

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6658 of 2011

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Harinagar Sugar Mill Ltd., a Company registered under the provision of the Indian Companies Act, 1956, having its registered office at 207, Kalbadevi Road, Mumbai and its sugar factory at Harinagar, P.O.- Haringar, P.S. Ramnagar, District West Champaran through its Chief General Manager, S.N.Poddar @ Satya Narayan Poddar and the Chief Cane Controller H.P. Pancharia @ Hari Prasad Pancharia holders of power of attorney on behalf of the Company

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Sugarcane Industries Department, Bihar, Patna.
3. The Commissioner-cum-Secretary, Cane Development Department, Bihar, Patna.
4. The Secretary/Principal Secretary to the Government, Department of Registration, Excise and Prohibition (Excise and Prohibition).
5. The Excise Commissioner-cum-Controller of Molasses, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
6. The Joint Commissioner of Excise, Department of Registration, Excise and Prohibition (Excise and Prohibition).
7. The Superintendent of Excise, West Champaran, Bettiah.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Ramesh Kumar Agrawal, Advocate

For the Respondents : Mr. Vikash Kumar SC-11

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 23-12-2021

Heard learned counsel for the petitioner and learned counsel for the State respondent.

2. The writ petitioner is a Company manufacturing sugar at Harinagar in the District of West Champaran. The State Government, vide a resolution dated 12.09.2006, announced incentive Scheme for establishment and development of sugar and sugar based industries in the State of Bihar (hereinafter referred to as incentive Scheme). The same is Annexure 1 to the writ petition. The same provided certain benefits /incentives for establishment of sugar mills /sugar cane based industries as well as for expansion of capacity of existing sugar mills. Clause 4 (ख) (ii) provided exemption from administrative charges for five years on molasses to Distilleries/Ethanol units being established. The same exemption was granted in case of capacity expansion of Distilleries and Ethanol units also.

3. Clause 5 (ग) and (घ) are relevant for the present case and are, thus, being quoted:

“5. (क)

(ख)



(ग) उत्पादन तिथि का तात्पर्य उस तिथि से होगा जबसे इकाई वास्तव में वाणिज्यिक उत्पादन प्रारम्भ कर लिया हो जिसके लिए वह निबंधित है। उत्पादन तिथि के संबंध में निदेशक, तकनीकी विकास, उद्योग विभाग द्वारा निर्गत प्रमाण-पत्र मान्य होगा।

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(छ) डिस्टिलरी/इथानोल की स्थापना / क्षमता विस्तार तथा को-जेनरेशन द्वारा विद्युत उत्पादन के लिए वर्तमान में रियायतें / छूटों पर वाणिज्यिक उत्पादन करने की तिथि से पाँच वर्षों के लिए देय होगा।

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.....”

4. After issuance of the Resolution dated 12.09.2006, guidelines were issued by the sugar industries Department, Bihar, Patna on 24.07.2007. Clause 6 whereof is relevant as the same forms the basis for the dispute regarding petitioner's entitlement to the benefit of exemption from administrative charges on molasses under the Resolution dated 12.09.2006. Clause 6 of this guidelines reads as under:

“6. छोआ पर प्रशासनिक चार्ज से छुट के संबंध में उत्पाद विभाग द्वारा अलग से अधिसूचना निर्गत किया जायेगा एवं उसके अनुरूप कार्रवाई होगी।”

5. Pursuant to Clause 6 of this guidelines, the Registration, Excise and Prohibition Department, Govt. of Bihar issued the notification dated 11.09.2008 (Annexure-7). The same was issued under Section 8(A) of the Bihar Molasses



(Control) Act, 1947. The notification dated 11.09.2008 reads as follows:-

“1 Upon establishment of new distillery/ethanol plant and expansion of existing distillery plant in the state of Bihar, the administrative charges on all grades of molasses are fully exempted. In case of expansion of existing distillery exemption from payment of administrative charges on molasses, shall be confined only to the quantity of molasses which is used for increased capacity of production and shall not be admissible to installed capacity prior to expansion irrespective of production below or at par installed capacity.

2. The above exemption of administrative charges on all grades of molasses will be applicable for a period of 5 years from the date of commercial production of new distillery/ethanol plants and expansion of existing distillery plant in the state of Bihar.”

6. Admitted facts are that the petitioner established a new 45 KLPD Ethanol/ Distillery plant in their factory premises. The new Ethanol/ Distillery plant was commissioned on 05.03.2008 for trial. Commercial production of this new Ethanol/Distillery plant started w.e.f. 05.04.2008.

7. The petitioner, in terms of Clause 5 (ग) and (घ), the incentive Scheme and para 2 of the notification dated 11.09.2008, has claimed that he was entitled to exemption from



administrative charges on the molasses being consumed by this new Ethanol/Distillery plant for a period of five years from the date of its commercial production i.e. w.e.f. 05.04.2008. As a consequence of such entitlement, the petitioner claims refund of Rs. 37,51,350/- being the administrative charges paid by the petitioner in between 05.04.2008, i.e. the admitted date of commencement of commercial production till 30.06.2008. After this period, petitioner has been allowed the exemption. The exemption has been denied only for this limited period and, therefore, the petitioner has sought a direction for refund of the said amount.

