

STATE OF UTTAR PRADESH & OTHERS

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v.

MAWANA SUGARS LIMITED

(Civil Appeal No. 10610 of 2017)

AUGUST 18, 2017

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[ARUN MISHRA AND AMITAVA ROY, JJ.]

*Excise – Molasses Policy – Interpretation of – State Government, for the Molasses Year 2015-2016 issued “Molasses Policy”, which provided for a reservation of 25% of the molasses produced to be supplied to the country liquor manufacturers as per the formula mentioned therein – According to the respondent, the reservation of 25% would apply to the balance of molasses left over after its captive consumption for its distillery – Whereas, appellants asserted that the reservation of 25% would be on the total production of molasses, to be adjusted eventually on the basis of the balance stock computable in terms of the formula defined in the Policy – Held: In the Policy for the Molasses Year 2015-16, mandate is for 25% reservation of the total molasses produced – Unambiguous prescript of the Policy that the reservation would be of 25% of the molasses produced, which by no means, can be construed to connote that such reservation had been contemplated to be only of the balance stock left over after the captive consumption of the sugar mill(s) concerned – Noticeably, the Policy consciously underlines that in any event thereby, the captive consumption of molasses by the sugar mills is not affected at all, so much so that if the balance stock is more than the extent of reservation, the whole of it would apply, but if the balance stock is less than the quantity to be reserved, the reservation would work only to the extent of the balance stock and not in excess – Therefore, the plea of the respondent that the reservation is unmistakably limited to 25% of the balance stock under all situations is visibly flawed and fallacious.*

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**Allowing the appeal, the Court**

**HELD: 1.1** It would be apparent from the Molasses Policy 2015-16 that for the Molasses Year 2015-16, every sugar mill, at the first place, would have to keep 25% of the molasses produced,

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- A reserved and those sugar mills, whose distilleries are situated in the State, would apply the following norms of reservation:
- (a) If the balance stock exceeds the reserved quantity (25%), then in that case, full reservation would apply to them w.e.f. the commencement of the molasses year.
- B (b) In case the balance stock is less than the reserved quantity then, reservation would apply w.e.f. the commencement of the molasses year, but would be limited to the quantity of balance stock.
- C (c) If the balance stock is nil i.e if the captive consumption of molasses exceeds the quantity available to them, no reservation would apply. [Para 21] [1109-E-H]

1.2 The Policy determined the balance stock as hereunder:  
 Balance stock for the Molasses Year 2015-16 = unreserved preliminary stock of the group of mills in the Molasses Year 2015-16 + production in the Molasses Year 2015-16 – self-consumption of molasses in the Molasses Year 2015-16 (equivalent of self-consumption of molasses up to 31.10.2015 in the Molasses Year 2014-15). [Para 24] [1110-D]

1.3 The balance stock for the purpose of the Policy, therefore, in essence, is the stock that would be left over after utilization of the commodity for captive consumption in the Molasses Year 2015-16 from the sum total of the unreserved preliminary produce of the same molasses year and the production thereof in the said year. The computation of balance stock though relevant to eventually decide as to the extent of reservation that would be effective to ascertain the volume of supply to other distilleries manufacturing country-made liquor, it however does not in any way support the contention of the respondent that irrespective of the eventualities in the aforementioned clauses (a), (b) and (c), the reservation would be of 25% only of such balance stock and not otherwise. This is in view of the unambiguous prescript of the Policy that the reservation would be of 25% of the molasses produced, which by no means, can be construed to connote that such reservation had been contemplated to be only of the balance stock left over after the captive consumption of the sugar mill(s) concerned. Such a

construction would be a total misreading of the Policy and would border on perversity. [Para 25] [1110-E-H] A

