

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.02.2018

Delivered on : 08.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.844 and 845 of 2016,
C.M.P.Nos.10897 and 10898 of 2016

M/s.IMCOLA Exports Ltd.,
Neeladri, 3rd Floor,
No.9, Cenatoph Road
Alwarpet, Chennai - 600 018.

...Appellant/Petitioner
in both Appeals

Vs

1.State of Tamil Nadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Secretariat, Chennai - 600 009.

...1st respondent in
W.A.No.844/2016

2.The Taluk Excise Officer,
Fort Tondiarpet Taluk, Chennai - 600 003.

3.The Collector, Chennai District,
62, Rajaji Salai, Chennai

...Respondents 2 and 3 in
W.A.No.844/2016 &
...Respondents 1 and 2 in
W.A.No.845/2016

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent
against the order dated 18.12.2015 made in W.P.Nos.94 and 95 of
2013.

WP.No.94 and 95 of 2013:Writ Petition filed under article 226 of
constitution of India to issua a Writ of Prohibition,
Prohibiting the respondents from demanding the administrative
service fee from the petitioner under the Tamilnadu Molasses
Control and Regulation Rules 1958 in respect of transactions
involving purchase of molasses from outside Tamilnadu and
exported outside India through the Chennai Port Trust and to
issue a Writ of Certiorarified Mandamus to call for the records
of the Ist respondent in notice, bearing RC.No.E/0091/12 dated
21.12.2012 issued by 1st respondent quash the same and
consequently direct the respondents to refund the amount of Rs.
15 00 000/- (Rupees Fifteen Lakhs only) paid by the petitioner
under protest as administrative service fee respectively.

For Appellant : Mr.P.S.Raman
Senior Counsel for
Mr.V.P.Raman

For Respondents: Mr.S.R.Rajagopal
Additional Advocate General
Assisted by Mrs.A.Srijayanthi,
Spl.Govt.Pleader

C O M M O N J U D G M E N T

K.K.SASIDHARAN, J.

The appellant, who is the holder of ML-2 Licence issued by the Commissioner of Excise under Rule 4(1) and 7(1) of the Tamil nadu Molasses Control and Regulation Rules, 1958, (hereinafter referred to as "Molasses Control Rules") purchased 5000 MT Molasses from M/s.Sudalagunta Sugars Limited, Andhra Pradesh on 30 July 2012 and imported it into the State of Tamil Nadu for export. A surprise inspection conducted by the Assistant Commissioner, Prohibition and Excise Department revealed that the appellant stored 7785.925 MT of Molasses in their storage tank inside the Chennai Harbour. The Assistant Commissioner on verification of the records from September 2012 to 21 December 2012 satisfied that the appellant without obtaining licence in ML-5 imported Molasses and kept it in their storage point at Chennai Harbour. The appellant paid the administrative charges in accordance with Rule 7 of the Molasses Control Rules. Thereafter, the appellant filed two writ petitions, one for refund of the amount collected by the Excise authorities and another for prohibiting the Excise Department from demanding administrative service fee in respect of transactions involving purchase of Molasses from outside Tamil Nadu and exported outside India through the Chennai Port. While dismissing the writ petitions, the learned Judge opined that even without an intention to sell at the place where it was stored, but as part of the business by way of export sales, the transactions would attract the provisions of the Molasses Control Rules. The common order is under challenge at the instance of the writ petitioner.

Summary of Submissions

2. The learned Senior Counsel for the appellant contended that the appellant purchased 5000 MT Molasses from M/s.Sudalagunta Sugars Limited, Andhra Pradesh on 30 July 2012. The administrative fee for exporting the Molasses out of Andhra Pradesh was paid by M/s. Sudalagunta Sugars Limited for and on behalf of the appellant. The appellant took the molasses to Tamil Nadu only for export. Since Molasses was

taken to Tamil Nadu only in the course of transit, there is no liability to take either a licence in Form No.5 or payment of administrative fee under Rule 7(2) of the Molasses Control Rules. The learned Senior Counsel contended that there was no allegation that the appellant indulged in local sale. The Molasses was kept inside the Chennai Port Trust for the purpose of export. Therefore, the appellant is not liable to pay the administrative charges. The learned Senior Counsel submitted that the administrative charges were collected forcibly and as such, the appellant was correct in filing a writ petition for refund of the amount.

