

Nagar Mahapalika, Bareilly

Vs

State of U.P. and Others

Special Leave Petition (Civil) No. 14968 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

02.02.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This petition under Article 136 of the Constitution for leave to appeal is against the decision of the High Court of Allahabad dated November 2, 1987. The question involved here is regarding the levy and realisation of octroi duty by the Nagar Mahapalika, Bareilly in Uttar Pradesh. Kasturi Lal Satantra Kumar and his partner, respondents herein, by a bid in the auction held for retail vend of country liquor for excise year 1987-88 ending on March 31, 1988 obtained the necessary license under the U.P. Excise Act for a group of shops known as Faridpur Group in the district of Bareilly. The auction was held in the month of March 1987. One of the conditions of the auction which also formed part of the licence, was that the license would obtain supply of country liquor for retail vend from the bonded warehouse in respect of Bareilly district situated within the limits of Nagar Mahapalika, Bareilly.

2. Indubitably the said Kasturi, petitioner in the original writ petition brought into the territory country spirit, the question was at what rate the municipality was to impose octroi duty on the rectified spirit which was brought.

3. It appears that there was a notification dated April 30, 1986, published in the U.P. Gazette in exercise of powers under Section 172(2)(b) of the U.P. Nagar Mahapalika Adhiniyam, 1959. In the Schedule forming part of that notification are mentioned the articles on which the octroi duty is payable and the rates thereof. The articles have been grouped together in different classes from Class I to Class X. Class III which bears the heading "Articles of Lighting, Fuel, Washing and Lubricants" contains the following entry as item 7 :

7. Methylated denatured and rectified spirit.. Rs 0.05 per litre Class VI with the heading "Tobacco and other intoxicating goods" contains the following entry at item 6 :

6. Foreign imported liquor and all kinds of wines made in India ... .. Re 1 per litre

4. It is asserted on behalf of the respondents that the point of entry within the Nagar Mahapalika limits, the plain spirit is nothing but rectified spirit and that octroi duty could not be charged upon it in excess of Re 0.05 per litre under item 7 of Class III of the aforesaid gazette notification. The municipality contends otherwise that it is foreign imported liquor of all kinds of wines made in India. The base for this contention is that for foreign liquor or wine rectified spirit is used. Reliance

was placed on a decision of this Court in the State of U.P. v. Synthetics and Chemicals Ltd. (AIR 1980 SC 614 : (1980) 2 SCC 441), where this Court observed that the term 'liquor' in the various Abkari Acts in the provinces of India would not only cover these alcoholic liquids which are generally used for beverage purpose and produce intoxication but also all liquids containing alcohol. It is, therefore, submitted that the payment of octroi duty could not be avoided by the respondents saying that the plain country spirit was not liquor in the sense that it was not fit for human consumption at the stage when it was brought within the limits of the Nagar Mahapalika. The normal meaning of the expressions "foreign imported liquor or all kinds of wine made in India" would not fit in the description of the rectified spirit. Ordinary people would not consider rectified spirit to be foreign imported liquor or all kinds of wines made in India. That is not the natural meaning as understood by common people. That is the yardstick by which this should be judged. The dictionary meaning also corresponds to the same view. "Wine" according to Collins Dictionary of the English language means an alcoholic drink produced by the fermenting of grapes with water and sugar and an alcoholic drink produced in this way from other fruits, flowers etc.

5. By any common notion it could not be considered that the respondents having regard to the nature of the goods, brought into the territory liquor or wine. The High Court has come to that conclusion after taking into consideration the ordinary notion. While giving a meaning to an item contained in the Schedule of articles, the court should normally give it a meaning intended by the framers of the Schedule by looking at the various articles mentioned in a particular group. All the items in one group should be considered in a generic sense. It appears that Class III of the Schedule in the instant case was intended to deal with the subjects of methylated denatured and rectified spirit which was brought within the limits of the Nagar Mahapalika for use as articles for lighting, fuel, washing and lubricants at the low rate of Re 0.05 per litre while liquor brought within its limits for use as an article of intoxication was intended to be subjected to levy of octroi duty at the higher rate of Re 1 per litre. Class VI contains the following items :

Class VI - Tobacco and other intoxicating goods :

1. Field dried tobacco, its chura and roots ordinary tobacco for eating and Huqqa.
2. Scented tobacco for eating and smoking, Qimam, Surti, Sugni.
3. Leaves of bidi.
4. Bidi tobacco, finished bidi, prepared khamira tobacco.
5. Cigarette, cigar, foreign type manufactured tobacco which is smoked through cigarette and pipe, cigarette paper, pipe and other such articles.
6. Foreign imported liquor and all kinds of wines made in India.
7. Beer.

6. The scheme is found in respect of the articles mentioned in the various other classes also. The High Court has noted Class I which deals with articles of food and drinks for men and animals. Item 1 of the said class mentions wheat and paddy : item 6 mentions chemical fodder meant for animals and birds; item 16 mentions ice made of water and item 17 mentions all cold drinks like Double Seven. Thums up, Limca, Gold Spot, etc. Likewise, in Class III, articles for lighting, fuel, washing and lubricants, one finds at item 1 fuel and wood etc.

7. We must reiterate that we are concerned with a duty which is imposed at the time of entry and not how it is used thereafter. The taxable event for the imposition of octroi is the entry and the nature and type of the goods at the point of entry is the relevant factor.

8. We may note that this view was taken by the Rajasthan High Court in Heeralal v. State. (AIR 1979 Raj 133) Having regard to the nature of the duty and the type of the goods with which we are concerned, we are of the opinion that the rectified spirit is dutiable at the rate of Re 0.05 per litre and not on the basis that it was foreign wine or liquor.

9. In the premises, the view taken by the High Court is right. This petition therefore, fails and is accordingly dismissed.

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