
(1969) 03 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 1088 of 1967 (P.)

A.M.S. and Brothers

APPELLANT

Vs

Union Territory of Pondicherry and Another

RESPONDENT

Date of Decision : 21-03-1969

Acts Referred:

Pondicherry Alcoholic Liquors (Consumption Duty) Amendment Act, 1966 — Article 5

Citation : AIR 1970 Mad 152

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : R. Kesavan Iyengar and K. Yamunar, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The petitioner, A. M. S. and Brothers, is engaged in the business of importing liquors into the Union Territory of

Pondicherry from other States in India. Under a resolution passed by the "General Council" in 1906, which has the force of law, the Pondicherry

Government was given power to levy tax called "Consumption Duty" on all foreign liquors imported into the territory of Pondicherry as well as on

locally manufactured liquor. After the merger of the former French Territory of Pondicherry in the Indian Union, the above consumption duty was

collected in advance from importers under a scheme called "Import Duty paid permits". Only after they had obtained such Import Duty paid

Permits, were they allowed to import liquor from other parts of India into Pondicherry limits. In other words, advance payment of consumption

duty was made as a condition precedent to the issue of the Import Duty paid Permit. The permit so issued was valid for three months from the date

of issue, and the transport of the liquor mentioned in the permit should be made within the three months,

2. The petitioner obtained three such Import Duty paid permits on 19-3-1966 for importing specified quantity of Brandy from a Bangalore Dealer.

The rate of consumption duty which was at that time prevalent under the resolution was Rs. 675 per hectolitre. The petitioner paid this duty and

obtained the permit. By a subsequent amendment called the Pondicherry Alcoholic Liquors (Consumption Duty) Amendment Act, 1966, (Act No.

5 of 1966), the rate of consumption duty payable on imported liquors was increased by 100 per cent with effect from the date when the Amending

Act came into force, namely, 1-6-1966. Though the petitioner had entered into an arrangement with the Bangalore manufacturer for "getting the

consignments under the three aforesaid Import Duty paid Permits, the goods in question reached Pondicherry only after 1-6-1966. It may be

mentioned that the period of three months which the party had under the above Import Duty paid Permits ended on 19-6-1966. The goods were

transported before that date, but after 1-6-1966. Taking advantage of the doubling of the duty by Act 5 of 1966, in the interval, the respondent in

this petition, the Union Territory of Pondicherry insisted that this extra duty should be paid in addition to the duty already paid; in other words

insisted on a payment of the consumption duty which was the double of what was already paid. The petitioner demurred to the payment and he has

filed this Writ Petition under Article 226 of the Constitution for a Writ of Certiorari for quashing the above demand for extra duty.

3. It was urged by the learned Counsel appearing for the petitioner, Thiru Kesava Iyengar, that the levy of this duty itself as a consumption duty is

ultra vires, after the Indian Constitution was extended to Pondicherry territory with effect from the date of the de jure transfer of the territory to the

Indian Union, in 1962. According to him, the enhancement of the levy was made by way of an amendment to the pre-Constitution Act, namely the

resolution of the General Council in 1906, above mentioned. If such levy of consumption duty was beyond the competence of the State

Legislature, the effect is that the amendment providing for the enhancement, will be ultra vires even though the pre-Constitution Act for levy of

consumption duty at the lower rate may be intra vires. The argument proceeds thus. Entry No. 51 in the State List (List II) of the Seventh Schedule

of the Constitution gives power to the State Legislature to levy duties of excise on the goods specified against the entry, manufactured or produced

in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: The entry includes

alcoholic liquors for human consumption"". It is urged by the learned counsel that levy of consumption duty is permitted under this entry only if a

countervailing duty for the goods in question are levied on the local manufactured product. Learned counsel also placed reliance upon the decision

of the Supreme Court in *Kalyani Stores Vs. The State of Orissa and Others*, first of all for explaining the meaning of the term ""countervailing duty"" ;

secondly for laying down the principle that the protection given under Article 372 of the Constitution to a pre-Constitution Act will not protect the

amendment of a pre-Constitution Act if that Act is ultra vires the Constitution if it were to be passed after the Constitution came into force. While

the pre-Constitution Act might be saved under Article 372 of the Constitution, the post-Constitution amendment if it is beyond the constitutional

power of the State Legislature, will have pro tanto to be struck down. The Supreme Court decision is relied upon for these two principles. As

against this it is pointed out by the learned Govt. Pleader of Pondicherry that this is a case really where there is a countervailing duty, because

alcoholic liquor is also manufactured in Pondicherry, besides import, and it also suffers consumption duty. The scope of a countervailing duty is

explained in the Supreme Court decision above cited, thus :--

Countervailing duties in Entry 51, List II of the Seventh Schedule of the Constitution meant a duty levied with a view to equalise the burden on

alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquors manufactured or produced in the

State. It meant that countervailing duties could only be levied if similar goods were actually produced or manufactured in the State on which excise

duties were being levied.

In view of½ the statement of the learned Government Pleader that at the relevant period alcoholic liquor was manufactured in Pondicherry also

and there was consumption duty on such liquor, there is no doubt that what the Amendment provided for was a countervailing duty falling within

Entry 51 of List II of the Seventh Schedule of the Constitution and therefore,

within the competence of the State Legislature.

