

T.J. Baby & others, etc.

Vs

State of Kerala & others

Civil Appeal Nos. 6326-6329 of 1999

with

C.A. Nos. 6330-6332/1999, C.A. Nos. 6333-6334/199, C.A. Nos. 6335-6343/1999, C.A. Nos. 6344-6348/1999, C.A. Nos. 6349-6357/1999, C.A. Nos. 7113-7125/1999, C.A. Nos. 7428-7458/1999, C.A. Nos. 190-191/2000, C.A. No. 192/2000, C.A.No. 193/2000, C.A. Nos. 1467-1471/2000, C.A. No. 2588/2000, C.A. No. 3485-3486/2000 & C.A. No. 3487/2000

(Mr. B.N. Kirpal, S.N. Phukan and Mrs. Ruma Pal, JJ.)

10.08.2000

JUDGMENT

B.N. Kirpal, J.:— The only question which arises for consideration in these appeals is whether the appellants who are F.L.1 and F.L. 3 licence-holder under the Abkari Act of Kerala can be made liable to pay any difference in excise duty due to subsequent increase on the unsold stock of liquor which remained with them at the close of the financial year having purchased the same from the state-owned Kerala State Beverages (Manufacturing and Marketing) Corporation Limited on which duty has already been paid by the State Corporation when it was issued out of the bonded warehouse.

2. Under the provisions of the Abkari Act different types of licences are issued. As far as the appellants are concerned F.L.1 licence is issued to stockists and retailers and F.L. 3 licences are issued to bars and restaurants. The holders of F.L.1 licences can purchase liquor for sale from the aforesaid Beverage Corporation to whom F.L. 9 licence is issued. These stockists and retailers then sell liquor to other dealers or to consumers while the holders of F.L.3 licences sell liquor in the bars and restaurants run by them.

3. It appears that prior to 1st April, 1996 the duty of excise on Indian-made foreign liquor was Rs. 20/- per proof litre. With effect from 1st April, 1996, Section 18 of the said Act was amended and now the maximum rate of excise duty could be Rs. 200/- per proof litre.

4. The respondents herein while invoking the provisions of proviso to Section 18(3) sought to realise the difference in the excise from the F.L.1 and F.L.3 licensees in respect of the stocks which were held by them as on 1.4.1996. It is not in dispute that the appellants herein are licence holders whose licences have been extended for the period from 1.4.1996 to 31.3.1997 and they were existing licence-holders in the previous year as well.

5. The appellants challenged this imposition by filing writ petitions in the Kerala High Court. Single Judge of the said Court came to the conclusion, while allowing the writ petitions, that such a demand could not be raised under proviso to Section 18(3) from the F.L.1 and F.L.3 licensees. The State of Kerala went up in appeal. The Division Bench while reversing the decision of the Single Judge, and thereby dismissing the writ petitions, came to the conclusion that the said proviso to Section 18(3) enabled the State Government to realize from the licensees who hold stocks the additional excise duty which had come into effect from 1st April, 1996.

6. Seeking to challenge the aforesaid decision, it has been contended by the learned senior counsel for the appellants that Section 18(3) can have no application to F.L.1 and F.L.3 licensees who are not liable to pay excise duty under Section 17 of the Act. Mr. Bhat, on the other hand, submits that the plain reading of the said proviso clearly indicates that all licensees including F.L.1 and F.L.3 licence-holders would be liable to pay the difference in the exercise duty in the event of there being an increase of the same.

7. In order to examine the proviso it is appropriate to refer to the relevant provisions of the Act. Section 17 provides for levy of duty on liquor or intoxicating drugs. The said Section reads as follows:

Duty on liquor or intoxicating drugs: — (Substituted for the opening paragraph "A duty of such amount as the Diwan may prescribe shall, if he so direct, be levied on all liquor and intoxicating drugs" by Section 5(I) of President's Act 1 of 1964) [A duty of excise or luxury tax or both shall, if the Government so direct, be levied on all liquor and intoxicating drugs]

(a) permitted to be imported under [The words "the proviso to" omitted by Section 18(a) of Act 10 of 1967] Section 6; or

(b) permitted to be exported under [xxx] Section 7; or

(c) permitted under Section 11 to be transported; or

(d) manufactured at any licence granted under Section 12; or

(e) manufactured at any (Substituted for the word "distillery" by Section 18(b) of Act 10 of 1967) [distillery, brewery, winery or other manufactory or warehouse] licensed or established under Section 12 or Section 14; or

(g) sold in any part of the (The word "Cochin omitted by Section 18(d) *ibid.*) [xxx] State;]

(Substituted by Section 7 of Act 4 of 1996) [Provided that no duty or gallonage fee or vend fee or other taxes shall be levied under this Act on rectified spirit including absolute alcohol which is not intended to be used for the manufacture of potable liquor meant for human consumption.]

