribes a transport fee at a specified rate for issue of passes under Rule 5(1) for transport of the rectified spirit in bond. The Rules were amended on 22.3.1994 whereby a proviso was added to Rule 5(2) which provided that no transport fee or administrative fee shall be levied if the rectified spirit is transported for consumption as a raw material in the manufacture of IMFL/country liquor in the units belonging to the distillery. The said proviso to Rule 5(2) was subsequently deleted by another amendment to the said Rules on 12.7.1999.

Resultantly, the appellants were required to pay transport fee prescribed under Rule 5(2).

3. The appellants challenged the deletion of the proviso to Section 5(2) of the Rules in writ petitions before the Bombay High Court. The writ petitions were admitted in 2001 and are pending. While granting Rule the High Court made an interim order directing the appellants to continue depositing the transport fee. It further directed the concerned Superintendent of State Excise to keep a separate account in regard to the deposit of the transport fee with a condition that if the appellants ultimately succeeded in the writ petitions, the respondents should refund the amount deposited towards the transport fee with interest at the rate of 6% per annum. The said interim orders are challenged in these appeals by special leave.

4. On 29.8.2002 while granting leave this Court has stayed recovery of transport fee from the appellants subject to the appellants filing undertakings that in the event of the appeals being dismissed or the interim order being vacated, the appellants shall satisfy the liability in accordance with law and/or as determined by this Court within the time appointed by this Court.

5. When the matters came up for final hearing today, the learned counsel for the appellants submitted that an identical issue arose before the Bombay High Court with reference to Rule 50 of the Bombay Denatured Spirit Rules, 1959 and the High Court by its judgment dated 9.1.2001 (in Writ Petition No.2275 of 2000-M/s. Vam Organic Chemicals Ltd. vs. State of Maharashtra) had quashed the amendment Notification dated 12.7.1999 whereby the proviso to Rule 50 of these Rules, was deleted. The High Court also directed the State Government to refund the transport fee collected from the writ petitioner in that case. The learned counsel for the appellants submitted that the decision in Vam Organic was challenged by the State before this Court and this Court has dismissed the appeal (Civil Appeal No.7126 of 2001) by order dated 13.3.2008. The appellants contend that as the issue involved in these cases is similar to the issue which was decided by the Bombay High Court in Vam Organic and upheld by this Court, these appeals should be disposed of by making a final order in terms of the interim order already granted on 29.8.2002.

6. Learned counsel for the State opposes the said submissions. According to him the facts of these case are distinguishable from the facts of Vam Organic. He contended that in Vam Organic, the licensee did not manufacture rectified spirit, and there was a contention that the State had no right to regulate or levy any fee regarding de-natured spirit. He also submitted the assumption by the Bombay High Court that individual quid-pro-quo was necessary for levy of fee is not sound as there was no need to justify the levy by showing that service was rendered individually to the person paying the fee. He also submitted that the order of this Court upholding the decision of the Bombay High Court is not a reasoned order. Be that as it may.

7. It is not necessary to examine the matter on merits as the writ petitions of the appellants are still pending in the Bombay High Court. However, the fact remains that an amendment similar to the amendment which is the subject matter of the pending writ petitions has been held to be invalid by the Bombay High Court and that decision has been upheld by this Court.

8. In the circumstances, we are of the view that the matters can be disposed of with the following direction (i) In regard to the period between 29.8.2002 till 30th September, 2008 the interim order that there shall be no recovery of transport fee subject to the appellants filing undertakings, shall continue. This shall however be subject to the condition that if ultimately the appellants lose in the writ petitions, they shall pay the transport fee due for that period with interest at the rate of 9% per annum from the respective due date to the date of payment. The third respondent shall prepare the statement of such dues upto 30.9.2008 and file it before the High Court by end of November 2008.

(ii) In regard to the transport fee payable for the period from 1.10.2008 till the final disposal of the writ petitions, the appellants shall deposit 50% of transport fee with the third respondent subject to the conditions mentioned by the High Court in the impugned order. The appellants shall file an undertaking before the High Court to pay the remaining 50% of transport fee in the event of their failure in the writ petition with interest at the rate of 9% per annum from the respective due dates to date of payment.

(iii) In the event of the contention of appellants being upheld and appellants are found not liable to pay the transport fee, the amounts paid by the appellants in pursuance of this order shall be refunded by the State with interest at the rate of 9% per annum from the date of payment till it is refunded.

9. Having regard to the fact that similar matters relating to Denatured Spirit have already been disposed of, we request the High Court to consider expeditious disposal of the pending writ petitions, preferably within four months. We make it clear that nothing stated herein shall be

construed as expression of any opinion on the merits of the case.

The appeals are disposed of accordingly.