

# SUPREME COURT OF INDIA

Maharashtra Distilleries

Vs.

Municipal Corporation of Aurangabad

C.A.No.5341 of 1996

(S. P. Bharucha CJI. N. Santosh Hegde and Shivaraj V. Patil JJ.)

17.04.2002

## JUDGEMENT

### **Shivaraj V. Patil, J.**

1. The appellant is a company engaged in the manufacture of various kinds of IMFL/potable liquor. For manufacture of its products, it requires raw materials such as Rectified Spirit, Compound Alcoholic preparation, Cane Juice Spirit, Grape Spirit, Malt Spirit Barley Malt, Molasses, Coal etc. It imports these raw materials into the octroi limits of Aurangabad Municipal Corporation, the respondent herein. The controversy raised in this appeal is confined to the rate of octroi duty levied on the Rectified Spirit imported by the appellant.

2. On the Rectified Spirit imported by the appellant, the local authorities had been charging octroi duty @ 1.5% falling under Entry 37 of Class III of the Schedule "O" annexed to the Aurangabad City Municipal Corporation Octroi Rules (for short the 'Rules') even before the establishment of the respondent-Corporation which came into force on 1-3-1984. Thereafter also, it continued to collect octroi duty at the same rate. Surprisingly, the appellant received a letter dated 5th August, 1986 from the respondent stating that the Rectified Spirit which the appellant had been importing was chargeable to octroi duty @ 5% falling under Entry 7 of Class I of the Schedule "O" and consequently the appellant was directed to pay balance of octroi duty @ 3.5%.

3. In reply to the said letter, it was brought to the notice of the respondent that the Entry 7 in Class I of the Schedule relates to articles of food and drinks consumed by men and animals; Rectified Spirit was not potable and could not be directly consumed by human-beings so as to be covered by it. This contention was rejected. The appellant received a letter on 16-10-1986 along with the bill of demand to the tune of Rs. 8.87, 538.95 from the Octroi Superintendent of the respondent. The appellant by its letter dated 20th October, 1986 tried to convince the Administrator of the Corporation but failed.

4. Hence, the appellant filed Writ Petition No. 1080/86 which was dismissed by the High Court taking a view that Rectified Spirit is fit for human consumption which clearly fell under Entry 7 of Class I of the Schedule. Hence, this appeal by special leave.

5. The relevant entries in the Schedule "O" therein showing the goods liable to octroi and the rates leviable read as under:-

| Item No. | Description of Goods | Rates fixed by the Corporation, Aurangabad<br>Ad-valorem per 10 kgs. unless Otherwise. |
|----------|----------------------|--|
|----------|----------------------|--|

Class I- Articles used for food or drink by men or animals and drugs

1. ....

7. Wine and spirits and beer, ganja, bhang, opium, charas. 5.00%

Class III- Articles used for fuel, lighting, washing and industrial use.

37. Methylated and denatured spirits and industrial alcohols 1.50%

Class IX- Miscellaneous

86. Goods not included in any of the above items and not specifically exempted in Schedule II. 2.00%

6. From 1983, the Rectified Spirit was being declared and accepted under Entry 37 collecting octroi duty @ 1.5%. The respondent by the letter dated 16-10-1986 retrospectively revised octroi duty stating that the goods were liable to octroi under Entry 7 in Class I of the Schedule.

7. It was contended on behalf of the appellant that what was imported was Rectified Spirit within the octroi limits of the Corporation for its use in manufacture of IMFL in its factory. The octroi duty was not leviable on its import into the octroi limits of the Corporation under Entry 7 in Class I as at that stage it was not fit for human consumption. The issue that the Rectified Spirit is not fit for human consumption is concluded by the decisions of this Court in *Synthetic and Chemicals Ltd. and Ors. v. State of U.P. and Ors.*<sup>1</sup> and in the *State of U.P. and Ors. v. Modi Distillery and Ors.*<sup>2</sup>. Class heading of Class I covers articles used for food and drink by men or animals and drugs. Entry 7 covers wines and spirits and beer, ganja, bhang, opium, charas. It cannot be said that the Rectified Spirit falls under this Entry plainly because it cannot be used for food or drink. According to the appellant, the High Court committed a manifest error in holding that the Rectified Spirit fell under Entry 7 of Class I to attract octroi duty @ 5%.

