
(1983) 07 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 647 of 1976

Ajudhiya Distillery

APPELLANT

Vs

Excise Commissioner and Others

RESPONDENT

Date of Decision : 13-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 55 STC 116

Hon'ble Judges : H.N. Seth, J;A. Banerji, J

Bench : Division Bench

Advocate : S.K. Suri, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A. Banerji, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, M/s. Ajudhiya Distillery, Moradabad, challenging the imposition and the realisation of purchase tax on alcohol from the petitioner by the District Excise Officer, respondent No. 2.

2. The petitioner manufactures alcohol and sells the same in bulk to such parties as are permitted to purchase the same by the respondent No. 2. There is a tax on alcohol at the point of such sale, imposed under the U. P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939. In the present case the respondent No. 2 seeks to realise an amount of Rs. 9,264.80 from the petitioner as purchase tax. A notice to this effect was given to the petitioner. The tax pertained to purchase of alcohol for the period 1st November, 1975, to 20th April, 1976. The petitioner's case was that the notice demanding the tax was bad in law and no amount was due from the petitioner, who was a seller and not the purchaser of alcohol. The petitioner's case further was that no purchase tax was realised by it from the purchaser. The petitioner made a representation to respondent No. 2 but it was of no avail. The respondent No. 2 by his order dated 18th November, 1976, directed the petitioner to deposit the said amount as

purchase tax by 4th December, 1976. Consequently, the petitioner filed the present petition.

3. Although the respondents were granted time to file a counter-affidavit, none has been filed. The facts stated in the petition remained uncontroverted. However Mr. K. C. Dhuliya, learned standing counsel for the State, has appeared and argued the case on behalf of the respondents. We have heard the learned counsel for the parties.

4. Originally, the United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939 (U. P. Act No. 1 of 1939), did not contain any provision for a tax on the sale of alcohol. By an amendment brought about by Ordinance No. 9 of 1974 and later by U. P. Act 12 of 1974 alcohol was added as one of the taxable commodities in the aforesaid Act. This amendment, apart from amending various provisions of the 1939 Act, imposed sales tax on the first sale of alcohol payable by the selling dealers. The vires of the Amending Act was challenged in a writ petition in this Court and by a judgment dated 11th July, 1975-Kesar Sugar Works Ltd. v. State of U. P. 1976 UPTC 538 this Court allowed the writ petition and struck down the Ordinance No. 9 of 1974, and the U. P. Act No. 12 of 1974 in so far as they related to alcohol. Subsequently, by an Act (U. P. Act No. 8 of 1978), the provisions of Section 3 of the 1939 Act were amended. This Act received the assent of the President on the 17th April, 1976 (sic) and was published in the Gazette the very next day. The, relevant portions of amended Section 3(1)(a), (b) and (c) are quoted below :

Section 3(1)(a) : There shall be levied on the first sale of motor spirit in the State...and such tax shall be payable to the State Government in the prescribed manner by the dealer effecting such sale;

(b) There shall be levied on the first sale of diesel oil in the State...and such tax shall be payable to the State Government in the prescribed manner by the dealer effecting such sale;

(c) There shall be levied at the point of first purchase of alcohol in the State a "tax" at the rate of 40 paise per litre for the first million litres and at the rate of 20 paise per litre for the remainder payable by the purchaser, and such tax shall be collected and paid in the prescribed manner to the State Government.

5. A perusal of the above provisions shows that the tax on the first purchase of alcohol has been levied, secondly, it has been made payable by the purchaser, thirdly, the tax shall be collected and paid in the prescribed manner to the State Government. In the case of motor spirit and diesel oil, the tax has been imposed on the first sale of the same and is a tax on the sale. The statute has used the same expression in regard to the liability to pay the tax on the dealer in the case of motor spirit and diesel oil. In the case of alcohol, however, the language puts the liability on the purchaser. The expression "payable by the purchaser" is in sharp contrast to the expression "payable to the State Government in the prescribed manner by the dealer" in Clauses (a) and (b).

6. An argument was raised by the learned standing counsel that the purchase tax was to be realised or collected by the seller from the purchaser and the latter was liable to pay the same. The learned counsel relied on the expression "such tax shall be collected and paid in the prescribed manner to the State Government" contained in Section 3(1)(c) of the Act. Reliance was also placed on Rule 15(b)(i) of the Uttar Pradesh Sales or Purchases of Motor Spirit, Diesel Oil and Alcohol Taxation Rules, 1977, framed u/s 17 of the Act. The relevant part of the rule on which reliance was placed reads :

The tax on the purchase of alcohol shall be payable by the purchaser or the seller on his behalf....

7. We do not find any merits in this contention. The provisions of the Act, viz., Section 3(1)(c) squarely place the liability on the purchaser and not on the seller. The said provision, also speaks of the rules prescribed for payment unto the Government the said tax. The rule quoted above nowhere puts the liability on the seller. This could not be done either by the Rules. However, the seller is empowered under the rule to deposit the said tax on behalf of the purchaser. This does not mean that the liability is transferred on the seller. The liability to pay the tax, in our opinion, remains on the purchaser. But as noticed above the seller can deposit the tax on behalf of the purchaser. The expression used is "on his behalf". Here the word, "his" refers to the purchaser. Imposition of the tax is quite different from payment of tax. Imposition connotes a liability. Payment or deposit of tax means payment into the Government treasury and this can be done by the purchaser or even by the seller on behalf of the purchaser. This does not fasten the liability for the payment of the purchase tax on the seller, so that in the event of the failure of the purchaser to pay the said tax the seller becomes liable. Moreover, there is no allegation anywhere that the amount of the purchase tax had been collected by the seller from the purchaser.

8. Further, in our opinion, no support can be had from the aforesaid rules, for they came into effect from the 24th January, 1977, i.e., long after the event. The rules are not retrospective in operation.

9. For the reasons indicated above we are of the view that there was a tax on the purchase of alcohol at the relevant period and that was the liability of the purchaser of alcohol and no part of the liability to pay the tax lay on the seller. In this view of the matter the imposition and the realisation of the purchase tax on the petitioner is bad in law and liable to be struck down.

10. Before we conclude, we must notice another argument raised by the learned Standing Counsel, viz., that the petitioner had an alternative remedy by way of appeal and that no relief be granted to the petitioner in exercise of the power of the Court under Article 226 of the Constitution. This contention has to be repelled. Alternative remedy is no bar to the grant of relief under Article 226. It may affect the exercise of discretion in the grant of relief. In the present case no such plea was taken by the respondent in the past seven years although they

had notice of the petition. The plea has been taken orally at the stage of arguments. Further, plea of an alternative relief by way of an appeal was not even prescribed when the notice was served or the direction for making the deposit was given, i.e. 18th November, 1976. The Act did not prescribe the authority to whom the appeal could be filed. Rule 20 prescribed that an appeal could be filed before the Excise Commissioner within 30 days of the order. This rule was non-existent on the 18th November, 1976, or even within one month of the passing of the impugned order. Consequently, there was no prescribed or effective remedy to be had from an appellate authority when the said impugned order was passed. This contention is also without substance. We are therefore satisfied that the petitioner did not have any adequate or suitable alternative remedy, so as to deny him the relief obtainable under Article 226 of the Constitution.

11. In the result the writ petition is allowed, the impugned notice dated 13th October, 1976 and the order passed by respondent No. 2 dated the 18th November, 1976, are hereby quashed. The petitioner will be entitled to its costs.