

M/S. Mohan Meakin Breweries Ltd.

Vs

Excise & Taxation Commr., Chandigarh and Others

Civil Appeal Nos. 582 of 1971

(A.C. Gupta, Jaswant Singh JJ)

04.05.1976

JUDGMENT

JASWANT SINGH, J. -

1. These two Civil Appeal Nos. 1418 of 1970 and 582 of 1971, the first by certificate of fitness granted under Article 133(1)(a) of the Constitution by the Punjab and Haryana High Court and the second by special leave granted by this Court which are directed against the judgments and orders of the said High Court dated December 4 1969, and July 29, 1970, rendered in Civil Writ Petition Nos. 342 of 1969 and 2376 of 1970 respectively shall be disposed of by this judgment as they arise out of identical proceedings and raise common questions of law.

2. The appellant, a public limited company incorporated under the Indian Companies Act, which carried on the business inter alia of manufacture, storage and sale of various kinds of Indian made foreign liquors and had its plants for manufacture and production of beer and distillation and production of the said liquors at Solan (in Himachal Pradesh), at Mohan Nagar (in Uttar Pradesh), at Lucknow (in Uttar Pradesh) and at Kasauli in Form B.W.H. 2 under Section 22 of the Punjab Excise Act (1 of 1914) (hereinafter referred to as 'the Act') read with Rule 2, of the Punjab Warehouse Rules, 1957 (hereinafter referred to as 'the 1957 Rules') which were framed by the Financial Commissioner under Section 59 read with Section 22 of the Act, permitting it to run on conditions specified therein a bonded warehouse at Chandigarh for storage of bottled and bulk liquor and issue thereof under bond or on payment of duty to the licensees of Punjab, Haryana, Himachal Pradesh, etc. One of these conditions required the appellant to observe the provisions of the Act as also the rules framed and instructions issued thereunder from time to time.

3. Rules 7 to 10 of the 1957 Rules governing the appellant's licence ran thus :

7. No liquor shall be received in the bonded warehouse unless accompanied by a pass from the Officer-in-charge of the distillery or bonded warehouse from which it has been imported or transported.

Immediately on arrival of a consignment at the bonded warehouse the Officer in-charge shall be informed and the consignment shall not be opened until the same has been examined and verified with the pass by the Officer-in-charge who shall also note the results in the register maintained for the purpose and also on the pass covering the consignment. One copy of the pass with entries of receipt shall be immediately returned to the Officer, who issued the pass and the other copy with entries thereon, shall be kept in the Warehouse.

8. A wastage allowance not exceeding 1 per cent shall be made for the actual loss in transit by leakage or breakage of vessels or bottles containing liquor. The allowance shall be determined by deducting from the quantity dispatched the quantity received at the destination, both quantities being stated in terms of proof litres of spirit contents or in case of beer in bulk litres.

9. If the report of the Officer-in-charge shows that the wastage exceeds the prescribed limit, the licensee shall be liable to pay duty at the prescribed rate as if he wastage in excess of the prescribed limit had actually been removed from the Warehouse :

Provided that each case of excessive wastage shall be reported to the Financial Commissioner for orders, who may in his discretion, on good cause being shown, remit it whole or a part of the duty leviable on such wastage.

10. Liquor shall be imported/transported under bond in accordance with the Punjab Liquor Permit and Pass Rules at the sole risk and responsibility of the licensee. The bond in form L. 37 shall be discharged, after liquor has been duly checked and proved by the Officer-in-charge and deposited in the Warehouse.

4. Between June, 1967 and April, 1969, the appellant transported, for the purpose of bottling, various quantities of Indian made foreign liquors from its aforesaid distilleries in Uttar Pradesh and Himachal Pradesh to its bonded warehouse at Chandigarh. This was done on the strength of the permits issued by the Excise and Taxation Officer, Chandigarh. Pursuant to Rule 7 of the 1957 Rules, The officer-in-charge of the warehouse examined the consignments on their arrival at their destination with a view to checking and verifying the quantities thereof with those shown in the permits and discovered that they suffered from shortage which exceeded the wastage allowance of 1 per cent permissible under Rule 8 of the said Rules.

5. As a sequel to the detection of the aforesaid shortages, the Excise and Taxation Commissioner exercising the powers of Financial Commissioner, Chandigarh Administration, who is the first respondent herein, issued notices calling upon the appellant to show cause why duty at the prescribed rate of Rs. 20 per proof litres be not levied against it on the wastage in excess of the prescribed limit "as if the same had been removed from its bonded warehouse at Chandigarh". In the written representations submitted on behalf of the appellant in reply to the notices, it was pleaded that the liquor evaporated during transit; that the bonded warehouse was in its initial stage and the method of measurement of spirit was crude; that at the time of measurement, the temperature of spirit was not taken and that apart from evaporation, wastage occurred by leakage of drums in transit. By his detailed orders dated January 15, 1969 and February 10, 1970, the said respondent repelled all the pleas raised on behalf of the appellant and made the notices absolute holding that there was no material on the record to show that anything peculiar had taken place in respect of the consignments in question which entitled the appellant to any remission in the duty leviable on the wastage. The appellant thereupon preferred to the High Court Writ Petition Nos. 342 of 1969 and 2376 of 1970 under Articles 226 and 227 of the Constitution challenging the aforesaid orders on various grounds. While the first writ petition was dismissed by the High Court by an elaborate judgment and order dated December 4, 1969, the second one was dismissed in limine vide order dated July 29, 1970. While the High Court granted, as already indicated, a certificate of fitness for appeal to this Court against its judgment and order dated December 4, 1969, it refused to do so in respect of its order dated July 29, 1970.