8. In opposition, on behalf of the respondent, it was submitted that the Spirit in Entry 7 includes Rectified Spirit. Alternatively, at best it could fall under residuary Entry 86 of Class IX of the Schedule but not under Entry 37 as it is not specifically included.

9. In order to appreciate these rival contentions, we may now refer to few more facts. From 1983, the goods imported were being declared and accepted under Entry 37 including Rectified Spirit (Ethyl Alcohol) of strength of 95% v/v and octroi duty was paid @ 1.5%. A notice was issued on 16-10-1986 by respondent claiming octroi duty @ 5% and demanding the difference of octroi duty @ 3.5% retrospectively. In an octroi statute, the incidence of tax can only be on goods actually brought into the local area for use directly i.e. if wine spirit, beer were brought in, the rate of tax would be 5% but if industrial alcohol was brought in, the rate of tax would be otherwise irrespective of the fact that such industrial alcohol was later converted by processing into potable liquor. In the case on hand, the Rectified Spirit brought into local area was not potable liquor and could not be used for food or drink directly. Further on every consignment brought in the local area, all the facts were disclosed to the authorities showing that the Rectified Spirit of the strength of 95% v/v had been brought in and the octroi duty had been paid and accepted @ 1.5% accordingly. The appellant, as stated, manufactures Indian Made Foreign Liquor (IMFL), i.e. potable liquor which is fit for human consumption. For the purpose of manufacture of such liquor, it inter alia imports Rectified Spirit within the local area of the respondent. In the decisions of this Court aforementioned, it is clearly held that the Rectified Spirit cannot be treated as potable liquor as it is not fit for human consumption.

10. In the light of facts stated above, there cannot be any doubt that the Rectified Spirit imported by the appellant into octroi limits of the respondent was not fit for human consumption as it was directly at the point. It was only raw material at that stage. No doubt, it is subsequently used in the manufacture of potable liquor but the octroi duty is leviable on the material imported into octroi limits at that stage only, which aspect is not correctly appreciated by the High Court. The Rectified Spirit undergoes numerous processes in the distillery of the appellant after importing it on payment of octroi duty before being converted into potable liquor. Class I of the Schedule speaks of "articles used for food or drink by men ....". It would only mean that the articles which were used directly on the import within the local area of the respondent and not articles coming into being after further processing because the octroi duty is leviable on goods actually brought into the local area at that point for use directly. The High Court was also not right in saying that the Rectified Spirit is purified or refined liquor as it has to undergo certain processes including treatment with chemicals and redistillation to remove impurities before it can be treated as pure spirit. It may be stated that even the pure spirit has strength of about 90% v/v and in this form also it is not fit for human consumption. Class I of the Schedule speaks of articles used for food or drink by men or animals and drugs. Spirits included in Entry 7 of the said Class are included in the company of wine and beer which can be used for drink by men. This being the position, contextually spirits in the said Entry 7 cannot be read or understood as including Rectified Spirit. The Rectified Spirit does not fit in Entry 7 and does not match with Class heading of Class I. In these circumstances, we are of the view that Rectified Spirit does not fall in Entry 7 of Class I of the Schedule. It is not possible to accept the contention of the

appellant that the Rectified Spirit falls under Entry 37 of Class III. Rectified Spirit is an input in the industrial use of making potable alcohol. As the phraseology of the Entry shows (fuel, lighting, washing), it is inapplicable to inputs. We are, therefore, of the opinion that the Rectified Spirit falls under residuary Entry 86 of Class IX of the Schedule attracting octroi duty @ 2%.

11. Given the facts and reasons stated above, we allow this appeal, set aside the impugned judgment and order and hold that the appellant was liable to pay octroi duty @ 2% on the Rectified Spirit imported. The respondent is entitled to recover the difference of octroi duty. No costs.

Appeal allowed.

<sup>1</sup>(1990) 1 SCC 109

<sup>2</sup>(1995) 5 SCC 753