3. The learned Additional Advocate General appearing on behalf of the State contended that the appellant kept the Molasses purchased from Andhra Pradesh along with the stock covered by the licence obtained in ML-2. There was no segregation. The learned Additional Advocate General on the strength of the documents available on record contended that the appellant stored 7785.925 MT of Molasses inside the Chennai Harbour. There was no entry in the records indicating that 5000 MT of Molasses was intended for export and the remaining for local sale. The learned Additional Advocate General further contended that there were allegations that the appellant and other dealers in Molasses were indulging in local sale of Molasses under the guise of export. The Enforcement Wing of the Prohibition and Excise Department unearthed the malpractice committed by the appellant. Thereafter, administrative charges were paid. It was further contended that the appellant is liable to pay administrative charges even for import into the local area for export out of the local area in case Molasses is imported from a place outside Tamil Nadu.

Discussion and Conclusion

4. The Government of Tamil Nadu in exercise of the powers conferred by Sections 6-A and 54 of Tamil Nadu Prohibition Act, 1937 notified the Rules for the control and regulation of Molasses. The Tamil Nadu Molasses Control and Regulation Rules, 1958 provides for taking various licences. Form ML-2 licence is provided for possession and sale of molasses, Form ML-4 licence for possession and use of molasses, Form ML-5 licence for import or export of molasses and Form ML-6 for the transport of molasses within the State.

5. Rule 7 of the Molasses Control Rules provides the Procedure for the grant of licences and permit. Rule 7(2) (a) provides that every dealer or consumer holding a licence in Form ML-2 or Form ML-4, desiring to import molasses from places outside the State and every dealer desiring to export molasses outside the State shall take a licence from the Collector of the District in Form ML-5. Rule 7(2) (b) provides that the molasses imported/exported shall not be disposed of in any manner while

in transit. There are also string of provisions dealing with the licence fee or otherwise called as administrative fee for export/import of Molasses.

6. The appellant is the holder of ML-2 licence for possession and sale of Molasses. The appellant was expected to pay the administrative charges and obtain ML-5 licence from the concerned Collector in case, the company is desiring to import molasses into the State of Tamil Nadu or export.

7. The appellant appears to have purchased 5000 Mt of Molasses from M/s.Sudalagunta Sugars Limited. The appellant has not produced the licence issued by the authorities under the Andhra Pradesh Excise (Possession, Import, Export, Transport of Molasses Conditions of License and Permits) Rules, 2008 for export of molasses. The receipt produced by the appellant indicates that M/s.Sudalagunta Sugars Limited paid a sum of Rs.1,25,00,000/- towards export pass fee on 18 October 2012. This receipt is taken as the basic material by the appellant to contend that the export fee was paid in the State of Andhra Pradesh for the purpose of exporting 5000 MT of Molasses from Andhra Pradesh. Even the quantity is not mentioned in the said receipt, which is a treasury challan. The appellant for the reasons best known failed to produce any documents before this Court to prove the transaction related to the purchase of molasses from M/s.Sudalagunta Sugars Limited.

8. According to the appellant, 5000 MT of Molasses purchased from M/s.Sudalagunta Sugars Limited on 30 July 2012 was taken to Chennai Port for export. It is the contention of the appellant that the procurement is only for export and there is no requirement either to take ML-5 licence or to pay administrative charges under Rule 7(2) of Molasses Control Rules for transit.

9. The surprise inspection conducted by the Assistant Commissioner, Prohibition and Excise, Chennai at Chennai Port on 22 December 2012 revealed that the appellants stored 7785.925 MT of Molasses. It is the case of the appellant that only 5000 MT of Molasses was intended for export to a foreign country. It is not clear as to why the appellant stored the Molasses intended for export along with 2785.925 MT of Molasses, which was not intended for such export. The molasses intended for export was not kept separately. It was mixed with the stock of molasses covered by ML-2 licence obtained by the appellant.

10. The Assistant Commissioner, Prohibition and Excise Department, directed the appellant to pay the administrative charges for 5000 MT of Molasses, which was exported to Tamil Nadu from Andhra Pradesh. The appellant without even recording protest paid the said amount. It was only thereafter the appellant filed writ petitions for refund of the amount.