4. The further question is whether the enhancement of the duty on the goods which were actually brought inside the Pondicherry territory after 1-6-

1966 and before the expiry of the permit on 19-6-1966 is in accordance with the Act. What is relied on by the respondent for the purpose of

bringing the consignments within the scope of the higher duty, is that the date of the entry of the consignments into the territory of Pondicherry will

decide the rate of duty payable, and not the date when the Import Duty was paid in advance before the Import duty, Paid Permit was granted. In

other words what the learned Government Pleader wants to say is that the same principles which are applied to an import duty must be held

applicable to a consumption duty under the Act. He also urges that what was paid for the grant or import duty permit was only a provisional

payment or duty, subject to actual levy at the time of import.

5. A perusal of the relevant provisions of the Act, shows that it really provides a consumption duty and not an import duty. The other provisions

which prescribe for the method of collection, are intended only to enable effective collection of the duty. Article 5 which is relied upon for this

purpose by the respondent, mentions that taxes are collected for imported beverages ""at the time of unloading or entry through land"" and for

alcohols, liquors, liquor wines and duplicate beverages made in the colony at the time of leaving the producing factories. It may be noted that no

provision is made for collecting the duty at the exact point of time when the customs frontier is crossed as in the case of an import duty. It appears

to me that ""the time of entry prescribed in the Article for the purposes of levy of consumption duty is intended to prescribe in general terms that the

levy should be made in the course of import. In other words ""Import"" for this purpose will include all the integrated transactions that go with the

import. The learned counsel Thiru Kevasa Iyengar quotes the analogy of tax on a sale in the course of import. The Supreme Court in Universal

Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others, has given a wider interpretation to ""import"" in such

terms:

Applying the said principles to an import sale it may be stated that a purchase by import involves a series of integrated activities commencing from

the contract of purchase with a foreign firm and ending with the bringing of the goods into the importing country and that the purchase and resultant import form parts of a same transaction. If so, in the present case the bringing of the goods into India and the relevant contracts entered into by the petitioners with the foreign dealers form parts of a same transaction. The imports, therefore, were the effect of the legal consequence of the "things done", i.e., the contracts entered into by the petitioners with the foreign dealers. The authorities when they insisted that ft permit should be obtained before the actual import and that the prescribed customs duty should be paid at the time the permit is obtained were obviously intending to levy the customs duty from the point of view of Article 5 of the Act, The permit thus issued was described as ""import duty paid permit"". When they gave a period of three months for the validity of the ""import duty paid permit"" thus issued, one can reasonably infer that they intended to consider that the ""time of entry"" for the purpose of Article 5 will be a period which could be expected to cover a period of three months commencing from the contract of sale with the foreign dealer or foreign supplier, and ending with the arrival of the goods in the limits of Pondicherry. Because of this period of three months given for the validity of the permit and because of the insistence that duty should be paid before the permit is granted, I am inclined to hold the view that ""the time of entry"" for the purpose of Article 5 has to be given an extended meaning to cover the period of three months from the date of the issue of import duty paid permit without laying stress upon the exact point of time when under the carrier in which the goods are transported crossed the State frontier. Stress on the exact point of time of crossing the frontier would be relevant for the levy of customs duty. But from the way in which a longer period has been incorporated at the time of granting of import duty paid permit, it appears to me that no importance was attached to the exact time of crossing the frontier, in the scheme of levy of consumption duty in such cases. If a different view is to be taken, it will lead to different duty paid permits issued on the same date depending upon the State of Law before 1-6-1966 and after 1-6-1966. This result of an invidious distinction, was not visualised when the import duty paid permit was granted in these cases.

6. Further, the permit itself states that the duty had been paid. It is not

described as ""Provisional duty"" subject to alteration with reference to the circumstances existing at the time of the actual crossing of the State frontier. It is possible on the other hand of the import being in violation of the permit either because the goods imported were larger in quantity, or were of a different description. But such violations will fall within the scope of non-compliance with the permit. But when such violations have not taken place,, and the transport is effected within the time granted in the permit, there is no scope for holding that a further duty has to be paid with reference to the law in force at the time of the actual movement of goods in the carrier, across the State's frontier.

7. The decision cited by the learned Government Pleader in Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, dealt with

an entirely different state of affairs. It dealt with the validity of the levy of excise duty by a provision in the Finance Act, with retrospective effect. It

was held that in such a case, the vires of the Act could not be attacked nor its constitutionality, and for that purpose, the ultimate incidence of the

duty was not of importance or relevance. The question that arises here for decision is not a question about retrospectivity or a question of ultimate

incidence. It is a question of the Interpretation of the provision in Article 5 of the Act for the levy of consumption duty. The question is whether

with reference to the terms of the import duty paid permit granted,, a restricted view should be taken of the time of entry of ½ the goods as the

point when the carrier which transported the goods crossed the State frontier, or whether the time of entry should be interpreted so as to have a

larger meaning to include the integrated activities that go with the commencement of the contract entered into and ending with the actual removal of

the goods across the State frontier, within a reasonable time which is fixed in the permit the period for that purpose being restricted to the three

months mentioned. In my opinion the entire period of validity of the permit, namely three months, must be viewed as time of entry for the purpose

of the payment of consumption duty. The period must be treated as the estimated period to cover all incidents of actual transport of goods. If the

transport is made within the time prescribed in the permit, payment of duty will be valid.

8. For the above reasons, the writ petition is allowed as prayed for and a writ of mandamus will issue directing the refund of excess duty collected from the petitioner.