IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.94 and 95 of 2013
MP.Nos.1 and 4 of 2013

M/s.IMCOLA Exports Limited
Chennai-18 ... Petitioner in both WPs

Vs

1.State of Tamil Nadu by Secretary
Department of Prohibition and Excise,
Chennai-9
...1st Respondent in WP.94/13

2.The Taluk Excise Officer,
Fort Tondiarpet Taluk
Chennai-3

3.The Collector,
Chennai ... Respondents in
WPs.95/13
and 2nd & 3rd Respondents in WP.94/13

Prayer:- These Writ Petitions are filed to issue a Writ of Prohibition, prohibiting the Respondents from demanding administrative service fee from the Petitioner under the Tamil Nadu Molasses Control and Regulation Rules, 1958 in respect of the transactions involving purchase of molasses from outside the Tamil Nadu and exported outside India through the Chennai Port Trust and to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Notice, bearing RC.No.E/0091/12, dated 21.12.2012, issued by the 1st Respondent and to quash the same and to direct the Respondents to refund the amount of Rs.15,00,000/- paid by the Petitioner under protest as administrative service fee, respectively.

For Petitioner : Mr.V.P.Raman

For Respondents : Mr.M.S.Ramesh,
Additional Government Pleader

ORDER

In these Writ Petitions, the Petitioner seeks to quash the notice, dated 21.12.2012, issued by the 1st Respondent, demanding administrative service fee and for a direction to the Respondents to refund the amount of Rs.15,00,000/- paid by the Petitioner under protest as administrative service fee and to restrain the Respondents from demanding such fees in future transactions.

2. The case of the Petitioner is that the Petitioner Company is engaged in the business of exporting molasses. The production, possession, use, sale, export and import of molasses are governed by the Tamil Nadu Molasses Control and Regulation Rules, 1958. The Petitioner is holding necessary licence as required. The Petitioner purchased 5000 MT of molasses by sale order dated 30.7.2012 from M/s.Sudalagunta Sugars Limited, Andhra Pradesh for the purpose of export to foreign buyers and the export pass fee was also paid by the Petitioner. After payment of export pass fee, the molasses were transported out of Andhra Pradesh and taken to the Chennai Port Trust between October and December 2012. The vessel was scheduled to leave Chennai Port for Netherlands on 24.12.2012. While so, the 2nd Respondent insisted for payment of administrative service fee of Rs.300/MT for the said 5000 MT of Molasses and issued the impugned demand notice dated 21.12.2012, directing the Petitioner to pay a sum of Rs.15,00,000/- towards administrative service fee, failing which the licence of the Petitioner would be cancelled. Hence, these Writ Petitions have been filed for the relief as stated above.

3. In MP.No.1 of 2013, the Petitioner sought for an order of interim injunction, restraining the Respondents from demanding the said administrative service fee. The learned Single Judge, vide order, dated 03.01.2013, granted an order of interim injunction to the following extent:-

> "In view of the above, there will be an order of interim injunction, subject to the condition that on each and every consignment originating from any State outside Tamil Nadu for export, if there is any demand, the petitioner shall give appropriate security either in the form of bank guarantee or otherwise, as may be specified by the authority, till the disposal of the writ petition. Notice."

Subsequently, in MP.No.2 of 2013, by order dated 22.10.2013, the learned Single Judge modified the aforesaid order to the following extent:-

> "5. In view of the above decision, this Miscellaneous Petition is ordered. The petitioner is allowed to furnish personal bonds instead of

bank guarantee in future. This Miscellaneous Petition is ordered accordingly. Post the writ petition in the usual course."

and in the same proceedings, MP.No.3 of 2013 filed by the Respondents, seeking to vacate the interim order, dated 03.01.2013, was dismissed.

4. In WA.No.1244 of 2015 preferred by the State, challenging the said interim order dated 22.10.2013, made in MP.No.2 of 2013, the Division Bench of this Court, while disposing of the appeal, has observed as under:-

> "The question on the competence of the State to collect administrative service fee under the afore stated provisions of law is still pending consideration in the main writ petition. Grant of interim relief of this nature may prejudice the adjudication, pending writ petition. However, in the facts of the case, we are not inclined to interfere with the interim orders impugned herein, clarifying that the said interim orders shall not govern the future transactions. In the event, the respondent feels aggrieved in future, it is at liberty to make appropriate application for appropriate orders in the pending writ petition. The Registry is directed to expedite posting of the writ petition for final disposal."