6. Though several contentions were raised by the appellant in the aforesaid two writ petitions filed by it in the High Court, Counsel appearing on its behalf has assailed before us the correctness of the impugned orders passed by the first respondent on two grounds. He has in the first instance contended that Rules 8 and 9 of the 1957 Rules under which the duty is sought to be imposed are ultra vires the rule-making power of the Financial Commissioner. Elaborating his submission, Counsel has urged that since the State alone has, by virtue of Section 31 of the Act, the power to impose duties mentioned therein, as also the exclusive power under Section 58(1) of the Act to make rules for the purpose of carrying out the provisions of the Act including those of Section 31 or any other law for the time being in force relating to excise revenue and other law for the time being in force relating to excise revenue and Section 13(a) of the Act prohibits the State Government to delegate the powers conferred on it by Section 14, 21, 31, 56 and 68 of the Act, Rules 8 and 9 of the 1957 Rules are manifestly beyond the competence of the Financial Commissioner. This contention cannot, in our opinion, be accepted as it proceeds on a misconception of the correct legal position. It is, no doubt, true that it is the State Government alone which is empowered to impose excise duty or countervailing duty on any accessible article and to prescribe rates thereof as also to make rules for carrying out inter alia the purposes of Section 31 of the Act. But it seems to be overlooked that the impugned rules do not impose any one of the aforesaid duties or prescribe the rates thereof or create any liability in respect thereof. They are in essence and substance of a regulatory character meant to guard against perpetration of fraud or deception on the Revenue. They provide for and regulate the storage of liquor in the bonded warehouse without payment at the initial stage of the duty payable under the Act and subsequently the removal of the liquor from the warehouse on payment or otherwise of the duty which, as correctly pointed out by the High Court, is chargeable under the Fiscal Rules of 1937 issued by the State Government. The powers exercised by the Financial Commissioner were clearly available to him under Section 59 and 22 of the Act and he has not, in our opinion, overstepped the same. The first contention raised on behalf of appellant is, therefore, overruled.

7. It is next contended by Counsel for the appellant that Rules 8 and 9 of the 1957 Rules are also invalid as they go beyond the scope of Sections 16, 23 and 31 and Entry 51 of List II of the Seventh Schedule to the Constitution. Dwelling on this contention, Counsel has submitted that as the taxing power of even the State Legislature is restricted to the imposition of excise duty or countervailing duty on an excisable article which, according to Section 3(6) of the Act, means inter alia an alcoholic liquor for human consumption implying thereby an alcoholic liquor in existence, the incorporation in Rule 9 of the 1957 Rules of the fiction making the licensee liable to pay duty at the prescribed rate on wastage in excess of permissible limit as if the said wastage had actually been removed from the warehouse, has the effect of imposing duty on an article which neither existed in the State nor was removed from the bonded warehouse thus violating the scope and extent of the taxing power.

8. For a proper appreciation of the true legal position, it is necessary to advert to Section 3(6-b), 31, 32, 16 and 23 of the Act and Entry 51 of List II of the Seventh Schedule to the Constitution and the connotation of the term 'countervailing duty'.

Section 3 (6-b). - 'excise duty' and 'countervailing duty' mean any such excise duty or countervailing duty as the case may be, as is mentioned in Entry 51 of List II in the Seventh Schedule to the Constitution.

Section 31. Duty on excisable articles. - An excise duty, or a countervailing duty, as the case may be at such rate or rates as the State Government shall direct, may be

imposed, wither generally or for any special local area, on any excisable article -

(a) imported, exported or transported in accordance with the provisions of Section 16, or

(b) manufactured or cultivated under any licence granted under Section 20, or

(c) manufactured in any distillery established or any distillery or brewery licensed under Section 21 :

Provided as follows :

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

#(ii) \* \* \* \*##

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

Section 32. Manner in which duty may be levied. - Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied ratably, on the quantity of excisable article imported, exported, transported, collected or manufactured in, or issued from, a distillery, brewery or warehouse :

Provided that duty may be levied -

(a) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp plant, or by a rate charged on the quantity collected;

(b) on spirit or beer manufactured in any distillery established, or any distillery or brewery licensed, under this Act in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe;

(c) on tari, by a tax on each tree from which the tari is drawn :

Provided further that, where payment is made upon issued of an excisable article for sale from a warehouse established or licensed under Section 22(a), it shall be made -

(a) if the State Government by notification so directs at the rate of duty which was in force at the date of import of that article, or

(b) in the absence of such direction by the State Government at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

Section 16. Import, export and transport of intoxicants. - No intoxicant shall be

imported, exported or transported except. -

(a) after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment, and

(b) in compliance with such conditions as the State Government may impose.