2. Noticeably, the Policy in question consciously underlines that in any event thereby, the captive consumption of molasses by the sugar mills is not affected at all, so much so that if the balance stock is more than the extent of reservation, the whole of it would apply, but if the balance stock is less than the quantity to be reserved, the reservation would work only to the extent of the balance stock and not in excess thereof. As the balance stock, if any, conceptually would be the residue after the utilization by way of captive consumption, in absence of the challenge to the Policy to be illegal, unfair, unjust, unreasonable or unconstitutional, the plea of the respondent that the reservation is unmistakably limited to 25% of the balance stock under all situations is visibly flawed and fallacious. The measure of the captive consumption for the Molasses Year 2015-16, on the basis of such utilization for the Molasses Year 2014-15, in absence of any overwhelming material to the contrary, also cannot be faulted with. [Para 28] [1112-A-D] B C D

*Dhampur Sugar Mills Ltd. v. State of U.P. and others* (2007) 8 SCC 338 : [2007] 10 SCR 245 – held inapplicable. E

*SIEL Limited v. Union of India* (1998) 7 SCC 26 : [1998] 1 Suppl. SCR 560 – referred to.

Case Law Reference

[2007] 10 SCR 245 held inapplicable Para 6

[1998] 1 Suppl. SCR 560 referred to Para 18 F

CIVIL APPELLATE JURISDICTION : Civil Appeal No.10610 of 2017.

From the Judgment and final Order dated 07-10-2016 passed by the High Court of Judicature at Allahabad in Writ (C) No.40567 of 2016. G

Dinesh Dwivedi, Ms. Indu Malhotra, Sr. Advs., Mr. Ardhendumauli Kumar Prasad, Ms. Nalin Kohli, Prasanjit Keshwani, Ankit Roy, V. D. Khanna, Sumit Goel, Ms. Sonal Gupta, P. K. Bhalla, Praveen Kumar, Ms. Babita Sant, Tanvir Nayar, Advs. for the appearing parties. H

A The Judgment of the Court was delivered by  
**AMITAVA ROY, J.** 1. Leave granted.

B 2. The State of Uttar Pradesh along with its functionaries of the  
Department of Excise are in appeal against the judgment and order dated  
07.10.2016 rendered by the High Court of Judicature at Allahabad,  
thereby in essence directing the appellants to allow the respondent to  
retain 25% of the balance stock of molasses, after utilization for its captive  
consumption, for supply to the distilleries manufacturing liquor for the  
C Molasses Year 2015-16. The respondent was also left at liberty to move  
the appropriate authority in the event of its requirement for further quantity  
of molasses for its captive consumption during the said Molasses Year.  
The appellants repudiate this determination and the above directions to  
be opposed to and militative of the policy for the Molasses Year 2015-16.

D 3. We have heard Mr. Dinesh Dwivedi, learned senior counsel  
for the appellants and Ms. Indu Malhotra, learned senior counsel for the  
respondent.

E 4. The pleaded facts in brief, sans the inessentials need be  
adverted to for the required grip of the issues. The respondent company  
has three sugar mills in the name and style of “Mawana Sugar Works,  
Mawana, Distt. Meerut,” “Nanglamnal Sugar Complex, Nanglamal, Distt.  
Meerut and “Titawi Sugar Complex, Titiwi, Distt. Muzaffarnagar” which  
are engaged in the manufacture of crystal sugar through vacuum pan  
process and produce molasses as a by-product. Admittedly the storage,  
sale, supply and distribution of molasses within the State of U.P. is  
governed by the Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964 (for  
short, hereinafter to be referred to as “the Act”), whereunder in terms  
F of Section 8, the Controller of Molasses, with the prior approval of the  
State Government, is empowered to issue order to a sugar mill for transfer  
or sale or supply in the prescribed manner, such quantity of molasses to  
such persons, as may be specified therein. It is a matter of record that  
every year, the State Government issues “Molasses Policy”, whereby it  
G prescribes the mode and manner in which the molasses produced by the  
sugar mills would be dealt with. The policy invariably provides for  
reservation of certain portion of the molasses produced by the sugar  
mills for sale and supply to the country liquor manufacturers.