5. The Respondents filed a counter affidavit, wherein it is averred as follows:-

a. On receipt of a complaint from a third party that the Petitioner was smuggling molasses, on inspection by the Respondent Officials on 21.12.2012, it was found that the storage tank contained 7785.925 MT of molasses as against the quantity declared in the records of 5000 MT of Molasses transported from 20.10.2012 to 7.12.2012. As per Rule 5 of the Tamil Nadu Molasses Control and Regulation Rules, import of the same from the places outside the State is permitted only for the ML2 and ML4 licence holders. As per Rule 7(2)(ccc), the licensee has to pay Rs.300/- per MT towards administrative fees and obtain ML5 licence. Hence, the impugned demand notice dated 21.12.2012, demanding a sum of Rs.15 lakhs towards administrative service fee was issued and the Petitioner also paid the same by way of pay order dated 22.12.2012.

b. The Petitioner is liable to pay the administrative service fee and to obtain ML5 licence for export of molasses from Chennai, irrespective of the place of purchase. The Petitioner holds only ML2 licence. When the molasses had been stored at Chennai Port Trust for export, then it cannot be defined as a transit and it is an export from Chennai Port and hence, it is imperative on the part of the Petitioner to obtain ML5 licence and to pay the administrative fee. The Petitioner could not be exempted from the levy of the administrative fee for the reason that the other States are not levying such a fee, as it is an import from the other States. Since the Petitioner is importing and exporting molasses in the State of Tamil Nadu, the said Rules apply to the Petitioner. Hence, the impugned demand of administrative fee is in order and as per the relevant Rules, which warrants no interference by this Court.

6. The learned counsel for the Petitioner contended that there is no provision under the said Rules to make a demand of administrative service fee when the molasses taken through the Tamil Nadu only in transit to the Chennai Port to be exported and before making such a demand, the provisions of Rule 7(2)(ccc) of the Rules are not satisfied and that since the Petitioner does not import molasses into the State of Tamil Nadu, it is not necessary to obtain ML-5 licence for exporting the molasses and therefore, such a demand is illegal when the Petitioner paid the export pass fee to the Department of Prohibition and Excise, Government of Andhra Pradesh. The learned counsel further contended that in other states, through which the molasses are transported, are not raising any such demand and that the Rule, under which the impugned demand notice has been issued, has no application to the case on hand and hence, prayed for quashing of the impugned demand notice and for a direction to the Respondents restraining them from making such a demand and also to refund the administrative fee paid by the Petitioner, relying on the decision of the Division Bench of this court made in WP.Nos.21609 to 21611 of 2002, by order dated 22.1.2013.

7. The learned Additional Government Pleader for the Respondents reiterated the averments made in the counter affidavit and supported the impugned demand of administrative fee.

8. This court heard the learned counsel on either side and considered their respective rival submissions and also perused the materials placed on record and the relevant provisions.

9. The facts, which are not in dispute, are that the Petitioner purchased 5000 MT of molasses by sale order dated 30.7.2012 from M/s.Sudalagunta Sugars Limited, Andhra Pradesh and transported the same to the Chennai and stored in the Chennai Port Trust for the purpose of exporting it to foreign buyers. As per the demand made by the Respondents through the impugned demand notice dated 21.12.2012, the Petitioner also paid a sum of Rs.15,00,000/- towards administrative service fee.

10. The main contention of the Petitioner is that without satisfying the provisions of Rule 7(2)(ccc), the demand of administrative service is untenable, when the molasses taken through the Tamil Nadu only in transit to the Chennai Port to be exported and hence, it is not necessary to obtain ML-5 licence for such export.

11. On the contrary, according to the State, on inspection, it was found that there was misdeclaration of the goods in question, inasmuch as 7785.925 MT of molasses was found in the storage tank, whereas as per the records, it was 5000 MT. However, as per Rule 7(2)(ccc) and as the Petitioner holds only ML2 licence, the Petitioner was directed to pay the administrative service fee and to obtain ML5 licence for export of the goods in question.

