IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 6089 of 2015

Date of decision: 05.10.2015

JBJ Perfumes Pvt. Ltd

..... Petitioner

Versus

Union of India and another

….. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

PRESENT: Mr. Jagmohan Bansal, Advocate for the petitioner.

Mr. Kamal Sehgal, Advocate for the respondent No. 2.

RAMENDRA JAIN, J.

1. The petitioner prays for quashing the order dated 16.03.2015 (Annexure P-7) passed by respondent No.2-Commissioner of Central Excise and Service Tax Chandigarh-I, confirming the demand of Central Excise Duty of ₹ 11,53,316/- including Education Cess of ₹ 22,614/- for the clearance made during the period 01.03.2005 to 16.06.2005 and recovery under Section 11A of the Central Excise Act, 1944 (for short 'the Act') along with interest under Section 11AB of the Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner installed

a unit in the year 2003-04 at Baddi (Himachal Pradesh) for manufacturing various toilet preparations containing alcohol. Respondent No. 2 raised demand from the petitioner under Section 11A of the Act by holding that the goods manufactured by it fell under Chapter heading 33030050 and were liable to excise duty under the Act, ignoring the fact that the petitioner was not liable to pay excise duty under Medicinal and Toilet Preparations (Excise Duty) Act, 1955 (hereinafter referred to as 'the Act of 1955'), because as per entry No. 84 of List-I (Union List) of 7th Schedule to Constitution of India, duty of excise on Medicinal and Toilet preparations containing alcohol or opium, Indian hemp and other narcotics drugs had been the subject matter of Union List and, thus, under Article 268 of the Constitution of India, the excise duty on the products made by petitioner had to be leviable by Government of India and not by the State, but the State Government had only been empowered to collect the same. Since, as per Entry 51 of List-II (State List) of 7th Schedule of Constitution, the State Government had right to levy duties of excise only on liquors for home consumption and not on medicinal and toilet preparations containing alcohol or opium, therefore, respondent No. 2 had acted illegally and arbitrarily in passing the impugned order. As per Notification No. 50/2003-C.E. Dated 10.06.2003 (Annexure P-1), the goods manufactured in the States of Himachal Pradesh and Uttrakhand were exempted from excise duty for a period of 10 years from the date of commencement of production. The petitioner in view of the aforesaid notification was entitled for exemption from payment of Central Excise Duty leviable under the Act, on the ground that the toiletry products made by it with the help of liquor were liable for duty under the Act of 1955 only as there was no exemption of duty under the said Act of 1955. Hence, the petitioner filed a declaration with respondent No. 2 claiming exemption from duty leviable under the Act after obtaining the licence dated 04.06.2003 (Annexure P-2) from the State Excise Authorities.The petitioner during March, 2005 to June, 2005 procured liquor without payment of duty, but paid duty on finished goods leviable under the Act of 1955. However, respondent No. 2 insisted the petitioner to pay duty on its products under the Act which it did not pay because of the above reason. Hence, respondent No. 2 issued a show cause notice dated 28.03.2006 (Annexure P-5) and then slept over the matter till 24.09.2013 i.e. for around more than seven years on which date the matter was fixed for personal hearing. Thereafter, the matter was again delayed upto 12.01.2015, on which date the petitioner appeared before respondent No. 2, for personal hearing. The petitioner in its reply categorically pointed out to respondent No. 2 that the products manufactured by it containing liquor were not covered under Chapter note 1(d) of Chapter 33 and thus, were not liable to levy of duty. However, respondent No. 2 passed the impugned order illegally and arbitrarily. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner argued that the impugned order passed by respondent No. 2 is a cryptic and whimsical order. Respondent No. 2 had exceeded his jurisdiction in passing the same. The petitioner could not be taxed twice, because once it had paid the excise duty under the Act of 1955, in that event, it was not liable to pay the excise duty under the Act also, as payment of excise duty under the Act would tantamount to double taxation. By referring to Chapter 33 of the Central Excise Tariff Act, 1985, Section 11A of the Act, Article 268 of the

Constitution, entry No. 84 of List-I (Union List) of 7th Schedule to Constitution and Entry 51 of List-II (State List) of 7th Schedule of Constitution, he prayed for quashing of impugned order dated 16.03.2015 (Annexure P-7). In support of his arguments, he placed reliance upon judgment of the Bombay High Court in ***USV Ltd.*** ***Vs.*** ***State of Maharashtra, 2009 (234) E.L.T. 587 (Bom.).***

5. On the other hand, learned counsel for respondent No. 2 while refuting the above arguments prayed for dismissal of the petition.

6. As per entry No. 84 of List-I (Union List) of 7th Schedule of the Constitution of India, medicinal and toiletry preparations containing alcohol are made subject matter thereunder. Under Article 268 of the Constitution of India, the excise duty on such products is leviable by Government of India but the same has to be collected through the State. From the impugned order, it is evident that the petitioner manufactures various toiletry products containing alcohol. The stand of the petitioner is that it has already paid excise duty under the Act of 1955. Hence, *prima facie* it seems that demand of excise duty from the petitioner under the Act would amount to vexing it twice. More so, vide notification dated 10.06.2003 (Annexure P-1), the goods manufactured in the States of Himachal Pradesh and Uttrakhand are being exempted from excise duty for 10 years from the date of commencement of production under the Act. This issue has also not been considered by respondent No. 2. Hence, in our opinion, it would be expedient to remand the case back to respondent No. 2, for taking a decision afresh, after affording an opportunity of hearing to the petitioner and considering its stand including that raising the demand of any excise duty under the Act would tantamount to taxing it twice, more particularly, when

the petitioner has already paid the excise duty under the Act of 1955.

7. Resultantly, the impugned order dated 16.03.2015 (Annexure P-7) is set aside and the matter is remanded back to respondent No. 2-Commissioner of Central Excise and Service Tax, Chandigarh-I, to pass a fresh order after affording an opportunity of hearing to the petitioner, in accordance with law. Needless to say, nothing observed herein before shall be taken to be expression of opinion on the merits of the controversy.

(RAMENDRA JAIN)
JUDGE

October 05, 2015
rishu/gs

(AJAY KUMAR MITTAL)
JUDGE