H 5. The State Government, for the Molasses Year 2015-16, vide its  
communication No. 39/2016/1501/E-2/13-2016-74/2015 dated 24.6.2016

issued the "Molasses Policy" (for short also "Policy") for the said year. A  
The Policy provided for a reservation of 25% of the molasses produced  
to be supplied to the country liquor manufacturers as per the formula  
mentioned therein.

6. The parties are at issue on the interpretation of the above B  
Policy. Whereas, according to the respondent, the reservation of 25%  
would apply to the balance stock of molasses left over after its captive  
consumption for its distillery, as propounded in *Dhampur Sugar Mills*  
*Ltd. vs. State of U.P. and others*<sup>1</sup>, the assertion of the appellants herein  
is that having regard to the content and purport of the Policy, the  
reservation of 25% would be on the total production of molasses; to be C  
adjusted eventually on the basis of the balance stock computable in  
terms of the formula defined in the Policy.

7. The pleaded case of the respondent is that the entire  
requirement of molasses for operating its distillery is met from the stock  
produced in its sugar mills and that dealing with previous Molasses Year  
2015-16, the balance stock of molasses left over after such captive D  
consumption was made available for supply to the country liquor  
manufacturers in terms of the Policy for that year.

8. According to it, in the Molasses Year 2015-16, the production  
of molasses has been much less for various reasons and though it had  
consumed a portion of the stock for its captive consumption in its  
distilleries till 6.6.2016, when the operations had to be suspended due to E  
rain, it was anticipated that the whole of the remaining stock would be  
utilised in its distilleries and no balance stock would be left for reservation  
or supply to the country-made liquor manufacturers. Though stating the  
above in details, it had made a representation on 5.7.2016 before the F  
Controller of Molasses highlighting that the entire stock of molasses  
produced during the Molasses Year 2015-16 would be unavoidably utilised  
for its captive consumption in its distillery, the said authority by the order  
dated 27.7.2016 without recording any reason has directed compliance  
of the Policy for the Molasses Year 2015-16, and thereby for all practical  
purposes has rejected the request made. G

9. The appellants in their pleadings in reply, while endorsing the  
Policy for the year 2015-16 and the reservation of 25% of the molasses  
produced during that year, did *inter alia* underline as well that in terms  
of the Act, the State Government was authorised and empowered to  
(2007) 8 SCC 338 H

A direct/regulate, control, storage, supply, gradation of price of molasses. It was elaborated that the aim and object of the fixation of reservation and to maintain the exist ratio of molasses was to ensure proper availability of the commodity for the country liquor distilleries each month so that the revenue earned by the State from country liquor was not adversely affected for the financial year 2016-17. It underlined that the Minimum Guarantee Quantity of country liquor in the financial year 2016-17 was about 32.02 crore bulk liter by which a revenue of Rs. 8037.42 crores was likely to be generated and for that purpose, the estimated requirement of molasses was 52 lakhs quintal. That supply of quality molasses of the above amount was uncompromisingly essential to make available to the public, safe and potable country liquor at an appropriate price, so as to guard against consumption of spurious stuff manufactured illegally and prevent fatal accidents and injuries to public health, has been emphasized. The appellants thus, sought to flag that the regulatory regime for reservation of molasses for production of country liquor was not only to generate revenue for the State Government but was also comprehended in the interest of public life, health and safety. It was highlighted as well that in absence of reservation of molasses, the sugar mills would be at liberty to hold the stock thereof in order to earn high profit at the end of the year or to convert it into free sale stock which would dislocate the supply to the country liquor manufacture distilleries, thus adversely affecting the availability of the safe and quality country liquor for the general public. After referring to the statistics pertaining to the respondent company with regard, amongst others to its opening balance, production and captive consumption over a period of four years from 2012-13 to 2015-16, the appellants endeavoured to demonstrate that in all these years, the respondent company had been left with surplus stock/balance stock after utilising the rest for its captive consumption. Due reference was made as well of the Policy and in particular of the computation of balance stock to conclude that the impugned action was unassailable.