11. The Core issue is as to whether the appellant is liable to pay the administrative charges treating the transaction as one covered under ML-5 licence.

12. The appellant appears to be under the impression that import would mean only the import from outside the country and export out of the country. There is absolutely no basis in the contention taken by the appellant.

The Regulations

13. The Molasses Control Rules were framed under the Tamil Nadu Prohibition Act, 1937. Sections 3(6) and (7) defines export and import respectively. The provision reads thus:-

"(6) "export" means-

(a) to take out of any local area to which this Act applies to any other local area in the State of Tamil Nadu to which this Act has not been extended; or

(b) to take out of the State of Tamil Nadu otherwise than across a customs frontier as defined by the Central Government.

(7) "import" means-

(a) to bring into any local area to which this Act applies from any other local area in the State of Tamil Nadu to which this Act has not been extended; or

(b) to bring into the State of Tamil Nadu, including the bringing across a customs frontier as defined by the Central Government."

14. The Andhra Pradesh Excise (Possession, Import, Export, Transport of Molasses - Conditions of License and Permits) Rules, 2008 (hereinafter referred to as Andhra Pradesh Molasses Rules 2008, provides for the grant of licenses for possession or sale of molasses and for import and export. The Rules contain the definition for Export. As per Rule 14 of Andhra Pradesh Molasses Rules, Export means dispatch of molasses to any place outside the State of Andhra Pradesh and includes export to foreign countries.

15. It is very clear that exporter like the appellant even for exporting Molasses to a place outside Andhra Pradesh shall pay the administrative fee for export. The state is not concerned as to whether export is to a foreign country. In short, the exporter like the appellant must pay administrative charges to the excise authorities at Andhra Pradesh for exporting molasses to a place outside the state of Andhra Pradesh. The payment made by M/s.Sudalagunta Sugars Limited on behalf of the appellant should be considered in the context of

the definition for the term "export" under the Andhra Pradesh Molasses Rules.

16. The appellant must be under the impression that there is no statutory liability to pay administrative charges in case the molasses is imported to Tamil Nadu for the purpose of export to a place outside the State. The said contention is per se against the Molasses Control Rules.

17. The Tamil Nadu Molasses Control and Regulation Rules very clearly provides that every dealer desiring to import molasses from places outside the State and every dealer desiring to export molasses outside the State must procure licence in Form ML-5 on payment of administrative charges.

18. There is no dispute that the appellant imported molasses to the State of Tamil Nadu for the purpose of exporting it into a place outside the State. There are two elements involved in this process; one relating to the import of molasses from Andhra Pradesh and another exporting the molasses outside the State. The term export/import must be interpreted in the light of the definition given to the said term in the Tamil Nadu Prohibition Act, 1937.

19. The writ petitions were decided without the benefit of the counter affidavit filed by the respondents. We have therefore directed the respondents to produce the original file. The file produced by the Commissioner of Prohibition and Excise Department, contained the details of the inspection conducted by the Assistant Commissioner, Prohibition and Excise Department on 21 December 2012 at the storage premises of the appellant inside the Chennai harbour. There was no segregation of the stock intended for export vis-a-vis stock intended for local sale to prove that 5000 MT of Molasses was intended only for export to a particular country. The factum of payment of export fee by the M/s.Sudalagunta Sugars Limited on 18 October 2012 was taken as the basic material to prove that the Molasses was procured only for export. The appellant by mixing 5000 MT of Molasses with another 2785.925 MT of Molasses contributed for the loss of identity of the product exported from the State of Andhra Pradesh.

20. The Molasses procured from the State of Andhra Pradesh was transported to Chennai and it was stored at Chennai Port under the pretext that it is meant for export. The purchase was on 30 July 2012. The inspection was on 21 December 2012. The inspecting team inspected the entire records for the period from 1 September 2012 to 21 December 2012. The verification clearly revealed that the appellant was in possession of large quantity of Molasses and it was kept on the strength of ML-2 Licence.

