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M/S. SITARAM AND BROS.

v.

STATE OF RAJASTHAN AND ORS.

OCTOBER 5, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Excise Law :

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Rajasthan Excise Act, 1950—Amendment Act of 1985—Whether repugnant to the provisions of Mollasses Control Orders, 1961 or the Industries (Development and Regulation) Act, 1951 Held: No inconsistency and the Amending Act is within the legislative competence under Art. 246(3) of the Constitution.

Constitution of India, 1950 :

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Art, 246(3)—Rajasthan Excise Act, 1950—Amendments made by Amendment Act, 1985—Held : within the Legislative competence of the State Legislature.

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Section 17A and class Mollasses added to Section 41(2)(d) of the Rajasthan Excise Act, 1950 as amended in 1985 were challenged before the High Court. After exhaustive consideration of all the constroversies, the High Court declared the Amendment Act of 1985 was enacted by the State Legislature under Entry 33(a) of List III of the 7th Schedule to the Constitution; and that the State Legislature was competent to enact the said Amendment Act except condition No. 3(1)(II) and 3(2) of the licences in form M- I as repugnant to the provisions of clauses (3), (4) and (7) of the Mollasses Control Order. The State did not prefer any appeal.

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In this appeal, on behalf of the appellant it was contended that exercising the power under Entry 52 of List I, the Industrial Development Act, 1951 was enacted by Parliament item 25 of the Schedule relates to sugar industry; that Mollasses, a by product of the mother liquor of sugar, it was controlled by the Mollasses Control Order, 1961 made by the Central Government and therefore the State Legislature was devoid of competency to enact the Amending Act.

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Dismissing the appeals, this Court

HELD : The operation of the Mollasses Control Order 1961 and the operation of the Amendment Act of 1985 amending the Rajasthan Excise Act, 1950 have neither occupied the same field nor run into collision course. It is seen that the Amendment Act was made by the State Legislature exercising the power under Entry 33(a) of the concurrent list read with Entry 24 of State List as Mollasses is a by product of sugar industry covered by the Industries Development Regulation Act. The Amendment Act does not enter into the occupied field of the Mollasses Control Order. There is no inconsistency in their operation and that therefore both the Amendment Act and the Mollasses Control Order would harmoniously co-exist and operate in their respective fields. The State Legislature had thereby made the Amendment Act regulating the import, export, transport or possession of Mollasses within the State of Rajasthan. Thus, the Amendment Act is within the Legislative competence under Art. 246(3) of the Constitution. [281-G-H, 282-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 925 of 1990.

From the Judgment and Order dated 18.8.89 of the Rajasthan High Court in C.W.P. No. 1805 of 1988.

I. Makwana, Ms. Rachna Joshi Issar (NP) for the Appellant.

Aruneshwar Gupta for the Respondents.

The following Order of the Court was delivered :

The appeals arise from Writ Petition No. 1808 of 1988 and batch dated 18.8.89 of the Division Bench of the Rajasthan High Court following its earlier judgment dated May 17, 1989 in Writ Petition No. 1340 of 1986 and batch. In the High Court, Section 17A and class Mollasses added to Section 41(2)(d) of the Rajasthan Excise Act, 1950 as amended by the Rajasthan Excise Amendment Act 8, 1985 were impugned. The Division Bench after exhaustive consideration of all the controversies declared that the Amendment Act 5 of 1985 was enacted by the State legislature under Entry 33(a) List III (concurrent list) of the 7th Schedule of the Constitution of India. Therefore, the State Legislature was competent to enact the said Amendment Act except the condition No. 3(1)(II) and 3(2) of the licenses in form M-I as repugnant to the provisions of clauses (3), (4) and (7) of

A the Mollasses Control Order. The State did not prefer any appeal as regards the declaration of the said aforesaid provisions to be *ultra vires* of the State Legislature. But being dissatisfied with the judgment of the Division Bench the appellants had sought leave and this court granted leave under s. 136 of the Constitution.