12. The Division Bench of this court did not interfere with the interim orders, however, it made it clear that the said interim orders would not govern the future transactions. The entire case solely rests on the interpretation and conception of the provisions of the Rules and Acts of the two States, viz. Tamil Nadu and Andhra Pradesh. Therefore, the only question that has to be adjudicated and decided is as to whether the State of Tamil Nadu is competent to collect the administrative service fee, under the Tamil Nadu Acts and Provisions, for the goods transported from the places outside the place of Tamil Nadu viz. from the State of AP, for the purpose of exporting it to foreign buyers from the Chennai Port Trust.

13. Though the demand of administrative service fee was made in the impugned notice placing reliance on Rule 7 in general, however, both in the counter affidavit as well as in the course of arguments, Rules 4(1) and 7(2)(ccc) of the Tamil Nadu Molasses Control and Regulation Rules, 1958 have been specifically relied upon. Therefore, at this juncture, it is necessary to refer and quote the said Rules as under:-

> (1) Rule 4(1):- License and permit: - (1) The licences and permits prescribed in these rules are:-
>
> i. Form ML-2 for possession and sale of molasses
> ii. Form ML-4 for possession and use of molasses
> iii. Form ML-5 for the import or export of molasses
> iv. Form ML-6 for the transport of molasses within the State
>
> (2) Rule (5):- Import and Export:- Import of molasses from places outside the State will be permitted only to the holders of licence in form

ML-2 or Form ML-4. Export of molasses to places outside the State will be permitted only to person holding licences in Form ML-2.

(3) Rule 7(2)(ccc):- Procedure for the grant of licences and permit:-
(1) ......
(2) Import/Export licence in Form ML-5:-
(a) Every dealer or consumer holding a licence in Form ML-2 or Form ML-4 as the case may be, desiring to import molasses from places outside the State and every dealer desiring to export molasses outside the State shall apply to the Collector of the district for a licence in Form ML-5 for the import or export of molasses. The application shall be affixed with a Court fee label of the value of one rupee and fifty paise and shall contain the following particulars:-

i. Name and address of the applicant;

ii. Description of licence held by him;

iii. Quantity of molasses allowed for possession under the licence; Quantity of molasses proposed to be imported/exported;

iv. Name and address of person from/he whom it is proposed to import/export the molasses;

v. Mode of conveyance and route;

vi. The date by which it is proposed to complete the import/export.

Each import/export shall be covered by a separate import/export licence and a separate application shall be made for the purpose.
....
(cc) Every licences in form ML-5 shall pay rupees two hundred per MT on the quantity of the molasses exported outside the State towards A.S.F before taking delivery of molasses from the Sugar Mill for export. Enhanced to Rs.300/- in GO.Ms.No.52 P (&E (VIII) Department dated 03.08.2066.
(ccc) Every licensee, holding licences in Form ML-2 or ML-4 desiring to import molasses from outside the State shall pay Rs.300/- per MT on the quantity or molasses imported towards A.S.F before obtaining a licence in Form ML-5 from the Collector concerned. (vide GO.Ms.No.42, HP & E (VIII) Department dated 02.07.2008).

14. Coming to the proper appreciation and interpretation of the Rules, in general and according to other Acts, "Export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India and similarly, "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India. But, under the Rule 14 (1) of the AP Excise (Possession, Import, Export, Transport of Molasses Conditions of License and Permits) Rules, 2008, though there is no definition for "import", the meaning and definition of "Export" is given, thereby meaning as "dispatch of molasses to any place outside the State of Andhra Pradesh and includes export to foreign countries. The phrases "includes export to foreign countries" can be meant as "dispatch of molasses to foreign countries from the places inside the State of AP and not from the places outside the State of AP. But, in the Tamil Nadu Molasses Control and Regulation Rules, 1958, though there is no specific definition, giving definite meaning, the proper meaning of "export" and "import", that can be inferred from the various provisions and rules, is that the transaction done between the State can also be termed as export or import transaction, as the case may be.

15. According to the Petitioner, an export pass fee of Rs.2500/MT amounting to Rs.1,25,000/- has already been paid on 18.10.2012 for the export of the molasses outside Andhra Pradesh under Rule 15(2) of the AP Excise (Possession, Import, Export, Transport of Molasses Conditions of License and Permits) Rules, 2008), which is evident from the receipt dated 18.10.2012 and hence, by misconstruing the provisions of the Tamil Nadu Act and Rules in respect of the definitions of "export" and import" and the other Rules, it is contended on behalf of the Petitioner that the Petitioner is not required to pay the administrative service fee. As per the rules applicable in the State of Andhra Pradesh, the Petitioner paid the export pass fee only for movement of the molasses or for export of the molasses from the State of AP to the place outside the State of AP.

