

Mohan Meakins Breweries Ltd., Daliganj, Lucknow

Vs

Controller of Weights and Measures, U. P., Lucknow

M/S. Modi Industries Ltd., Modinagar

Vs

Controller of Weights And Measures, U. P., Lucknow and Others,

Mohan Meakins Breweries Ltd., Ghaziabad and Another

Vs

Controller of Weights and Measures, U. P., Lucknow and Others

Civil Appeals Nos. 506, 507 and 508 of 1989

(K. N. Singh, Kuldip Singh JJ)

31.01.1989

JUDGMENT

K. N. SINGH, J. –

1. Special leave granted.

2. The appellants are engaged in the business of a manufacture and sale of Indian made foreign liquor and country liquor, under licence granted to them under the provisions of U.P. Excise Act. The appellants have installed vats in their breweries' premises for the storage of liquor. The liquor stored in vats is bottled and sold under the supervision of officers of the Excise Department. The inspector of Weights and Measures issues notices to the appellants calling upon them to get their vats verified, calibrated and stamped in accordance with the provisions of the U.P. Weights and Measures (Enforcement) Act, 1959, (hereinafter referred to as 'the Act'). The appellants preferred appeals against the notice issued by the Inspector on the ground that the provisions of the Act were not applicable to the appellants' undertaking, manufacturing alcohol but the appeal was dismissed by the Controller of Weights and Measures. The appellants made petitions under Article 226 of the Constitution before the High Court of Allahabad challenging the orders of the respondents. Before the High Court the appellants contended that the provisions of the Act were attracted to the appellants' undertaking only at the stage of sale and anything done in the process of manufacture and storage of liquor could not be subjected to the provisions of the Act and the notice issued by the Inspector of Weights and Measures was without any authority of law. It was further urged that the calibration of vats storing liquor was not necessary and the direction issued by the respondents was without any authority of law. Similar petitions were filed by the manufacturers of Synthetic Rubber and Camphor. All the three sets of petitions were disposed of by a Division Bench of the High Court by a common judgment and order dated December 5, 1985. The Division Bench allowed the

petitions filed by the manufacturers of Synthetic Rubber and Camphor but it dismissed the petitions filed by the manufacturers of liquor on the finding that the provisions of the Act and the notifications issued thereunder are applicable to the manufacturers of liquor in the distillery and the notices issued by the respondents for the calibration of the storage vats were legal and valid. Aggrieved the appellants have preferred the present petitions for special leave to appeal.

3. Dr. L. M. Singhvi, learned counsel for the appellants urged that the High Court committed error in holding that the storage vats are required to be calibrated under the provisions of the Act. He added that the provisions of the Act would apply if measures are used for transaction in trade and commerce, but keeping alcohol in storage vats does not amount to transactions in trade or commerce. Learned counsel emphasised that unless the storage vats are used in transaction for trade and commerce the provisions of the Act would not be attracted. In order to appreciate the contention, we would briefly refer to the relevant provisions of the Act.

4. Section 7 of the Act imposes prohibition on use of weights and measures other than standard weights and measures. It provides that no unit of mass or measure, other than the standard weights or measures shall be used in any transaction for trade or commerce or any dealing or contract or for any work to be done or goods to be sold or delivered. Section 10 further imposes prohibition on the sale or use of unstamped commercial or measuring instrument in trade or commerce unless it has been verified or re-verified and stamped in the prescribed manner by an Inspector with stamp of verification. These provision impose legislative prohibition that no weight of measuring instrument shall be used or be kept for use in any transaction for trade or commerce or being sold, unless it has been verified by the Inspector of the Department in the prescribed manner. Section 2(jj) defines the expression "use in transaction for trade or commerce" which is as follows :

2(jj) use in transaction for trade or commerce - with its grammatical variation and congate expression, means use for the purpose of determining or declaring the quantity of anything in terms of measurement of length, area, volume, capacity or weight in or in connection with -

(a) any contract, whether by way of sale, purchase, exchange or otherwise, or

(b) any assessment of royalty; toll; duty or other dues, or

(c) the assessment of any work done or services rendered, otherwise than in relation to research or scientific studies or in individual households for household purpose.