8. The learned counsel for the State has opposed this prayer referring to the counter affidavit filed by the State of Bihar in the Department of Registration, Excise and Prohibition (Respondent Nos. 4 to 7). The stand of the respondents is that in terms of incentive Scheme guidelines had been issued by Annexure-2 (24.07.2007) and Clause 6 of the guidelines clearly specify that for exemption from administrative charges on molasses under the incentive Scheme a notification was required to be issued by the Excise Department. Since the notification has been issued on 11.09.2008, exemption from administrative charges cannot be claimed prior to the date of notification, being



the period in-question, i.e. 15.05.2008 to 30.06.2008. It is the stand of the State that the notification dated 11.09.2008 does not have retrospective effect. The petitioner, therefore, cannot claim exemption from administrative charges on molasses for the period in-question, which is prior to issuance of the notification dated 11.09.2008.

9. Petitioner does not dispute the fact that in terms of Clause-6 of the guidelines dated 24.07.2007, notification came to be issued by the Registration, Excise and Prohibition Department, Govt. of Bihar on 11.09.2008. Issuance of this notification, however, as per petitioner, would have no bearing on the petitioner's entitlement to exemption from administrative charges w.e.f. the date of commercial production, irrespective of the fact that the said date is prior to the notification dated 11.09.2008. Admittedly, the petitioner has started commercial production w.e.f. 05.04.2008. The incentive policy contained in Resolution dated 12.09.2006 as well as the notification dated 11.09.2008, issued by the Excise Department, both provide that the exemption on administrative charges on all grades of molasses is applicable for five years from the date of commercial production. The date of commercial production being admitted, it does not lie in the mouth of the respondent



authorities in the Department of Registration, Excise and Prohibition to contend that the same would be made available from any date other than the date of commencement of commercial production. The stand of the authorities in the Excise Department that the same cannot be granted w.e.f the date of commercial production, because that date is prior to issuance of the notification dated 11.09.2008 is unsustainable in the eyes of law and contrary to the incentive policy dated 12.09.2006, read with the guidelines dated 24.07.2007 issued with respect to the same and the notification dated 11.09.2008 issued by the Excise Department which are Annexure(s) 1,2 and 7 respectively to the writ petition.

10. This Court has carefully considered the submissions on behalf of the parties and examined the incentive scheme dated 12.09.2006, guidelines issued for implementation of the incentive policy dated 24.07.2007 as well as the notification dated 11.09.2008 issued by the Excise Department. The admitted position is that under the incentive policy exemption has been granted in respect of the administrative charges for molasses to new Distillery/Ethanol units established under the incentive policy dated 12.09.2006. It is also admitted that the petitioner established the new Distillery/Ethanol plant after



issuance of the incentive policy dated 12.09.2006. It is also an admitted fact that commercial production of the new plant commence w.e.f. 15.04.2008; and that notification in terms of the guidelines dated 24.07.2007 was issued on 11.09.2008. It is also admitted that that the incentive policy, dated 12.09.2006, guidelines dated 24.07.2007 and the notification issued by the Excise Department on 11.09.2008 all provide for grant of exemption from administrative charges on molasses w.e.f. the date of commercial production. The dispute sought to be raised by the Excise Department that the exemption from the administrative charges cannot be granted because commencement of commercial production is w.e.f. the date prior to issuance of notification dated 11.09.2008 is clearly unsustainable. Since the new plant was established in view of the incentive policy issued under the Resolution dated 12.09.2006, the fact that the notification came to be issued nearly two years later by the Excise Department; and after the date of commencement of commercial production would have no bearing on the petitioner's entitlement under the incentive policy, in view of the admitted fact that the petitioner had started commercial production on 15.04.2008 after declaration of the incentive scheme.



11. Submission in opposition to the petitioner's claim by the State counsel cannot be sustained for the fact that in paragraph No. 11 (घ) of the guidelines dated 24.07.2007, it has clearly been specified that in the event of any dispute, decision of the Principal Secretary, Department of Sugarcane Industry will be final. Clause 11(घ) reads as follows:-

“11. (घ) प्रस्तावित चीनी प्रोत्साहन पैकेज के अन्तर्गत किसी विवाद उत्पन्न होने की स्थिति में आयुक्त एवं सचिव/सचिव गन्ना उद्योग विभाग का निर्णय अंतिम माना जाएगा।”

