

State of U.P. and Others

Vs

Modi Distillery and Others

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Vs

Ajudhia Distillery

Civil Appeals Nos. 4324-32 of 1983 with Nos. 3208, 4301-22 of 1983

(S.P. Bharucha, Faizanuddin JJ)

29.08.1995

JUDGMENT

BHARUCHA, J. -

1. Leave granted.

2. These are appeals filed by the State of Uttar Pradesh against judgments and orders of the Allahabad High Court dated 9-3-1979 and 11-10-1979, and orders that followed the same. The High Court allowed writ petitions filed by the respondents, who are manufacturers of Indian-made foreign liquor, and quashed the orders impugned demanding excise duty from them.

3. The High Court in the judgment dated 11-10-1979, categorised the demands into four groups. In Group 'A' the demands for excise duty were on the wastage of Indian-made foreign liquor (IMFL) which was exported outside the State of Uttar Pradesh. Group 'B' related to demands made for excise duty on wastage, during transportation in containers, of high strength spirit, of 80 to 85%, from distillery to warehouse. Group 'C' related to the demand of excise duty on obscuration. Group 'D' related to excise duty sought to be levied on pipeline wastage. The judgment of the High Court dated 9-3-1979, related only to duty on obscuration (i.e., Group 'C').

4. It is convenient to state immediately that the issue relating to Group 'A', that is, the demands for excise duty on the wastage of IMFL exported outside the State, is now covered in its favour by the judgment of this Court in State of U.P. v. Delhi Cloth Mills and this is not disputed by the manufacturers.

5. In regard to Groups 'B', 'C' and 'D', the High Court took the view that the stage at which the State could levy excise duty had not been reached.

6. Mr. Sehgal, learned counsel for the State, submitted that the State was competent to levy excise duty on liquor for human consumption. It was the content of liquor in the IMFL which was exigible. Therefore, wastage of liquor from the time the process of manufacture of IMFL began was exigible to excise duty. In the alternative, Mr. Sehgal submitted that if it was the IMFL, the ultimate beverage, which alone was exigible, the process of determining wastage and levying excise duty

thereon was only regulatory and, therefore, permissible. Learned counsel for the manufacturers supported the view taken by the High Court.

7. Entry 51 of List II of the Seventh Schedule to the constitution empowers the State to levy excise duty on "alcoholic liquors for human consumption". Section 3(22-a) was introduced into the U.P. Excise Act, 1910, in 1950, that is, with the coming into force of the Constitution, and it states that "excisable article" means :

"(a) any alcoholic liquor for human consumption; or

(b) any intoxicating drug"

8. Sub-sections 8, 9 and 11 of Section 3 and Section 28 of the said Act read thus :

"3. (8) 'spirit' means any liquor containing alcohol obtained by distillation, whether it is denatured or not;

(9) 'denatured' means rendered unfit for human consumption in such manner as may be prescribed by the State Government by notification in this behalf. When it is proved that any spirit contains any quantity of any substance prescribed by the State Government for the purpose of denaturation the court may presume that such spirit is or contains or has been derived from denatured spirit;

* *

(11) 'liquor' means intoxicating liquor and includes spirits of wine, spirit, wine, tari, pachwai, beer and all liquid consisting of or containing alcohol, also any substance which the State Government may by notification declare to be liquor for the purposes of this Act;

* *

28. Duty on excisable articles. - (1) 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, either generally or for any specified local area, on any excisable article -

(a) imported in accordance with the provisions of Section 12(1); or

(b) exported in accordance with the provisions of Section 13; or

(c) transported; or

(d) manufactured, cultivated or collected under any licence granted under Section 17; or

(e) manufactured in any distillery established, or any distillery or brewery licensed, under Section 18 :

Provided as follows -

(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 Indian Tariff Act, 1894, or the Sea Customs Act, 1887.

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 strength and quality of such article.

(2) The State Government shall, in imposing an excise duty or a countervailing duty as aforesaid and fixing its rate, be guided by the directive principles specified in Article 47 of the Constitution of India.