Inserted by Section 5(ii) of President's Act 1 of 1964 (**Explanation:**— For the purpose of; this section and Section 18, the expression "duty of excise", with

reference to liquor or intoxicating drugs, include countervailing duty on such goods manufactured or produced elsewhere in India and brought into the State.]

Section 18 provides for the manner in which the duty may be imposed and reads as follows:

How duty may be imposed:— (Renumerated by Section 6 of President's Act 1 of 1964) (1) (Substituted for the words "such duty may be levied in one or more of the following ways" by Section 6(1)(1) *ibid.*) [Such duty of excise may be levied:]

(a) (The; words "by duty of excise to be charged" omitted by Section 6(1)(ii) *ibid.* [xxx] in the case of spirits or beer, either on the quantity produced in or passed out of (Substituted for the words "the distillery or brewery" by Section 10(1) of Act V of 1091.) [a distillery, brewery or warehouse licensed or established under Section 12 or Section 14] as the case may be or in accordance with such scale or equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash (Substituted by Section 8 of Act 4 of 1996) [or wort or on the value of the liquor] as the case may be, as the Government may prescribe;

(b) in the case of intoxicating drugs (The words "by a duty to be rateably charged" omitted by Section 10(1) of Act V of 1091) [xxx] on the quantity produced or manufactured (Added by Section 10(ii) of Act V of 1091) [or issued from a warehouse licensed or established under Section 14;]

Clause @ & (d) omitted by Section 6(1)(iv) of President's Act 1 of 1964 (c) xxx

(d) xxx]

(e) in the case of toddy, or spirits manufactured from today, (Substituted for the words "by a tax on each tree from which toddy is drawn" by Section 6(1)(v) of President's Act 1 of 1964 [in the form of a tax on each tree from which toddy is drawn], to be paid in such instalments and for such period as the Government may direct; or

(f) by Inserted by Section 10 (iii) of Act V of 1091 [import, export or] transport duties assessed in such manner as the Government may direct;

(The proviso omitted by Section 6(1)(vi) of President's Act 1 of 1964.) [xxx]

(Inserted by Section 6(2) of President's Act of 1964) [(2)] The luxury tax on liquor or intoxicating drugs shall be levied:—

(Substituted by Act 16 of 1969 with effect from 26.1.1950.) [(i) in the case of any liquor in the form of a fee for licence for the sale of the liquor and in the form of a gallonage fee or vending fee, or in any one of such forms; and;]

(ii) in the case of an intoxicating drug, in the form a fee for licence for the sale of intoxicating drug.]

(Inserted by Section 6(2) *ibid.*) [(3) the duty of excise under sub-section (1) and the

luxury tax under sub-section (2) shall be levied at such rates as may be fixed by the Government, from time to time, by notification in the Gazette, not exceeding the rates specified below:—

(1) Duty of Excise Maximum rates

(i) Duty of excise on liquors (Substituted by Section 8(2)(a)

(Indian made) of Act 4 of 1996.)

(Rs. 200 per proof litre or an

amount equal to 200 per cent

of the value of the liquor.

(ii) Duty of Rs. 1 per gram or

excise on intoxicating drugs. Rs. 933.10 per seer.

(iii) Duty of excise in the Rs. (Substituted by Act 16 of

form of tax on trees tapped 1969) [50] per tree per

for toddy half-year or part thereof.

(2) Luxury Tax:

(a) when levied in the form

of a fee for licence for

sale of foreign liquor -

(i) for licence for sale of Rs. [15000] for a year or part

foreign liquor in wholesale thereof.

(ii) for licence for sale of Rs. [12000] for a year or part

foreign liquor in hotels or thereof.

restaurants.

(iii) for licence for sale of Rs. 1,000 for a year or part

medicated wines thereof.

(iv) for licence for sale of Rs. [1500] for a year or part

foreign liquor in non-proprietary thereof.

clubs to members

Item "(v) for special licence for

sale of foreign liquor Rs. 500 for

a year or part thereof" omitted

by Section 8(b)(I) of Act 4 of 1996. [(v) x x x]

(b) when levied in the form of Rs. 10 per bulk litre or

gallonage fee Rs. 45.46 per bulk gallon.

Subclause "@ when levied in the

form of vending fee on denatured

spirit including menthylated

spirit Rs. 1 per bulk

litre or Rs. 4.54 per bulk gallon"

omitted by Section 8(3)(ii) of Act 4 of 1996.

Provided that where there is a difference of duty of excise or luxury tax as between two licence periods, such difference may be collected in respect of all stocks of [Substituted for the words "country liquor" by Section 8@ of Act 4 of 1996 [Indian made foreign liquor] or intoxicating drugs held by licensees at the close of the former period.]

Explanation added by Section 8(d) of Act 4 of 1996 [Explanation:— Where any liquor is chargeable with duty at a rate depending on the value of the liquor, such value shall be the value at which the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited purchases such liquor from the supplies and incase any such liquor is not purchased by Kerala State Beverages (Manufacturing and Marketing) Corporation Limited such value shall be the value fixed by the Commissioner.]