10. The High Court, as the impugned judgment would attest, premised its determination, chiefly on the decision of this Court in *Dhampur Sugar Mills*<sup>1</sup>, which, as would unfold hereinafter, was founded on the policy distinctly different from one, formulated for the Molasses Year 2015-16. Be that as it may, according to the High Court, the Policy was based on the directions given by this Court in the above pronouncement. It found fault with the impugned order dated 27.7.2016 requiring compliance by the respondent of the Policy, as devoid of reasons.

It perceived the stand of the appellants, to be that the entire excess stock had to be reserved by the respondent for supply to the distilleries manufacturing liquor, without however referring to in particular the concept of balance stock, as explained in the Policy and held, in terms of the decision in *Dhampur Sugar Mills*<sup>1</sup>, that the respondent was required to reserve 25% only of the excess stock left over after its captive consumption. It noted the figures representing the opening stock, production of molasses and the captive consumption thereof for the Molasses Year 2015-16, which was based on the actual consumption in the previous Molasses Year 2014-15 and calculated the balance stock for the Molasses Year 2015-16 to be 15,994 M.T. and held that the respondent would be required to reserve 25% thereof only for supply to the distilleries, manufacturing country liquor. The contention of the respondent that it may be allowed to consume the entire stock of molasses was rejected and in absence of particulars furnished by it, accepted its captive consumption to be as in the Molasses Year 2014-15. Accordingly, the respondent was required to retain 25% of its balance stock, after its captive consumption, to be reserved for supply to the distilleries manufacturer country liquor as per the Policy. To reiterate, the appellant was also granted the liberty to offer to the authorities concerned, in case, it required further quantity of molasses for its captive consumption during the Molasses Year 2015-16.

11. Mr. Dinesh Dwivedi, learned senior counsel for the appellants has emphatically asserted that the impugned judgment proceeds on an erroneous reading of the decision rendered by this Court in *Dhampur Sugar Mills*<sup>1</sup> and a patently wrong interpretation of the Policy and is thus, clearly unsustainable in law and on facts. The learned senior counsel maintained that the policy analysed and adverted to by this Court in *Dhampur Sugar Mills*<sup>1</sup> was distinctly different in its text and tenor from the Policy in question, for which no analogy therefrom was possible. According to him, the Policy, though at places, has reference of the observations in *Dhampur Sugar Mills*<sup>1</sup>, it stands on its own strength and if correctly interpreted, would squarely defeat the assertions of the respondent and the findings recorded in the impugned judgment. The decision given in *Dhampur Sugar Mills*<sup>1</sup> has no decisive bearing at all on the Policy and thus, the starting premise of the impugned judgment is patently flawed, rendering it indefensible, he urged. Apart from reiterating the underlying objectives of the Policy in espousal of public interest as pleaded, Mr Dwivedi, referring to the concept of balance stock, as

A explicated in the Policy, insisted that a manufacturer of molasses, was at the outset, obligatorily required to keep apart 25% of its total production in the Molasses Year 2015-2016, to be adjusted, eventually subject to its captive consumption for its distillery and in the face of such unequivocal mandate thereof, any interpretation either contrary thereto or in  
B unwarranted moderation thereof, is untenable in law.

12. Ms. Indu Malhotra, learned senior counsel for the respondent in confutation of the above, argued that the elucidation of the policy offered by the High Court, based on the enunciation in *Dhampur Sugar Mills'* is unimpeachable. According to her, the interpretation of the Policy, as extended by the appellants, besides being utterly wrong, if accepted,  
C would amongst others leave the respondent at the end of Molasses Year 2015-16, without any stock whatsoever of molasses to embark upon its manufacturing process for the next year, which is inconceivable. She has urged that the profuse reference of the decision in *Dhampur Sugar Mills'* in the Policy makes it abundantly clear that the exposition of the  
D policy, as made therein, was consciously made applicable to the Policy involved and thus the respondent at the most in terms thereof was required to reserve only 25% of the stock of molasses left in balance after its captive consumption to the fullest extent.

13. The disparate pleadings and the contrasting assertions have  
E received our due consideration. As a plain reading of the impugned judgment would testify, that it is substantially structured on the rendering in *Dhampur Sugar Mills'*, apt it would be at the outset to advert thereto, so as to clear the deck for the ultimate adjudication.