B It was contended by Mr. Makwana, learned counsel for the appellant that exercising the power under Entry 52 of List I, (Union List), the Industrial Development Regulation Act, 1951 was enacted by the Parliament, item 25 of the Schedule relates to the sugar industry. Mollasses is a by product of the mother liquor of sugar. It is also controlled by the

C Mollasses Control Order, 1961 made by the Central Government exercising the power under s.18a of the Industries (Development and Regulation) Act, 1951 and that therefore the State Legislature is devoid of competency to enact the Amendment Act. We find no force in the contention. Entry 52 of List I (Union List) of the 7th Schedule to the Constitution envisages

D to enact law relating to industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest. Undoubtedly, Act 65 of 1951 was enacted in exercise of this power and s. 18a gives power to the Central Government to regulate the items of industries enumerated in the Act 65 of 1951. However, Entry 24 and Entry 8 of the State List of the 7th Schedule gives power to the State Legislature

E to make law relating to intoxicating liquors, that is to say, the production, the manufacture, possession, transport, purchase and sale of intoxicating liquors. Entry 24 is the reserve power of the State Legislature subject to Entry 7 and Entry 52 of List I to enact the law relating to the industries. Entry 33 of the concurrent list gives power to the Parliament as well as the

F State Legislature to enact law regulating trade and commerce in and the production, supply and distribution of (a) the production of any industry where the control of such industry by the Union is declared by Parliament by law to expedient in the public interest and imported goods of the same kind as such products. Therefore, the Parliament as well as the State Legislature have been given the power to enact a law regulating trade and

G commerce in and the production, supply and distribution of "the products of any industry" obviously dealt with under Entry 52 of Union List. Section 17A of the Amendment Act defines Mollasses, thus :

H "Mollasses means the mother liquor produced in the final stage of the manufacture of sugar or Khandsari sugar by the vacuum pan

process or open pan process from sugar cane or gur." A

Section 4 of the Amendment Act provides that in Clause (d) of sub-s. (2) of s.41 of the Principal Act after the expression "exercisable article" the expression "or Mollasses" shall be added. Section 17 of the Rajasthan Excise Act deals with establishment and licensing of distilleries and warehouses subject to certain restrictions contained therein. As seen s.17A merely defines the Mollasses without any further consequences. Section 41 gives power to the State Government to make rules for the purpose of carrying out the provisions of the Rajasthan Excise Act or other law for the time being in force relating to excise revenue (b) liquidating the import, export, transport or possession of any excisable article. By virtue of s.4 of the Amendment Act "or Mollasses" has also been added to Clause (d) of sub-s.(2) of s.41. B C

Thereby, it would appear that the Legislature intended to regulate the import, export, transport or possession of Mollasses. The question is whether the Amendment Act is repugnant to the provisions of the Industries Development Regulation Act or the Mollasses Control Order 1961 made by the Central Government exercising the power under s.18G of the Industries (Development and Regulation) Act 65 of 1951. Section 17 of the Amendment Act is in *pari materia* is the definition given in s.2(a) of the Mollasses Control Order 1961 which came into effect for the State of Rajasthan with effect from 1.11.75. The question, therefore, is whether s.4 of the Amendment Act introducing Mollasses in clause (d) of sub-s.(2) of s.41 of the Rajasthan Excise Act, 1950, is repugnant to the provisions of the Mollasses Control Order or any other relevant order occupied under Act 65 of 1951. The Mollasses Control Order, 1951 regulate restriction on sale, clause (3), restriction or removal, clause (4), storage of Mollasses, clause (5), grading of Mollasses, clause (6) and pricing maximum for the sale regulated by clause (7). As seen the operation of the Mollasses Control Order and the operation of the Amendment Act have not occupied the same field nor run into collision course. It is seen that the Amendment Act was made by the State Legislature exercising the power under Entry 33(a) of the concurrent list read with Entry 24 of State List as Mollasses is a by product of a sugar industry covered by the Industries Development Regulation Act. The Amendment Act does not enter into the occupied field of the Mollasses Control Order. There is no inconsistency in their operation D E F G H

- A** and that therefore both the Amendment Act and the Mollasses Control Order would harmoniously co-exist and operate in their respective fields. The State Legislature had thereby made the Amendment Act regulating the import, export, transport or possession of Mollasses within the State of Rajasthan. Thus, we find that the Amendment Act is within the Legislature competence under Art. 246(3) of the Constitution. The appeals are dismissed accordingly but without costs.
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G.N.

Appeals dismissed.