

ALLAHABAD HIGH COURT

Mohan Meakin Breweries Ltd.

Vs.

State, (Allahabad)

Civil Misc. Writ Petns. 2603, 2873, 4002, 6104, of 1973; 613 of 1975; 757 and 429 of 1976 and Spl. Appeal No. 79 of 1968

(C.S.P. Singh and K.N. Seth, JJ.)

09.03.1979

JUDGEMENT

C.S.P. Singh, J.

1. These cases are being disposed of by a common judgment as they raise a common question of law, and the essential facts are the same. For the purposes of deciding controversy that has arisen between the parties, it will be sufficient to state the facts in Writ Petition No. 2603 of 1973.

2. The petitioner, a Limited Company holds a license in Form P.D. 1 for the manufacture of Indian made foreign liquor. The petitioner also holds license in Form F. L. 3-A for bottling of Rum. Rum, that is bottled by the petitioner, is supplied to Military Troops exclusively. The process for bottling consists of transferring liquor from vats, which are in a bonded warehouse to bottles in another bonded warehouse, under the supervision of the Excise Department. The Excise Department imposed excise duty on the quantity of Rum manufactured by it, on the basis that the assessee became liable to pay excise duty as soon as it manufactured rum, and wastage in the bottling process could not be taken into account for fixing excise duty. The petitioner's representation and revision against this levy have been turned down, and hence the present petition.

3. In the present petitions, it is not disputed that the quantity of Rum calculated bottle wise falls short of the quantity of Rum transferred from the vats to the bottles. According to the petitioner the wastage occurs on account of unavoidable causes like evaporation and spillage in the process of bottling. The

State has taken up the stand in the counter-affidavit filed that the wastage occurs on account of the negligence of the assessee, and in case the petitioner had exercised caution, wastages could have been avoided. As will be presently shown, the validity of the levy of excise duty on the wastage occurring during the bottling process, does not depend as to whether the wastage has occurred on account of the causes attributed by the petitioner or as to whether it was due to the negligence of the petitioner, as stated in the counter-affidavit.

4. The Excise duty sought to be charged from the petitioner has to be justified under Section 28 of the Act. In case the petitioner becomes liable for payment of excise duty as soon as Rum is manufactured by him, the demand would be justified. In case, however, duty is payable only on issue of the manufactured commodity, the petitioner will not be liable. The question as to whether under the U.P. Excise Act duty is chargeable at the stage of manufacture or at the point of issue, has been considered in the case of *Mohan Meakin Breweries Ltd., Ghaziabad (this very petitioner) v. State of U.P. in ¹* After considering the various decisions of the Supreme Court, the provisions of the Act, the Excise Manual, and the departmental practice, this Court held (i) that excise duty is a single point duty, and if it is charged at one of the points mentioned in Section 28, it cannot be charged at another point, (ii) excise duty is a charge essentially on the production or manufacture of an excisable article, but for administrative convenience it may be imposed at stages subsequent to the production or manufacture, (iii) Section 29 of the Act, the duty notifications, and para 814 of the Excise Manual indicate that duty is chargeable at the point of issue, and not at the point of manufacture, (iv) the departmental practice of charging duty at the point of issue corroborated this view. Sri Jagdish Swarup, appearing on behalf of the Department tried to persuade us that excise duty under the Act was livable at the stage of manufacture, but as at present advised, we are not inclined to differ from the view taken earlier. The view expressed by us earlier stands amply fortified by two other considerations, attention to which was drawn during the course of the hearing of these petitions. The first is the proviso to Section 29, which reads :

"Provided that where the payment is made upon issue of an excisable article for sale from a warehouse established or licensed under Section 18(d), it shall be at the rate of duty which is in force on that article on the

date when it is issued from the warehouse."

The proviso clearly indicates that in cases where an excisable article is kept in a warehouse established under Section 18(d) and payment is made on issue for sale, as is the case here, the rate of duty is one, which is in force on the date when the article is issued from the warehouse. "Thus, the rate of duty is linked in point of time to the date of issue for sale and not to the date of manufacture. Further, as has been noticed in the earlier decision, the rate of duty on Rum varies with the place to which it is issued, and thus, whatever be the maximum rate of duty prescribed in Section 28(3), duty can be charged only on the amount issued, at the rates appropriate for the destination where the articles are sent. The second being that by various notifications issued by the State Government, viz., Notifications Nos. 1130 E/XIII-328/1962, 7901 E/XIII-337-74 of November 20, 1974, 6628 E/XIII-501 (I)-71 of Oct. 25, 1972, 1990 E/XIII-333-70 of March 31, 1970 and 1275 E/XIII-508-62 of March 30, 1962, the rate of duty in respect of Rum supplied to Indian Troops varies with the place where it is sent. A similar situation obtains in respect of country liquor, as is apparent from the Notifications Nos. 390E/XIII-326-58 of March 23, 1959 and 729 E/XIII-336-67 of March 23, 1968 and Notification No. 573 E/XIII-331-75 of Feb. 13, 1975, which lay down different rates of excise duty for different towns in Uttar Pradesh. These Notifications clearly indicate that duty is chargeable only at the point of issue and the rate fixed with reference to the destination of the liquor. This could not have been so in case duty was chargeable and payable as soon as liquor was manufactured. Reference to Clause 7 of the bottling licence may also be made. This clause is to the following effect :-

"7. The wastages of spirit in bottling and filling the bottles shall be recovered from the licensee at the full rate of duty leviable on Indian made foreign liquor at the discretion of the Excise Commissioner."

Although this clause imposes a liability for excise duty on wastages, it has no efficacy as it is settled that a tax can be imposed only by a Statute and not by a rule or regulation, unless the statute authorizes this to be done. See *Bimal Chandra Banerjee v. State of Madhya Pradesh*, ²The Excise Act does not authorize the imposition of excise duty by a term contained in a bottling license.

This apart, the license clause is ineffective, as Section 28 and Section 29 and the duty Notifications issued under the Act clearly indicate that duty is to be charged only at point of issue and the rate fixed with reference to the destination.

5. It is, thus, clear that the impugned levy cannot be sustained in all these petitions.

In Special Appeal No. 79 of 1978 the matter has been remanded to the Excise Commissioner for considering the claim of the petitioner for being exonerated from payment of excise duty. However, on the view taken by us that excise duty is not payable on bottling wastage, no useful purpose would be served by asking the Commissioner to reconsider the matter.

6. The petitions and the special appeal are allowed, and the impugned demand of excise duty on bottling wastage is quashed and the respondents are restrained from realizing or adjusting the impugned demand of excise duty on bottling wastage. There shall be no order as to costs.

Appeals allowed.

Cases Referred.

1. Civil Misc. Writ Petn. No. 839 of 1975, decided on April 27, 1978, reported in 1978 All LR; 534: (1978 Tax LR NOC 107)
2. AIR 1971 SC 517