

The State of Bombay

Vs

M/s. S. S. Miranda Limited

Civil Appeal No. 21 of 1956

(K. N. Wanchoo, P. B. Gajendragadkar JJ)

25.03.1960

JUDGMENT

WANCHOO, J. -

This is an appeal on a certificate granted by the Bombay High Court. The brief facts necessary for its disposal are these. Messrs. S.S. Miranda Ltd. (hereinafter called the respondent) is a company and was holding a trade and import licence of foreign liquor as well as a vendor's licence under the Bombay Abkari Act (Bom. V of 1878) (hereinafter called the Act), upto the end of March 1949. It used to keep the liquor in a bonded warehouse. On April 2, 1948, the respondent was informed by the State of Bombay (hereinafter called the appellant) to remove the liquor from the bonded warehouse after paying the necessary excise duty. In pursuance of this letter, the respondent paid the duty and got transport permits from the appellant. It may be mentioned that the bonded warehouse was in the premises of the respondent itself and all that happened after the payment of the duty was that the liquor no longer remained in bond but came into possession of the respondent. The transport permits were issued on April 5, 1948, and thereafter the respondent took over the liquor and some of it was sold. On December 16, 1948, a notification was issued by the appellant (hereinafter referred to as the Notification) whereby the duty on foreign liquor was doubled. Thereupon the respondent was asked by the appellant to pay the additional duty upon the liquor which was still lying in its godown and was also told that it would not be permitted to deal with that liquor until the additional duty was paid. The respondent objected to this demand but paid the duty, which came to over two lacs of rupees, under protest. Thereafter a notice was given by the respondent under s. 80 of the Code of Civil Procedure to the appellant and was followed by a suit on the original side of the Bombay High Court.

The main contention of the respondent was that the Notification in so far as it imposed and levied additional duty on the stock of foreign liquor on which the duty had already been paid at the time of its issue from the bonded warehouse was illegal, invalid and ultra vires the Act and in particular beyond the scope of s. 19 of the Act. The respondent therefore claimed refund of the duty which it had paid under protest and also interest at 6 per cent. per annum from the date of payment till the date of recovery.

The suit was resisted by the appellant, and its case was that the Notification was valid and that the respondent was bound to pay the duty prevailing on the transport of the excisable articles at the time of transporting the same from its premises to another place within the State of Bombay.

Thus the only question that fell for consideration was whether the additional duty imposed and levied under the Notification was legally levied. The learned judge, who tried the suit, was of the

opinion that it was competent for the legislature to impose tax on excisable articles whenever they were transported from one place to another and that that power was delegated to the State Government which was thus competent to impose a duty on excisable articles not only once when they were transported in the beginning but also thereafter whenever they were transported from one place to another within the State before the goods passed into the hands of the consumer, and dismissed the suit.

The respondent went in appeal against the dismissal. The appeal was heard by a Division Bench and was allowed and the suit was decreed with interest at certain rates. The Division Bench was of the opinion that reading ss. 10 and 19 together it was clear that when the duty mentioned in s. 19 had been paid, the prohibition contained in s. 10 must disappear subject to the Explanation to s. 19. It also held that the first proviso to s. 19A of the Act was really a proviso to s. 19 and determined the rate at which the duty was to be paid and that there could be no further imposition of duty against the terms of that proviso by the Notification.

The main contention on behalf of the appellant before us is that it is open to the legislature to impose excise duty at more points than one and that that was what has been done by the legislature in this case and the Government when it made the Notification in December 1948 was carrying out the provisions of the Act. Reliance in this connection was placed on ss. 3(10), 10 and 19 of the Act, and it is urged that reading these three sections together it will be clear that the Notification was valid and within the powers of the State Government.