5. Under the aforesaid definition clause the legislature has given an artificial extended meaning to the expression "use in transaction for trade or commerce". According to the definition it means use for the purpose of determining or declaring the quantity of anything in terms of measurement of length or capacity or weight in or in connection with the clause. (a) and (b) mentioned therein. Clause (b) refers to any assessment of royalty; toll; duty or other dues. According to the extended meaning given by the legislature the provisions of the Act would be attracted if the assessment of royalty; toll; duty or dues is to be determined on the basis of the quantity anything in terms of measurement of length, area, volume or weight. There is no dispute that for the purposes of determining excise duty on the basis of the liquor produced and stored in vats is connected with the assessment of excise duty, it is covered by the expression "use in transaction for trade of commerce". Ordinarily, the storage of alcohol in vats by itself may not amount to transaction for trade or commerce but under the extended meaning of the expression under Section 2(ii) even the

storage of liquor in vats would be covered by the expression "use in transaction for trade or commerce" as volume of the liquor is necessary to be determined in connection with the assessment of excise duty. We are, therefore, in agreement with the view taken by the High Court.

6. The learned counsel for the appellants urged that the High Court failed to consider the effect of notification dated August 28, 1961 which made the provisions of the Act applicable to an undertaking engaged in the manufacture of alcohol at the stage of sale only. The notification is as under :

Notification

Khadya Tatha Rasad Vibhag Notification No. UPWM-1 (3)-28-2401/XXIX-4-524-58 dated August 19, 1961, published in U.P. Gazette, Part I, dated August 26, 1961, page 1537.

In exercise of the powers conferred by sub-section (3) of Section 1 of Uttar Pradesh Weights and Measures (Enforcement) Act, 1959 (U.P. Act No. 5 of 1959), the Governor of Uttar Pradesh is pleased to appoint the first day of October, 1961, as the date on which the provisions of the said Act shall come into force in the whole of Uttar Pradesh in respect of :

(b) Undertaking engaged in the manufacture of alcohol insofar as they undertake the sale of alcohol; and

(b) Departments of government insofar as they undertake the levy of duties of excise on alcohol.

7. By the aforesaid notification the provisions of the Act were made applicable to an undertaking engaged in the manufacture and sale of alcohol with effect from October 1, 1961. Emphasis was laid by the learned counsel for the appellants on the expression "in so far as they undertake the sale of alcohol". He urged that provisions of the Act occurring in the aforesaid notification have been made applicable to the appellants' undertaking at the point of the sale of alcohol. Before the sale of the provisions of the Act are not attracted and as such the storage vats cannot be required to be calibrated under the law. Having given our anxious consideration to the question, we do not find any merit in the submission. The alcohol in storage vats is essentially for the purpose of sale and there is no dispute that the appellants manufacture and store alcohol in storage vats for the purposes of sale. There is further no dispute that the officers of the Excise Department measure storage vats as prescribed by Rule 751 of the Excise Manual, Volume 1. Since the volume of the storage vats is measured by the officers of the Excise Department, the provisions of the Act for the purpose of sale would be applicable to the storage vats also. But of there be any doubt about the applicability of the provisions of the Act the same stood removed by the subsequent notifications dated May 17, 1962 and July 18, 1967. Under these notifications the provisions of the Act have been made applicable to all the undertaking insofar as they relate to units of capacity in respect of those clauses of undertaking to which the Act has been made applicable. Having regard to these facts the High Court, in our opinion, was right in holding that the storage vats are covered by the provisions of the Act.

8. Learned counsel for the appellants then urged that excise duty is assessed at the point of sale as held by the High Court of Allahabad in *M/s. Mohan Meakins Breweries v. State of U. P.* (1979 UPTC 1048 : AIR 1979 All 198), therefore, provisions of the Act are applicable to the issue vats

only and no calibration in the aforesaid decisions the High Court held that under the provisions of the U.P. Excise Act excise duty is a charge essentially on the production or manufacture of an excisable article but for administrative convenience it is imposed at a stage subsequent to the produced material is the subject matter of excise duty, even though the assessment of duty is done at the point of sale for convenience sake. The storage of alcohol is required to be measured by the officers of the Excise Department under the provisions of the Excise Manual to ensure that there is no pilferage or unauthorised removal of alcohol as that would adversely affect the assessment of duty. Storage vats are intimately connected with the assessment of excise duty, therefore provision of the Act are applicable to storage vats also.

9. We are, therefore, of the opinion that no can be taken to the view by the High Court. The appeals fails and the same are accordingly dismissed. There will be no order to costs.

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