Section 23. Removal of intoxicant from distillery. - No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under this Act, unless the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof.

Entry 51 of List II of the Seventh Schedule to the Constitution. - Duties on excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :-

(a) alcoholic liquors for human consumption.

(b) opium, Indian Hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry.

9. The expression 'countervailing duty' is not defined in the Act but its meaning has been made clear in the judgment of this Court in *Kalyani Stores v. State of Orissa* ((1966) 1 SCR 865 : AIR 1966 SC 1686) where it was observed :

This brings us to the consideration of the meaning of the expression "counter-vailing duties" used in Entry 51, List II of the Seventh Schedule to the Constitution. The expression "countervailing duties" has not been defined in the Constitution or the Bihar & Orissa Act 2 of 1915. We have, therefore, to depend upon its etymological sense and the context in which it has been used in Entry 51. In its etymological sense, it means to counterbalance; to avail against with equal force or virtue; to compensate for something or serve as an equivalent of or substitute for : see *Black's Law Dictionary*, 4th Edn., p. 421. This would suggest that a countervailing duty is imposed for the purpose of counterbalancing or to all against something with equal force or to compensate for something as an equivalent. Entry 51 in List II of the Seventh Schedule to the Constitution gives power to the State Legislature to impose duties of excise on alcoholic liquors for human consumption where the goods are manufactured or produced in the State. It also gives power to levy countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. The fact that countervailing duties may be imposed at the same or lower rates suggests that they are meant to counterbalance the duties of excise imposed on goods manufactured in the State. They may be imposed at the same rate as excise duties or at a lower rate, presumably to equalise the burden after taking into account the cost of transport from the place of manufacture to the taxing State. It seems, therefore, that countervailing duties are meant to equalise the burden on alcoholic liquors manufactured or produced in the State. If no alcoholic liquors similar to those imported into the State are produced or manufactured, the right similar to those

imported into the State are produced or manufactured, the right to impose counterbalancing duties of excise levied on the goods manufactured in the State will not arise. It may, therefore, be accepted that countervailing duties can only be levied if similar goods are actually produced or manufactured in the State on which excise duties are being levied.

10. It Will be seen that Section 31 of the Act read with Entry 51 of List II of the Seventh Schedule to the Constitution permits imposition of (i) excise duty by the State Government on any excisable article imported into or exported from or transported in accordance with the provisions of Section 16 of the Act which means after payment of any duty to which it may be liable under the Act which means after payment of any bond for such payment, and (ii) countervailing duty inter alia on alcoholic liquors for human consumption manufactured or produced elsewhere in India.

11. The contention advanced on behalf of appellant which seem to proceed on the assumption that the Chandigarh Administration can impose duty only if liquor is consumed in its territory is erroneous as, according to Section 31 of the Act read with the aforesaid Entry 51 of List II of the Seventh Schedule to the Constitution, countervailing duty can be imposed on liquor meant for consumption which is manufactured or produced elsewhere in India. It is immaterial whether the liquor for which permits were obtained was consumed within the Union territory of Chandigarh or was in existence in that territory or not. What is material is whether permits were obtained for import from Uttar Pradesh of alcoholic liquor meant for human consumption and the quantity shown in the permits were obtained by the appellant was admittedly in existence and was meant for human consumption and did leave the appellant's distilleries in Uttar Pradesh for being transported to its warehouse in Chandigarh at its own risk and responsibility. It is also not denied on behalf of the appellant that a portion of the liquor which exceeded the permissible limit of wastage did not reach the appellant's warehouse and was not found therein and the shortage remained unaccounted for. It is thus evident that duty is not sought to be charged on an excisable article which was not in existence, as contended on behalf of the appellant but is sought to be charged on liquor which was actually manufactured and left Uttar Pradesh but was found short beyond the permissible limit and no reasonable explanation was tendered by the appellant in respect thereof. There is accordingly no merit or substance in the second contention advanced on behalf of the appellant as well.

12. The decision of this Court in *Bimal Chandra Banerjee v. State of Madhya Pradesh* ((1971) 1 SCR 844 : (1970) 2 SCC 467) which is strongly relied upon on behalf of the appellant is not applicable to the present case. In that case, the condition introduced by the State Government in the purported exercise of its power under clauses (d) and (h) of Section 62(2) of the Madhya Pradesh Excise Act, 1915, in the appellants' licences prescribing the minimum quantity of liquor to be purchased by them from the Government and enjoining them to make compulsory payment of excise duty on the quantity of liquor which they failed to take delivery of was held to be invalid as it went beyond the provision of Sections 25, 26, 27, 62(1) and clauses (d) and (h) of Section 62(2) of the aforesaid Act. In the present case, however, the liquor was lifted by the appellant from its distilleries in Uttar Pradesh and a portion thereof remained unaccounted for, as already stated, on arrival of the consignments at their destination.

13. For the foregoing reasons, the respondents were right in demanding the duty on the shortages.

14. In the result, the appeals fail and are dismissed with costs, limited to one set.

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