14. The parties are not at issue that the Act has installed a legal  
F regime whereunder the State Government may issue necessary orders/directions for control, storage, supply, gradation and prices of molasses and that the Policy and the orders impugned do not suffer from any lack of authority. To reiterate, neither the validity of the Act nor that of the Policy has been assailed and hence, the instant exercise is limited to the dissension on the interpretation of the Policy in its application to the  
G respondent and other sugar mills equally situated. To address the issue and having regard to the pre-supposition on which the impugned judgment has been passed, it would be expedient to note in seriatim, the rendition in *Dhampur Sugar Mills'* and the relevant portions of the Policy 2015-2016.

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15. In *Dhampur Sugar Mills*<sup>1</sup>, the assailment pertained to an order of the State of U.P. directing the appellant under the Uttar Pradesh Sheera Niyam Adhiniyam, 1964 (abbreviated as "the Act") to supply 20% of the molasses produced by its sugar mills for manufacturing "country-made liquor" by distilleries for the financial years 2003-04 and 2004-05 as well as the consequential show cause notices for prosecution, as upheld by the jurisdictional High Court. The appellant did have a sugar mill in the State together with a distillery which manufactured ethyl alcohol, used for blending of petrol, manufacture of chemicals and rectified spirit for medicines. It also had similar business at other places. The main contention of the appellant was that though it was producing molasses, the entire production was required by it for captive consumption and even that was not sufficient for which it, with the permission of government, had been importing the commodity from other states as well as from other countries. It therefore reasoned that as it was left with no balance or extra stock of molasses for supply to the distilleries manufacturing country-made liquor, the authorities could not compel it to supply molasses vide the impugned orders and repudiated the impugned action to be illegal, arbitrary and unreasonable and also being violative of Articles 14 and 19(1)(g) of the Constitution.

16. In refutation, the plea of the government was that in accordance with the provisions of the Act, it was open to the authorities to ask the appellant to supply 20% molasses for the purpose of manufacturing country-made liquor and thus the impugned orders were perfectly in accord with the mandate of the enactment and by no means could be termed as illegal and unlawful. The High Court, to reiterate, held that the reservation for 20% of molasses and the directions issued to the appellant to supply such stock for manufacturing country-made liquor were neither contrary to law nor against public policy and thus rejected the impugnement of the appellant.

17. Before this Court, it was principally canvassed that the impugned order(s) were expressly clear and required a sugar mill to reserve 20% of the molasses from the balance stock i.e. the left over after the actual consumption by the industry, for manufacturing country liquor and as the appellant did not have such balance stock of molasses, even for its captive consumption and had to import molasses from other states in the country and abroad, it could not be compelled to reserve 20% molasses for manufacturing country liquor by other distilleries.

A 18. This Court, while noticing that the constitutional validity of the  
 Act had not been challenged, the same having been upheld earlier in  
*SIEL Limited vs. Union of India*<sup>2</sup> wherein the statute was held to be  
 within the legislative competence of the State and also not inconsistent  
 with the Industries (Development and Regulation) Act 1951, noted further  
 B clause (3) of the order 9.6.2004 relied upon by the High Court to partially  
 uphold the challenge. The, original text of the order impugned being in  
 Hindi, the translation thereof, as referred to in the judgment, is extracted  
 hereinbelow:

“25. The English translation supplied by the appellant at Annexure  
 P-3 reads thus:

C “From the balance stock of molasses with each sugar mill, 20%  
 of molasses shall be reserved for the distilleries manufacturing  
 country liquor. The sugar mills having their own distilleries shall  
 not be covered within this reservation to the extent that after the  
 D actual consumption of molasses in their captive distillery, 20%  
 reservation shall be applicable on the balance stock.”