The relevant portion of the Notification is in these terms :-

"In exercise of the powers conferred by section 19 of the Bombay Abkari Act, 1878 (Bombay V of 1878), and in partial supersession of all previous orders and notifications issued thereunder, that is to say, in so far as they relate to the imposition of excise and countervailing duties charged on the excisable articles specified in column 1 of Schedules A and B hereto annexed, the Government of Bombay is pleased to direct that -

(a) excise or countervailing duty, as the case may be, shall be imposed on the excisable articles specified in column 1 of Schedule A at the rate specified in columns 2 and 3 thereof, when such excisable articles are -

(i) imported into the Province in accordance with the provision of sub-section (1) of section 9 of the said Act; or

(ii) issued from any brewery, distillery or a warehouse established under the said Act in the Province; or

(iii) transported from the premises of persons holding a Trade and Import license under the said Act to any place within the Province :

Provided that no such duty shall be imposed on the excisable articles which have been imported into British India and were liable on such importation to duty under the Indian Tariff Act, 1934, or the Sea Customs Act, 1878 :

Provided further that if excise or countervailing duty has already been paid on such excisable articles for their import, issue or transport for consumption into, to or

within any place in the Province, the amount of duty to be imposed shall be the difference between the amount of duty leviable at the rates specified in the said Schedule and that already paid on such articles; and

#(b) "##

Then follow the Schedules which it is unnecessary to set out. By the notification excise duty at the rates specified in the Schedules is imposed on excisable articles when they are transported from the premises of persons holding a trade and import licence under the said Act to any place within the State. The second proviso, however, provides that where some excise duty has already been paid in connection with transport, the amount of duty to be imposed under the Notification would be the difference between the duty leviable under the Notification and the duty already paid.

The narrow question therefore is whether this additional duty can be legally levied by the State of Bombay and the answer to it will depend on the three provisions of the Act relied upon by the appellant. Sec. 3(10) defined "to transport" to mean "to move to one place from another place within the State". This definition is very wide and would cover any movement of excisable article at any stage from one place to another within the State.

Then comes s. 10, the relevant portion of which is in these terms -

"No intoxicant and no hemp shall be exported or transported unless -

(a) the duty, if any, payable under Chapter VI has been paid or a bond has been executed for the payment thereof."

This section thus forbids the transport of any excisable article unless the duty payable under Chapter VI (which deals with the subject of duties) has been paid.

Lastly, we come to s. 19 which is the charging section and is in these terms -

"An excise duty or countervailing duty, as the case may be, at such rate or rates as the State Government shall direct may be imposed either generally or for any specified local area, on any excisable article -

(a) imported in accordance with the provision of sub-section (1) of s. 9; or

(b) exported or transported in accordance with the provisions of s. 10; or

(c) manufactured under a license granted in accordance with the provisions of section 14 or section 15; Provided that -

(i) duty shall not be so imposed on any article which has been imported into India and was liable on such importation to duty under the India Tariff Act, 1894 or the Sea Customs Act, 1878 :

Explanation - Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article."

This section gives power to the State Government to fix the rate or rates on which the duty will be levied on transport of excisable articles. The Explanation to the section gives powers to the State Government to impose duties at different rates according to the places to which any excisable article is to be removed for consumption or according to the varying strengths and quality of such article.