16. However, on going through the provisions of the Tamil Nadu Molasses Control and Regulation Rules, 1958, there may not be any dispute with regard to ML-2 licence, since the Petitioner is admittedly a ML-2 licence holder, which is sufficient for the Petitioner to import the molasses from the places outside the State of Tamil Nadu into the places inside the State of Tamil Nadu. The only dispute is with regard to ML-5 licence.

17. It is pertinent to note that the molasses procured by the Petitioner outside the State of Tamil Nadu was

brought into the State of Tamil Nadu to the Chennai Port Trust and stored it for the purpose of exporting the same. Therefore, the storage, without an intention to sell at the place where it was stored, but as part of the sale business by way of export sales, would attract the relevant provisions prevailing in that place i.e. the Tamil Nadu Acts and Rules. In other words, the Tamil Nadu Molasses Control and Regulation Rules, 1958 and the other Tamil Nadu Acts apply to the Petitioner, since the Petitioner is importing and exporting the molasses in the State of Tamil Nadu.

18. According to the State, when molasses has been stored at Chennai Port Trust for export to the foreign countries, it cannot be defined as a transit between the States and it is an export from Chennai Port Trust and hence, it is imperative on the part of the Petitioner to obtain ML5 licence, as per Rule 7(2). Further, as per Rule 4(1)(iii), ML-5 licence is also required to be obtained for the import or export of molasses and for obtaining ML-5 licence, necessary administrative service fee has to necessarily be paid as per the Rule 7(2)(ccc) only by the licensees, holding licences in Form ML-2 or ML-4 desiring to import molasses from outside the State of Tamil Nadu.

19. Even according to the Petitioner, the molasses were brought into Chennai and stored it only for the purpose of exporting it to its foreign buyers. Hence, ML-5 licence is mandatorily required to be obtained as per rule 4(1)(iii), which mandates licence for the import or export of molasses. So, before obtaining ML-5 licence, administrative service fee as per Rule 7(2)(ccc) has necessarily to be paid, which is mandated for the molasses imported from outside the State. Admittedly, the Petitioner imported the molasses from the State of Andhra Pradesh to the Chennai Port Trust and in other words, the molasses were imported from the places outside the State of Tamil Nadu. Therefore, it can safely be concluded that for exporting the molasses to the foreign buyers, ML-5 licence is necessary and mandatory and consequently, before obtaining the same, the administrative service fee has to be paid.

20. In so far as the decision relied on by the learned counsel for the Petitioner made in WP.Nos.21609 to 21611 of 2002, by order dated 22.1.2013, is concerned, it is not applicable to the case on hand, inasmuch as it was a case where there was no such molasses transported for the purpose of export to foreign countries and only a transit took place through the State of Tamil Nadu from Pondicherry to Karnataka. In the case on hand, it is not so, as admittedly the molasses were transported from the State of AP and stored in the Chennai Port Trust for the purpose of exporting the same to foreign countries and hence, it cannot be defined as transit,

thereby attracting the provisions of the Tamil Nadu Acts and Rules.

21. In view of the above reasons, discussions and the relevant Rules, this court is of the view that the Petitioner is liable to pay the administrative service fee and to obtain ML5 licence for export of molasses from Chennai to the foreign buyers, irrespective of the place of purchase and as such, the contentions of the learned counsel for the Petitioner are based on misconception of the rules and that the State is justified in demanding the administrative service fee under the proper jurisdiction and rules and ultimately, these Writ Petitions are liable to be dismissed, as devoid of merits.

22. In the result, these Writ Petitions are dismissed. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The State of Tamil Nadu by Secretary,
Department of Prohibition and Excise
Chennai-9

2.The Taluk Excise Officer,
Fort Tondiarpet Taluk,
Chennai-3

3.The Collector,
Chennai

+1cc to Mr.V.P.Raman, Advocate, S.R.No.68723

WP.Nos.94 and 95 of 2013

PPA(CO)
CA(18/03/2016)