Reading of Section 17 shows that the said Section deals with two types of imposts - one is the duty of excise and the other is the luxury tax. Both the duty of excise and the luxury tax can be levied on liquor and intoxicating drugs. As we read the said Section it clearly indicates that Section 17 spells out the taxable events. Under Clause (a) the taxable event is the import under Section 11 is another taxable event. Manufacture under licence granted under Section 12 or by an entity mentioned therein established under Section 14 are the other taxable events. Clause (f) postulates the taxable event when there is an issuance from the distillery, brewery, winery or other manufactory or warehouse licenced are established under Section 12 or Section 14, while under Clause (g) liquor or intoxicating drug sold in any part of the State is taxable event. It will be seen that the Section does

not by itself indicate as with regard to which clause there is a reference to the levy of excise duty and with reference to which other Clauses there is reference to the luxury tax. The contention of Shri Bhat is that duty of excise and the luxury tax can be levied in cases of Clause (a) to (g).

Section 18, however, gives an answer to the problem in hand. Sub-section (1) of Section 18 provides as to how duty of excise can be imposed. The said sub-section does not deal with the levy of luxury tax. As made clear by sub-section (3) of Section 18, luxury tax is dealt with in sub-section (2) of Section 18. The said sub-section provides that luxury tax on liquor or intoxicating drug will be in the form of a fee for licences for the sale of liquor or intoxicating drug. When we read Section 17 along with Section 18 and keep in mind that duty of excise is levied on the manufacture, though its collection may be postponed, it is clear that when Section 17 talks of levy of luxury tax it cannot be in relation to clauses (a) to (f) to the said Section. No luxury tax is contemplated by Section 18(2) to be imposed on manufacture or issuance of liquor referred to in Clauses (d), (e) and (f) of Section 17. Similarly, Section 18(2) does not contemplate levy of luxury tax with reference to clauses (a), (b) and (c) of Section 17. What is relevant with regard to these clauses is the levy of excise duty. The method in which excise duty is levied is provided under Section 18(1). This leaves out clause (g) of Section 17. Luxury tax referred to in Section 17 is with reference to the sale of intoxicating drugs or liquor in any part of the State. Clause (g) of Section 17 is relatable to the levy of luxury tax.

The proviso to Section 18(3) obliges the existing stock-holders who are licensees to pay the difference of duty of excise or luxury tax in case there is an increase in respect thereof. The importers, exporters, manufacturers and warehouse owners would be concerned with the levy of excise duty whereas luxury tax would be payable by the licensees relatable to Section 17(g) which would be like the appellants in the present case. What the proviso means is that those licensees who are liable to pay excise duty can be called upon to pay the increase thereof while those licensees who are liable to pay luxury tax can likewise be required to pay the increase in the luxury tax. Section 17(a) to (f) which deals with the imposition of excise duty refers to licensees under Section 6, Section 7, Section 11, Section 12 and Section 14. The appellants are licensees under Section 15 of the Act. It is not in dispute that excise duty is not levied or realised in the first instance from the F.L.1 or F.L. 3. licensees. Excise duty of liquor which is manufactured within the State or is imported from outside the State, is paid either by the manufacturer or by the F.L.9 licensee, namely, the aforesaid Corporation. The proviso to Section 18(3) would not enable the respondents to realise the increase in excise duty from the licensee who was not under an obligation to pay the original excise duty which has increased. The luxury tax on the sale of intoxicating liquor can be imposed only on the persons holding licence for sale simplicitor but not excise duty.

The undisputed fact being, as noticed both by the Single Judge and the Division Bench, that the Government has chosen to levy the excise duty in the manner prescribed by Section 17(f) read with Section 18(1), namely excise duty on liquor is levied only at the time when it is issued from an establishment licensee under Section 12 or Section 14, the licensees under F.L.1 and F.L.3 were under no obligation to pay the excise duty. No excise duty could be levied on the F.L.1 and F.L.3 licensees. If this be so, then, under proviso to Section 18(3) the increase in the excise duty can only be levied in terms of Section 17(f) read with Section 18(1) which means if the distillery, brewery, winery or other manufactory or warehouse which is licenced or established under Section 12 or Section 14 had with it duty paid stock and there was an increase in the duty from Rs. 20/- to Rs. 200/- per proof litre, then it is only from those licensees referred to in Section 17(f) from whom the increase could be realised. The Act does not contemplate or permit imposition of excise duty on the stockists, retailers of F.L.3 licensees.

In our opinion, the learned Single Judge was right in coming to the conclusion that proviso to Section 18(3) did not enable the Government to realise the increase in excise duty from the appellants who are F.L.1 and F.L.3 licencees.

For the aforesaid reasons, we allow these appeals, set aside the decision of the Division Bench and restore the judgment of the Single Judge who had allowed the writ petitions. In the circumstances of the case parties to bear their own costs.