19. Having regard to the above quoted text, this Court ruled that  
 the same applied only to the excess stock of molasses, i.e., molasses  
 which was in excess of and not used for captive consumption by the  
 sugar factory and was thus “the balance stock” and sustained the  
 E assertion of the appellant to that extent. This Court minuted as well the  
 plea of the appellant that it had no excess stock of molasses and had to  
 import the said commodity from other sources to meet its requirement  
 for manufacturing industrial alcohol, after obtaining such permission  
 granted by the Central Government as well as the State Government.  
 F This Court therefore declared that the case of the appellant in the singular  
 fact situation as projected, did not fall within the purview of clause (3) as  
 above and, therefore, could not have been invoked by the authorities  
 against it. It therefore, determined that the High Court was not right in  
 holding that all sugar mills were bound to supply 20% of molasses under  
 Clause (3) of the Government Order 2004 irrespective of the stock  
 G possessed. The other contentions addressed being not of any significance  
 for the instant adjudication are not being adverted to. Suffice it to set-out  
 hereinabove the operative portion of the decision as contained in  
 paragraphs 53 and 54 thereof:

H <sup>2</sup> (1998) 7 SCC 26

“53. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and the order of the High Court deserves to be set-aside. It is, accordingly, held that the directive issued by the respondents would not apply in case there is no balance stock of molasses with any sugar mill. The respondent authorities have no right to compel such sugar mills to supply 20% molasses for the purpose of manufacturing country liquor.

54. We may, however, make one thing clear. As seen above, the assertion of the appellant was that it has no balance stock and even for its own requirement, it has to import molasses. On the other hand, the allegation of the respondents is that excess and balance molasses was available with the appellant which it had sold in open market. The High Court, in the impugned order has not decided the question finally. Quoting certain paragraphs from the writ petition, the High Court observed that there was no proper pleading and as such, the Court was not in a position to go into the question. It is, therefore, made clear that it is open to the respondents to take appropriate action in accordance with law on the basis of our decision and observation made in this judgment.”

20. The records testify that the said Policy 2015-16 was published by a Circular/Communication No.39/2016/1501/E-2/Thirteen-2016-74/2015 in vernacular and a translated copy thereof has been placed on records and produced in course of the arguments. As it had been attested on behalf of the appellants by Mr. Dwivedi that the document produced at the hearing bears the correct translated version of the original, the same would be referred to. The relevant excerpt therefrom is quoted hereinbelow:

“In this regard, I have been directed to say that suggestions/proposals received from you in pursuance to the aforesaid letters dated 9<sup>th</sup> November, 2015; 20<sup>th</sup> January, 2016; 2<sup>nd</sup> February, 2016; 2<sup>nd</sup> April, 2016; 4<sup>th</sup> May, 2016 and 23<sup>rd</sup> May, 2016, were placed in the meetings of the Molasses Advisory Committee headed by Chief Secretary held on 31.10.2015 and 15.03.2016 and the same were considered in the said meetings and in furtherance of the same, following Molasses Policy has been framed for the year 2015-16:

- A (1) Every sugar mill in the molasses year 2015-16 will keep 25% of the molasses, produced, reserved and those sugar mills whose distilleries are situated in the State will apply following reservation on the quantity of molasses produced by them in the year 2015-16:
- B (i) If the balance stock of the group of captive sugar mills exceeds reserved quantity (25%), then in that case full reservation shall apply to them with effect from the commencement of the molasses year as per directions contained in paragraph 47 of the Order dated 24.09.2007 passed in Civil Appeal No.4466 of 2007 titled M/s Dhampur Sugar Mills Limited Versus State of Uttar Pradesh and Others. Because it will not create any shortage in their own consumption of the molasses (in view of the quantity of self consumption of the molasses year 2014-15);
- C (ii) Whereas in case the balance stock of the group of captive sugar mills is lesser than the reserved quantity, then in that case reservation shall apply to them with effect from commencement of the molasses year and quantity of reservation shall be limited to the quantity of balance stock as it will not result in any shortage of their self-consumption (in view of the quantity of self consumption of the molasses year 2014-15) as per directions contained in paragraph 46 of the Order dated 24.09.2007 passed in Civil Appeal No.4466/07- titled M/s Dhampur Sugar Mills Limited versus State of Uttar Pradesh and Others. Because it will not create any shortage in their own consumption of the molasses (in view of the quantity of self consumption of the molasses year 2014-15);
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- F (iii) Whereas in case the balance stock of the group of captive sugar mills is nil i.e. to say that their consumption of molasses exceeds the quantity of molasses available to them (self-consumption based on molasses year 2014-15), then in that case no reservation shall apply to them as per directions contained in paragraph 46 of the Order dated 24.09.2007 passed in Civil Appeal No.4466/2007- titled M/s Dhampur Sugar Mills Limited Versus State of Uttar Pradesh and Others.
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Determination of the balance stock:

Balance stock has been elaborated by the Honorable Supreme Court in para 20 of its Judgment and Order dated 24.09.2007

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passed in Civil Appeal No.4466/2007- titled M/s Dhampur Sugar Mills Limited Versus State of Uttar Pradesh and Others, which reads as under - A

“In our opinion, however, Clause (3) applies only to excess stock of molasses that is, molasses which is in excess of and not used for captive consumption by sugar factory and is thus balance stock.” B

Therefore, balance stock for the molasses year 2015-16 = unreserved preliminary stock of the group of mills in the molasses year 2015-16 + production in the molasses year 2015-16 – self consumption of molasses in the molasses year 2015-16 (equivalent to self-consumption of molasses up to 31.10.2015 in the molasses year 2014-15). C

(2). The aforesaid percentage of reservation is fixed with the condition that availability and necessity of molasses will be reviewed after every quarter and if there occurs any change (for increase or decrease) in the percentage of reservation due to availability of molasses and necessity of country liquor, then State Government will take an appropriate decision regarding change in the reservation percentage of the molasses, after considering each and every fact in detail.” D

21. It would be apparent from the quoted text that for the Molasses Year 2015-16, every sugar mill, at the first place, would have to keep 25% of the molasses produced, reserved and those sugar mills, whose distilleries are situated in the State, would apply the following norms of reservation: E

(a) If the balance stock exceeds the reserved quantity (25%), then in that case, full reservation would apply to them w.e.f. the commencement of the molasses year. F

(b) In case the balance stock is less than the reserved quantity then, reservation would apply w.e.f. the commencement of the molasses year, but would be limited to the quantity of balance stock. G

(c) If the balance stock is nil i.e if the captive consumption of molasses exceeds the quantity available to them, no reservation would apply. H

A 22. As all the clauses would demonstrate, reference of paragraphs 46 and 47 of the decision in *Dhampur Sugar Mills*<sup>1</sup> has been referred to, highlighting that in all the eventualities, the captive consumption of molasses by the sugar mills would thereby not be curtailed or prejudicially affected.

B 23. With reference to “balance stock” as well, in the decision in *Dhampur Sugar Mills*<sup>1</sup>, following observation in paragraph 20 (corresponds to para 27 of the reported judgment, as above) has been alluded to:

C “In our opinion, however, Clause (3) applies only to excess stock of molasses, that is, molasses which is in excess of and not used for captive consumption by sugar factory and is thus the balance stock.”

D 24. The Policy determined the balance stock as hereunder:  
Balance stock for the Molasses Year 2015-16 = unreserved preliminary stock of the group of mills in the Molasses Year 2015-16 + production in the Molasses Year 2015-16 – self-consumption of molasses in the Molasses Year 2015-16 (equivalent of self-consumption of molasses up to 31.10.2015 in the Molasses Year 2014-15).

E 25. Thus the balance stock for the purpose of the Policy in essence is the stock that would be left over after utilization of the commodity for captive consumption in the Molasses Year 2015-16 from the sum total of the unreserved preliminary produce of the same molasses year and the production thereof in the said year. The computation of balance stock though relevant to eventually decide as to the extent of reservation that would be effective to ascertain the volume of supply to other distilleries manufacturing country-made liquor, it however does not in any way support the contention of the respondent that irrespective of the eventualities in the aforementioned clauses (a), (b) and (c), the reservation would be of 25% only of such balance stock and not otherwise. This is in view of the unambiguous prescript of the Policy that the reservation would be of 25% of the molasses produced, which by no means, can be construed to connote that such reservation had been contemplated to be only of the balance stock left over after the captive consumption of the sugar mill(s) concerned. Such a construction would be a total misreading of the Policy and would border on perversity.