21. The appellant even for export from Tamil Nadu must obtain licence in ML-5 for which he should pay administrative charges under Rule 7(2) of the Molasses Control Rules. It would not be possible for the appellant to avoid the statutory liability of payment of administrative charges by contending that Molasses was procured from the State of Andhra Pradesh by paying export fee there. The export from Andhra Pradesh to the State of Tamil Nadu would amount to import in the State of Tamil Nadu. In case the Molasses is exported to a place outside the State it would amount to export from the State.

22. There are no documents produced before us to show that while taking the export permit from the excise authorities at Andhra Pradesh, the appellant declared that it was intended for export to a particular country. The appellant conveniently failed to produce the export permit and produced only the receipt with a view to deprive this Court of the vital information as to whether the export was to the State of Tamil Nadu or it was to a foreign country. The fact that the appellant paid the export fee in the State of Andhra Pradesh would not stand in the way of the Prohibition and Excise Department in the State of Tamil Nadu to collect the administrative charges treating it as an export from the State of Tamil Nadu. We are therefore of the view that there is absolutely no merit in the contention taken by the appellant. We fully endorse the views expressed by the learned single Judge in the common order dated 18 December 2015.

23. For the reasons aforesaid, the intra court appeals are dismissed without any liability to pay costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

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सत्यमेव जयते

Sub Assistant Registrar

svki

To

- 1.The Secretary,
State of Tamil Nadu,
Department of Prohibition and Excise,
Secretariat, Chennai - 600 009.

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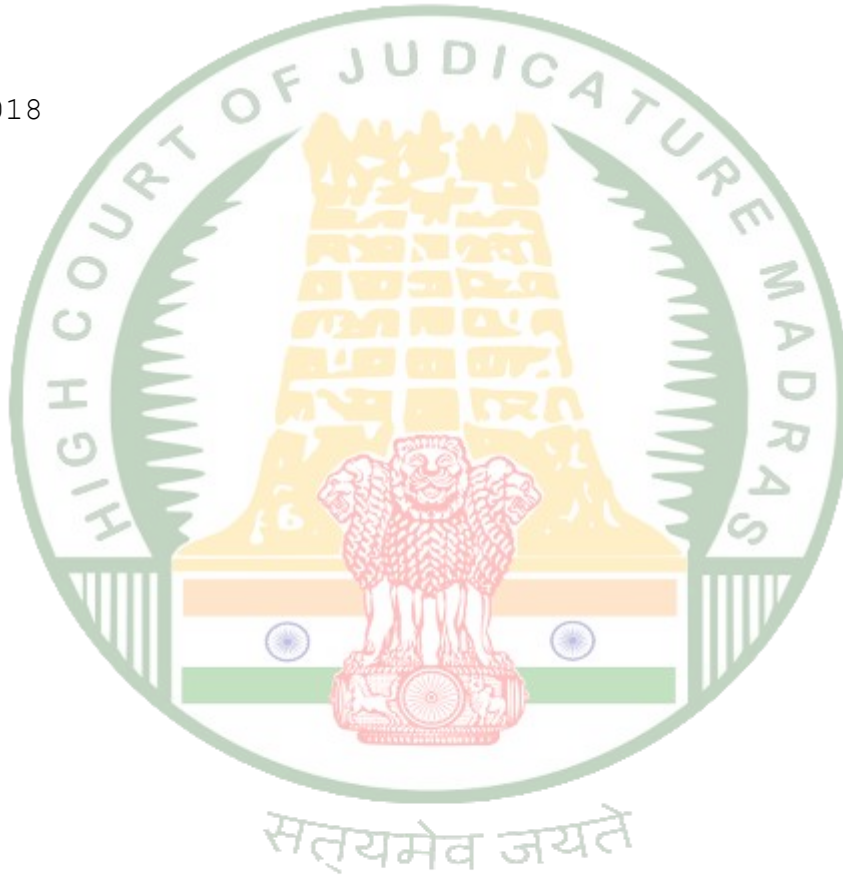
2.The Taluk Excise Officer,
Fort Tondiarpet Taluk,Chennai - 600 003.

3.The Collector, Chennai District,
62, Rajaji Salai, Chennai

+1 cc to the Government Pleader sr 18106
+1cc to Mr.V.P.Raman, Advocate sr.18064(02/05/2018)

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