The argument on behalf of the appellant is that in view of the very wide definition of the word "transport" and the prohibition of transport contained in s. 10 without payment of duty it is clear that every time there is transport the duty becomes payable at the rate fixed by the State Government under s. 19 and that there is nothing in these sections which in any way limits the power to levy duty at every stage of transport. If this argument is accepted it will logically mean that every time there is transport of an excisable article duty will have to be paid till the excisable article has been actually consumed. In other words when for example, the excisable article is transported from the bonded warehouse by a wholesaler he will have to pay duty on it; when a wholesaler sells to a retailer there is bound to be transport from the wholesaler's premises to the retailer's premises and the duty will have to be paid again. Finally when the retailer sells it to a consumer there will again be transport from the retailer's place to the consumer's place and duty will have to be paid a third time. Further if the interpretation as urged on behalf of the appellant is accepted, the duty will have to be paid again and again in the cases mentioned above, even though the rate remains the same. The fact that in this particular case the rate was changed and that the State Government only demanded the extra duty will not affect the question of interpretation of the three provisions of the Act with which we are concerned. Was it then the intention of the legislature when it made these provisions to levy duty irrespective of the fact whether the rate was changed or not, again and again as an excisable article passed from the bonded warehouse to the wholesaler, from the wholesaler to the retailer and from the retailer to the consumer ? It is true that it was competent for the legislature to make such a provision; but the question is whether the three provisions which we have set out above, amount to making such a provision. Sri Umrigar for the appellant fairly admits that if the rate of duty had not been changed there would not have been any demand of any further duty on any sale by the respondent which might have resulted in transport and that the practice was not to charge the same duty over again on sale by the wholesaler to the retailer or by the retailer to the consumer even though these sales resulted in transport except where the Explanation to s. 19 applies. If this practice is in accordance with law when there is no change in duty we cannot see how the excisable article which had been subjected to duty once will be liable to further duty equal to the difference when there is increase in the rate, (except of course where the Explanation to s. 19 applies). We see nothing in s. 10 which lays down that every time there is transport, duty must be paid even though the duty has already been paid when the first transport of an excisable article takes place. What s. 10 prohibits is the transport of excisable article unless the duty has been paid thereon. Once the duty has been paid the prohibition under s. 10 no longer applies, unless the case is covered by the Explanation to s. 19. However wide may be the definition of "transport", what has to be seen is whether the prohibition under s. 10 is to apply even to those excisable articles on which duty has been paid. On a plain reading of s. 10, the prohibition under that section cannot apply to transport of excisable articles on which duty has been paid. Section 19, which is the charging section, provides for levying of duty on transport in accordance with the provisions of s. 10. This brings us back to s. 10 and the question again is whether the prohibition having been removed by payment of duty once, there is anything in s. 10 which requires that the duty should be paid again for transporting the goods on which duty has been paid. As we read s. 10 we find nothing in it which requires that duty should be paid again for transport once the duty has been paid and the prohibition removed subject always to the Explanation to s. 19. Under that Explanation if there are different duties in different regions and the excisable article which has paid duty of one region is removed to another region

where the duty is different the excess will have to be paid in order that prohibition of transport in that region may be removed. But apart from the cases covered by the Explanation we can see no justification for reading s. 10 as giving power to impose duty on the same excisable article again and again as it moves in the course of trade from, say, the bonded warehouse to the wholesaler and from the wholesaler to the retailer and from the retailer to the consumer. Plainly, therefore, once the duty has been paid and the prohibition under s. 10 is removed the transport of the duty-paid excisable article can take place free from any further imposition, except where it is transported to a region where the duty is different from the region where the duty is paid.

Nor do we find any power in the State Government to impose a duty at every movement during the course of trade in the words of s. 19. All that s. 19 empowers the State Government to do is to fix the rate of duty on transport in accordance with s. 10. There is no delegation to the State Government anywhere in the Act of the power to impose duty from stage to stage during the movement of excisable articles in the course of trade. It is true that the legislature has the power if it so chooses, to levy duty on every movement; but as we read the three provisions on which reliance has been placed we do not find any exercise of that power by the legislature. Nor do we find any delegation by the legislature of any such power to the State Government. The view therefore taken by the Division Bench that once the duty mentioned in s. 19 has been paid the prohibition contained in s. 10 must disappear, (subject always to the Explanation to s. 19), and that there is nothing in s. 19 delegating any power to the State Government of levying excise duty more than once and at more than one point during the progress of the excisable goods from the time they leave the bonded warehouse till the time they reach the consumer is in our opinion correct. It is not in dispute in this case that the Explanation to s. 19 does not apply.

Turning now to the first proviso s. 19-A, it may be noticed that that section deals with the manner of levying duty. But the first proviso goes further and lays down that where the duty is levied on issue from a bonded warehouse it will be at the rate in force on the date of issue. We agree with the Division Bench that this proviso has no logical connection with s. 19-A and would more properly be a proviso to s. 19. It has nothing to do with the manner of payment but is concerned with the liability to pay at the rate prevalent on the date of issue from the bonded warehouse. If that is so, the quantum of tax is once for all determined by this proviso subject always to the Explanation to s. 19 and cannot be increased thereafter. Reference in this connection was made to s. 15-A also. But that section seems to have been inserted as a measure of abundant caution and does not appear to go further than s. 10. It seems to determine the time and manner of payment in cases where excisable articles are kept in a distillery or brewery or warehouse or other place of storage established or licensed under the Act where duty may not have been paid before such storage. It is not the charging section and cannot be read to go beyond s. 19 which is the charging section. We are therefore of opinion that on this ground also no additional duty could be charged from the respondent in this case as the Explanation to s. 19 has admittedly no application here.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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