(3) Such duty shall not exceed the maximum as provided hereinafter :

(a) Countervailing duty on excisable articles imported in accordance with the provisions of Section 12(1) -

#	Item Description of excisable articles	Maximum rate of duty	No.
	1. Country liquor (excepting tari)	20 per litre.	
	2. Liquor manufactured in India and sophisticated or coloured so as to resemble in flavour or colour liquor imported into India; and rectified spirit - (a) Ale, beer, porter, cider and other fermented liquors (b) Perfumed spirit (other than medicinal and toilet preparations) (c) Wines (d) Liquors, cordials, mixtures and other preparations containing spirit not otherwise specified (other than drugs and medicines) (e) Brandy, gin, whisky, rum, and other sorts of alcohol. spirit not otherwise specified.	4 per litre. 15 per litre. 8 per litre. 70 per litre.	
	3. Ganja	300 per kg.	
	4. Bhang	14 per kg.	
	(b) Excise or countervailing duty on excisable articles exported in accordance with the provisions of Section 13		
	Item Description of excisable articles	Maximum rate of duty	No.
	1. Country liquor (excepting tari and other fermented alcoholic beverages)	2.00 per litre.	
	2. Liquor manufactured in India and sophisticated or coloured so as to resemble in flavour or colour liquor imported into India (excepting beer)	2.00 per litre.	
	3. Beer brewed in India	2.00 per litre.	
	4. Ganja	150.00 per kg.	
	5. Bhang	4.00 per kg.	
	(c) Excise or countervailing duty on excisable articles transported		
	Item Description of excisable articles	Maximum rate of duty	No.
	1. Country liquor (excepting tari)	20 per litre.	
	2. Liquor manufactured in India and sophisticated or coloured so as to resemble in flavour or colour liquor imported into India; and rectified spirit - (a) Ale, beer, porter, cider and other fermented liquors (b) Perfumed spirit (other than medicinal and toilet preparations) (c) Wines (d) Liquors, cordials, mixture and other preparations containing spirit not otherwise specified (other than drugs and medicines) (e) Brandy, gin, whisky, rum, and other sorts of alcohol. spirit not otherwise specified.	2 per litre. 15 per litre. 8 per litre. 70 per litre.	
	3. Ganja	300 per kg.	
	4. Bhang	14 per kg.	
	(d) Excise duty on excisable articles manufactured, cultivated or collected under any licence granted under Section 17		
	Item Description of excisable articles	Maximum rate of duty	No.
	1. Country liquor (excepting tari)	20 per litre.	
	2. Liquor		

manufactured in India and sophisticated or coloured so as to resemble in flavour or colour liquor imported into India; and rectified spirit - (a) Ale, beer, porter, cider and other 2 per litre. fermented liquors (b) Perfumed spirit (other than 15 per litre. medicinal and toilet preparations) (c) Wines 8 per litre. (d) Liquors, cordials, mixtures and 70 per litre. other preparations containing spirit not otherwise specified³. Ganja 300 per kg.⁴ Bhang 14 per kg. (e) Excise duty on excisable articles manufactured in any distillery established, or any distillery or brewery licensed, under Section 18 -----

Item Description of excisable articles	Maximum rate ofNo. duty-----
Rs1. Country liquor (excepting tari and 20 per litre. other fermented alcoholic beverages)	2. Liquor manufactured in India and sophisticated or coloured so as to resemble in flavour or colour liquor imported into India; and rectified spirit - (a) Ale, beer, porter, cider and other 2 per litre. fermented liquors (b) Perfumed spirit (other than 15 per litre. medicinal and toilet preparations) (c) Wines 8 per litre. (d) Liquors, cordials, mixtures and 70 per litre. other preparations containing spirit not otherwise specified (other than drugs and medicines) (e) Brandy,gin, whisky, rum, 60 per litre of rectified spirit and other sorts of alcohol. spirit not otherwise specified.##

(4) Notwithstanding anything contained in sub-section (3), the maximum rate of duty on ale, beer, porter, cider and other fermented liquors occurring against item 2(a) in the table, in clause (e) of sub-section (3) shall be deemed to be Rupees 5 per litre with effect from 4-6-1975 and any notification issued on or after 4-6-1975 which is in conformity with the provisions of this sub-section shall be deemed to be, and always to have been, valid and lawful as if the provisions of this sub-section were in force at all material times."