12. In view thereof, it is the decision of the Department of Sugarcane industry which is relevant with respect to the dispute sought to be raised by the Excise Department regarding petitioner's entitlement to exemption from administrative charges on molasses w.e.f. the admitted date of commencement of commercial production. Paragraph Nos. 12,13 and 14 of the counter affidavit filed by the respondent Nos. 2 and 3 being the Principal Secretary, Sugarcane Industries Department, Bihar, Patna and Commissioner-cum- Secretary, Cane Development Department, Bihar, Patna does not leave any room for disputing the petitioner's entitlement to exemption from administrative charges on molasses consumed w.e.f. the date of commencement of commercial production i.e. w.e.f. 05.04.2008, for a period of five years. Paragraph Nos. 12,13 and



14, therefore, are being reproduced:-

“12. That the averment made in this para-14 of the writ application is not contradicted. In order to serve the end of justice, it would be appropriate to mention that according to Letter No. 05 dated 10.02.2010 M/s Harinagar Sugar Mill Ltd. (Distillery Division) had informed that encouraged by the Incentive Package declared by the Sugarcane Industry Department through Resolution No. 1433 dated 12.09.2006 (Annexure-1 of the writ) they obtained permission of the State Investment Promotion Board and Established the Ethanol Production Unit and commenced commercial production from 05.04.2008. (Annexure-3 of the writ).

13. That it was clearly mentioned in Letter No. 1355 dated 24.07.2007 (para-6) (Annexure-2 of the writ application) that notification regarding exemption of administrative charge on molasses will be issued by the Department of Excise. The Department of Excise issued the notification on 11.08.2008 while the Incentive Package had been declared in 2006 itself. In order to rectify this position it was recommended by the Sugarcane Industry Department that the Notification No. 989 dated 11.09.2008 of the Department of Excise should be effective from the date of the issuance of Resolution No. 1533 dated 12.09.2006 and accordingly the Harinagar Sugar Mill should get the benefit of exemption from the date of commencement of commercial production i.e. 05.04.2008.



14. That Letter No. 1355 dated 24.07.2007 clearly mentions in para-11 (Gha) that in the event of any dispute, the decision of the Principal Secretary, Department of Sugarcane Industry will be final the abovementioned letters were approved by the Principal Secretary, Department of Sugarcane Industry.”

13. Since the Principal Secretary, Sugarcane Industries Department was the competent Authority for resolving the dispute sought to be raised regarding the petitioner's entitlement to exemption from administrative charges, his decision, at least was required to be acknowledged by the Excise Department by granting the benefit to the petitioner for exemption on administrative charges on molasses consumed w.e.f. date of commencement of commercial production i.e. 05.04.2008.

14. This Court would find that the stand of the Excise Department in denying the petitioner's exemption from administrative charges w.e.f. the date of commencement of commercial production amounts to frustrating the object and intent of incentive Scheme for establishment and development of sugarcane and sugar based industries in the State of Bihar contained in Resolution dated 12.09.2006. The bogey of retrospectivity, which is sought to be raised by the Excise Department is legally unsustainable, also in view of their own notification dated 11.09.2008 (Annexure-7), which clearly



specifies that exemption of administrative charges on molasses were applicable for five years from the date of commencement of commercial production of new Distillery/Ethanol plant.

15. By raising such unsustainable plea the court would find that the petitioner has been deprived of the benefits of incentive Scheme w.e.f. the date of commercial production and has been driven to this most baseless and undesirable litigation.

16. During the instant proceedings also, the Excise Department has failed to see reason, even after the Principal Secretary, Sugarcane Industry (Respondent No.2) being the Competent Authority under the guidelines dated 24.07.2007 for resolving the dispute, has stated on affidavit that the petitioner was entitled to get the benefit of exemption from the date of commencement of commercial production i.e. 05.04.2008.

17. In view of the foregoing discussions, it is evident that the petitioner could not have been denied exemption from the administrative charges for the period during which he has claimed for the same, i.e. w.e.f. 05.04.2008 being the date of commencement of the commercial production. The petitioner, as a consequence of his entitlement, should have been refunded the amount of Rs. 37,51,350/- deposited towards administrative charges during the period of his claim. The same has not been



done and for the last about more than 13 years the petitioner has been deprived of the same. The State based on unfounded and unsustainable stand of the Excise Department has retained the amount without any justification. This enrichment of the State, based on the unfounded and unsustainable stand of the Excise Department, and in spite of the decision of the Principal Secretary, Sugarcane Department acknowledging petitioner's entitlement for the same, is clearly unjustified. The authorities are therefore, directed to refund the said amount along with interest at the varying Bank rate of interest applicable during this period on fixed deposits.

18. Instant case is a glaring example of baseless and unwanted litigation having been generated by the Excise Department, at the cost of the State exchequer, based on an unsustainable and mindless opposition of the petitioner's claim, due under the incentive Scheme. The opposition of the petitioner's claim amounts to frustration of the State Governments own incentive scheme. This Court was tempted to impose cost in the matter.

19. However, we refrain from doing so and observe that the refund with interest should be paid along with a calculation chart showing calculation of the amount being paid within a



period of three(03) months from the date of receipt/production of a copy of this order.

20. The writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.12.2021
Transmission Date	

