201 (2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:110181-DB

CWP-13240-2005 (O&M)
Date of Decision: 27.08.2024

M/s Saraswati Sugar Mills Ltd. ...Petitioner

Vs.

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Sandeep Goyal, Advocate and
Ms. Nazuk Singhal, Advocate for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

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<u>SANJEEV PRAKASH SHARMA, J.(Oral)</u>

1. The petitioner has assailed the show cause notice and the proceedings initiated against it for alleged violation of Rule 14(1) of the Punjab Molasses (Control) Rules, 1962 [for short 'the Rules, 1962'].

2. Vide notice dated 11.10.2004, the petitioner mill was directed to show cause as to whey penalty be not imposed on account of failure to file its weekly returns under Rule 14(1) of the Rules, 1962. It was alleged that rule 14(1) of the Rules, 1962 provided for filing weekly returns but the receipt of weekly returns is of much later point of time, the petitioner mill was liable to penal action in terms of Section 6(1)(ii) of the East Punjab Molasses (Control) Act, 1948 [for short 'the Act, 1948'].

3. Learned counsel for the petitioner submits that the show cause notice was based on wrong facts and in fact the petitioner had submitted its

weekly returns regularly. A certificate in this regard was also produced and placed on record before this Court, which had also been supplied along with the reply submitted to the respondents reflecting that the period ending from each week, the return was filed in the subsequent week.

Learned counsel submits that the rule also does not provide a particular time within which the weekly returns are required to be filed. However, he submits that even if, it is presumed that the returns were to be filed within one week after the concerned week is over, then too the petitioner has complied with the same.

Learned counsel has taken us to the order impugned Annexure P/14 dated 09.11.2004, to submit that the concerned respondent- Excise and Taxation Commissioner, Haryana, does not deny the fact of having received the weekly returns but he has objected to the method adopted by the petitioner in submitting its weekly returns to the Controller instead of having filed the weekly returns w.e.f. 01.06.2004 to the Deputy Excise and Taxation Commissioner (Excise), Jagadhri. Objecting to the petitioner's action of having submitted weekly returns to the Commissioner instead of Controller, the respondents have proceeded to impose penalty in terms of Section 6(1)(ii) of the Act, 1948 and penalty of Rs.21,56,600/- was imposed.

Learned counsel has also taken us to the order passed in appeal wherein too, the objection raised by the petitioner was rejected on account of the fact that the returns had been filed to the Commissioner instead of Controller.

4. Learned counsel for the State submits that as per rules weekly returns were required to be filed consistently before the Controller and a departure could not have been made by the petitioner in filing the weekly

returns to the Officer at Jagadhri. The penalty, therefore, has rightly been imposed.

5. We have considered the submissions.

6. A look at the show cause notice reflects that the petitioner was charged of not having filed weekly returns in terms of rule 14(1) of the Rules, 1962. However, there is no allegation levelled against the petitioner in the show cause notice of having filed weekly returns to the Deputy Excise and Taxation Commissioner instead of Controller. Both the Excise and Taxation Commissioner as well as the Appellate Authority do not deny the fact that the weekly returns were filed by the petitioner. Rule 14(1) of the Rules, 1962, provides as under:-

> *14. Maintenance of accounts and submission of returns.*
> *(1) The owner, occupier or manager of a sugar factory shall maintain correct account of the production and sale of molasses in Form MC 5 and furnish weekly return in Form MC 6 to the Controller.*

7. It is also apposite to quote Section 6(i)(ii) of the Act, 1948, which reads as under:-

> *Penalty.*
>
> *[1] Where any person –*
>
> *(ii) contravenes any provisions, other than those referred in clause (i) of this Act or of any rule, order or direction made or given thereunder, the Controller, may, after affording such person an opportunity of being heard, direct him to pay by way of penalty a sum not exceeding fifty thousand rupees and if the*

contravention is a continuing one to pay a daily penalty not exceeding five thousand rupees during the period of the continuance of the contravention.

8. Section 2(b) of the Act, 1948, defines the mean of 'controller' i.e. the Excise and Taxation Commissioner, Haryana. From the perusal of the aforesaid provisions, it is apparent that the essence of the entire provisions is that the owner, occupier or manager of a sugar factory shall maintain correct account of the production and sale of molasses and furnish weekly returns in the particular form to the Controller. Submission of returns to the Deputy Excise and Taxation Commissioner, who is situated at Jagadhri, cannot in any manner be treated to be a case of non-filing of return. The concerned Officer who is also a departmental Officer, was further required to send the said returns to the Controller who is the ultimate Officer in terms of the Act. Any official who performs duty under his superior officer, cannot be said to be unauthorized to accept the returns and further transmit the same to the superior officer. On account of such a lapse on the part of their own officer, the petitioner mill cannot be held liable for not filing of weekly returns.

9. Moreover, the penalty in terms of Section 6(1)(ii) as noticed above, is for the contravention of the provisions of the Act and not for submitting of weekly returns to a wrong office. If the returns could not have been filed, we would have understood the imposition of penalty. However, otherwise we would not find it a case where the penalty can be imposed merely because weekly returns were sent to a subordinate office and not directly to the Controller. We also find that the petitioner was never served

with any show cause notice for having filed return to the allegedly wrong authority.

10. In view thereto, the orders passed by the Excise Commissioner and the Appellate Authority are found to be not sustainable in law. The same are accordingly quashed. The writ petition is allowed in the aforesaid terms.

11. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

27.08.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No