9. It is convenient now to note the judgment of a Bench of seven learned Judges of this Court in *Synthetics and Chemicals Ltd. v. State of U.P.* This Court stated that it had no doubt that the framers of the Constitution, when they used the expression "alcoholic liquors for human consumption", meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink. Alcoholic or intoxicating liquors had to be understood as they were, not what they were capable of or able to become. Entry 51 of List II was the counterpart of Entry 84 of List I. It authorised the State to impose duties of excise on alcoholic liquors for human consumption manufactured or produced in the State. It was clear that all duties of excise save and except the items specifically excepted in Entry 84 of List I were generally within the taxing power of the Central Legislature. The State Legislature had limited power to impose excise duties. That power was circumscribed under Entry 51 of List II. It had to be borne in mind that, by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption. The ISI specifications had divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial purposes was defined as spirit purified by distillation having a strength not less than 95 per cent by volume of ethyl alcohol. Dictionaries and technical books showed that rectified spirit (95 per cent) was an industrial alcohol and not potable as such. It appeared, therefore, that industrial alcohol, which was ethyl alcohol (95 per cent), by itself was not only non-potable but was highly toxic. The range of potable alcohol varied from country spirit to whisky and the ethyl alcohol content thereof varied between 19 to about 43 per cent, according to the ISI specifications. In other words, ethyl alcohol (95 per cent) was not an alcoholic liquor for human consumption but could be used as a raw material or input, after

processing and substantial dilution, in the production of whisky, gin, country liquor, etc. In the light of experience and development, it was necessary to state that "intoxicating liquor" meant only that liquor which was consumable by human beings as it was.

10. What the State seeks to levy excise duty upon in the Group 'B' cases is the wastage of liquor after distillation, but before dilution; and, in the Group 'D' cases, the pipeline loss of liquor during the process of manufacture, before dilution. It is clear, therefore, that what the State seeks to levy excise duty upon is not alcoholic liquor for human consumption but the raw material or input still in process of being rendered fit for consumption by human beings. The State is not empowered to levy excise duty on the raw material or input that is in the process of being made into alcoholic liquor for human consumption.

11. That the measure of excise duty upon alcoholic liquor for human consumption is the alcoholic strength thereof does not make any difference in this behalf. It is only the alcoholic strength of the final product which is relevant.

12. The process of obscuration, concerned in the Group 'C' cases, needs explanation. The process of obscuration takes place in the manufacture of rum, other than white rum. Therein caramel is added to plain spirit. This results in obscuration or an apparent but not actual loss of proof gallons, that is, of alcoholic strength. It is upon this apparent loss that the State seeks to levy excise duty. The aspect of obscuration is dealt with in Rule 775 of the U.P. Excise Rules, 1910. This rule indicates that the caramel is added to plain spirit. In the writ petition out of which Special Leave Petition No. 3211 of 1980 arises, it was averred thus : "Because at the stage at which caramel is added no spirit is ready or available for human consumption and as such no duty be levied at that stage." In the reply filed by the State there was no denial of the averment. It is, therefore, clear that the obscuration is not of alcoholic liquor for human consumption and the levy of excise thereon is beyond the State's power.

13. Mr. Sehgal drew our attention to Rule 775 aforementioned and various other rules in the U.P. Excise Rules, 1910, which indicate the mode of levy of excise duty upon alcohol other than alcoholic liquor for human consumption. It will be remembered that the U.P. Excise Act, 1910, was amended in 1950 to include Section 3(22-a) whereby the power of the State to levy excise duty was limited to that conferred upon it by Entry 51 of List II. The Rules, however, do not appear to have been similarly amended. However wide the Rules may be, they cannot extend the power of the State to levy excise duty, which is limited by the Constitution and the statute. It is, therefore, not necessary to refer to the Rules in any detail.

14. Mr. Sehgal submitted, in the alternative, that if it was the ultimate beverage which alone was exigible, the process of determining the wastage and levying excise duty thereon was only regulatory and, therefore, permissible. We are here concerned with the demand of the State for excise duty. The power of the State to demand excise duty is limited in the manner aforementioned. The demand for excise duty is not a regulatory measure. The power of the State to levy excise duty cannot be expanded with reference to its power to regulate manufacture. We are not required to and do not express any opinion in regard to the power of the State to regulate the manufacture of alcoholic liquors for human consumption.

15. In the result, the appeals are allowed only insofar as they relate to the levy of excise duty upon the wastage of Indian-made foreign liquor exported outside the State of Uttar Pradesh. The judgments and orders of the High Court insofar as they hold that the State has no power to levy excise duty upon such wastage are set aside. For the rest, the appeals are dismissed and the

judgments and orders under appeal upheld.

16. There shall be no order as to costs.