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26. To recount, clause (3) of the order dated 09.06.2004, which fell for scrutiny of this Court in *Dhampur Sugar Mills*<sup>1</sup> was in following terms: A

“25. The English translation supplied by the appellant at Annexure P-3 reads thus:

“From the balance stock of molasses with each sugar mill, 20% of molasses shall be reserved for the distilleries manufacturing country liquor. The sugar mills having their own distilleries shall not be covered within this reservation to the extent that after the actual consumption of molasses in their captive distillery, 20% reservation shall be applicable on the balance stock.” B C

27. This is both in text and content totally dissimilar to the above excerpt extracted from the Policy for the Molasses Year 2015-16. Whereas in the order under challenge in *Dhampur Sugar Mills*<sup>1</sup>, it is crystal clear that the policy intended reservation to the extent of 20% of the molasses from the balance stock with the sugar mill, in apparent contradistinction, in the Policy for the Molasses Year 2015-16, the mandate is for 25% reservation of the total molasses produced. The adjustment, if any, in the extent of reservation to be eventually made depending on the quantum of balance stock, in our comprehension, would not alter the essence of the Policy in the manner as pleaded by the respondent. The pith and purport of the two policies, being strikingly at variance, no analogy is permissible. D E

28. A plain reading of paragraphs 46/47 of the decision in *Dhampur Sugar Mills*<sup>1</sup>, (as referred to the Policy) which in its reported version in (2007) 8 SCC 338, correspond to paragraphs 53 & 54 authenticate the above deduction. In the overall context, we are abundantly clear that such reference was unwarranted and, in any case, had been made only to indicate the notion that physically the balance stock would be the stock that would be left over after the captive consumption of molasses by the sugar mill concerned and has no bearing at all on the computation of balance stock as envisaged in the Policy and and in no manner would guide the interpretation thereof. In that view of the matter, the presupposition of the High Court that the Policy for the Molasses Year 2015-16 was based on the decision in *Dhampur Sugar Mills*<sup>1</sup> is patently incorrect. Such policies being an annual event, contingent on contemporaneous exigencies and within the realm of executive discernment, the High Court, in our estimate, had fallen in gross error in F G H

A proceeding on that premise and issuing the consequential directions as made. Noticeably, the Policy consciously underlines that in any event thereby, the captive consumption of molasses by the sugar mills is not affected at all, so much so that if the balance stock is more than the extent of reservation, the whole of it would apply, but if the balance stock is less than the quantity to be reserved, the reservation would work only to the extent of the balance stock and not in excess thereof.

B. As the balance stock, if any, conceptually would be the residue after the utilization by way of captive consumption, in absence of the challenge to the Policy to be illegal, unfair, unjust, unreasonable or unconstitutional, the plea of the respondent that the reservation is unmistakably limited to

C 25% of the balance stock under all situations is visibly flawed and fallacious. The measure of the captive consumption for the Molasses Year 2015-16, on the basis of such utilization for the Molasses Year 2014-15, in absence of any overwhelming material to the contrary, also cannot be faulted with.

D 29. In the wake up of the above, we are of the unhesitant opinion that the impugned judgment being based on a total misreading of the Policy for the Molasses Year 2015-16 and also of the verdict in *Dhampur Sugar Mills*<sup>1</sup> in its application to the attendant facts and circumstances, it is clearly insupportable and unsound in law and is thus liable to be set aside, which we hereby do.

E 30. As a consequence, the operative directions contained therein are also annulled. The appellants would ensure that the Policy is implemented in its letter and spirit. The respondent would abide by the same and extend its cooperation without fail. The appeal is allowed. No costs.

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