

Sir Shadi Lal Distillery & Chemical Works, Mansurpur, U.P. and Another

Vs

State of U.P. and Others

Writ Petition (C) No. 8354 of 1981 with Civil Appeals Nos. 2775 and 2776 of 1981

(M.M. Punchhi, Sujata V. Manohar JJ)

10.01.1996

ORDER

1. Intervention application is allowed.

2. The appellants in Civil Appeals Nos. 2775 and 2776 of 1981 and the petitioners in Writ Petition (C) No. 8354 of 1981 challenge the levy of a licence fee for bottling of liquor under the U.P. Bottling of Foreign Liquor Rules, 1969 and the subsequent amendment of the Rules under a notification dated 10-7-1975, issued by the Office of the Excise Commissioner, Uttar Pradesh bearing No. 1138/1X-213-C. These Rules are framed under the U.P. Excise Act, 1910.

3. The appellants submit that under the U.P. Excise Act, 1910, there is no power to impose a licence fee for bottling of liquor. Hence, the imposition of such a fee is ultra vires the U.P. Excise Act of 1910. Under Section 17(d) of the U.P. Excise Act, 1910, there is an express provision, inter alia, to the effect that no intoxicant shall be manufactured and no liquor shall be bottled for sale except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner under Section 18. Section 24 provides that the Excise Commissioner may grant to any person a licence for the exclusive privilege, inter alia, of manufacturing or of supplying by wholesale or of both, or of selling by wholesale or by retail, or of manufacturing or of supplying by wholesale, or both, and of selling by retail any liquor or intoxicating drug within any local area. The activity of bottling is an integral part of the activity of manufacture and supply of such liquor. In fact, a very similar provision in the Karnataka Excise Act, 1965 has been interpreted by this Court in the case of Khoday Distilleries Ltd. v. State of Karnataka [(1990) 10 SCC 304 : (1995) 7 Scale 262] as covering all activities which regulate the activity of manufacture, distribution and sale of liquor. Section 28(d) of the U.P. Excise Act, 1910 also provides that an excise duty or a countervailing duty may be imposed on any excisable article, inter alia, manufactured, cultivated or collected under any licence granted under Section 17. Under Section 41(c), the Excise Commissioner has been empowered to make rules, inter alia, prescribing the scale of fees or the manner of fixing the fees payable for any licence, permit or pass. It is in the exercise of this power that the U.P. Bottling of Foreign Liquor Rules, 1969 have been framed. There is, therefore, no merit in the contention that the levy of a fee for a bottling licence is beyond the scope of the U.P. Excise Act of 1910.

4. It is next submitted that in the plant of the appellants/petitioners, bottling is done as a part of the manufacturing activity. Since they already possessed a manufacturing licence, and since a duty of excise is levied on the liquor manufactured, an additional fee for a bottling licence should not be imposed. This argument also has no merit. Bottling is a distinct activity for which a licence is required under the provisions of the U.P. Bottling of Foreign Liquor Rules, 1969. There is an

express power under the U.P. Excise Act, 1910 to levy such a fee as set out above. In the premises and in view of the ratio of the judgment of this Court in *Khoday Distilleries v. State of Karnataka* [(1996) 10 SCC 304 : (1995) 7 Scale 262] which applies to these cases also, there is no merit in these appeals/petitions. The same are accordingly dismissed with costs.