(1979) 04 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No''s. 141 and 208 of 1975

Bombay Oil Mills Industries (P) Ltd. — APPELLANT

Vs

Excise Inspector and Others — RESPONDENT

Date of Decision : 05-04-1979

Acts Referred:

Cochin Abkari Act, 1077 — Section 18, 18(2), 18(3), 29, 3
Cochin Denatured Spirit and Methyl Alcohol Rules, 1965 — Rule 4, 6
Constitution of India, 1950 — Article 255, 301, 304

Citation : (1979) 04 KL CK 0001

Hon'ble Judges : Viswanatha Iyer, J;Bhaskaran, J

Bench : Division Bench

Advocate : Anil Divan, Pathrose Mathai, Joseph Vellappally and K.V. Kuriakose, for the Appellant; M.M. Abdul Khader, General, for the Respondent

Final Decision : Allowed

Judgement

Viswanatha Iyer, J.—A common question arises for consideration in these two cases. Methyl alcohol, a highly poisonous liquid declared by Parliament as dangerously inflammable, is stored by the Petitioners in tanks constructed according to approved specifications and in premises licensed by the District Collector. The Petitioner in O.P. 141 of 1975 needs the substance as a solvent for the production of Calcium Sennosides from Senna leaves and the Petitioner in the other Original Petition requires the substance as a raw material for the manufacture of Formaldehyde which in turn is a raw material used in the manufacture of synthetic resins. The State Excise Authorities consider the liquid as an intoxicating liquor and purporting to exercise their powers under the Abkari Act sealed the tank, belonging to one of the Petitioners, containing a large quantity of methyl alcohol and took proceedings against it for the alleged violation of the provisions of the Abkari Act. The Excise Authorities likewise informed the Petitioner in the other Original Petition that the Petitioner --company would be committing an offence by importing and storing methyl alcohol without obtaining a license under the provisions of the Abkari Act and the rules. This action of the State Excise Authorities is challenged by the Petitioners in these petitions on the ground that methyl alcohol is not an intoxicating liquor and that the provisions of the Abkari Act (Act 1 of 1977) do not apply to this substance. The question for consideration is whether this stand of the Petitioners is correct.

2. Before going into the nature of the rival contentions it is necessary to state the facts in O.P. 141 of 1975. For the manufacture of Calcium Sennosides methyl alcohol also known as ''methanol'' is essential and an essentiality certificate from the Director of Industries is a necessary pre -- condition for procurement of methanol from the Fertiliser Corporation of India and/or obtaining a license for storing methanol. The Petitioner obtained that certificate on 10th July 1974. This liquid has been declared to be dangerously inflammable by parliament in enacting the Inflammable Substance Act, 1952 (Central Act 20 of 1952). Consequently the provisions of the Petroleum Act have been made applicable by a notification of the Government of India and a license under the Petroleum Act is necessary to acquire, transport or store methyl alcohol. The Chief Controller of Explosives, Government of India, Nagpur is the licensing authority. The license will be granted under the Petroleum Act only on satisfying certain conditions. A tank has specially to be constructed in accordance with the approved specifications on obtaining a no objection certificate from the District Collector. This is necessary to the grant of the license under the Petroleum Act. On complying with all these formalities the Chief Controller issued a license to the Petitioner to store 2,200 gallons of methanol. Thereafter the Petitioner purchased a consignment of methanol from the Fertiliser Corporation of India, Bombay, transported the same to the Petitioner''s factory and was in the process of storing the same in the aforesaid tank. While so on 19th December 1974 the Excise Inspector, Excise Range, Angamaly seized part of the consignment contained in barrels along with the bills and transport documents and sealed the tank containing the balance of the consignment. According to the State Authorities the Petitioner has to take out a licence under the Cochin Denatured Spirit and Methyl Alcohol Rules made under the Abkari Act paying a vending fee at the rate of 35 p. per liter under the said Rules to the State Government. For the alleged violation of these rules two officers of the Petitioner''s Company were prosecuted u/s 55(a) of the Abkari Act, arrested and released on bail. So the amount demanded was paid under protest and the license has been applied for by the Petitioner. According to the Petitioner, no license is necessary under the Abkari Act to store methanol. So, the Petitioner has filed this Original Petition. In the second case the Petitioner complied with all the formalities under the Petroleum Act and stored methanol. But it has been intimated that it will be committing an offence by importing methyl alcohol without obtaining a license under the Abkari Act. So they have also challenged the action of the Excise Authorities to proceed against them under the Abkari Act. It is in this background that the question arising for consideration has to be decided.

3. Methyl alcohol, a highly poisonous liquid was previously obtained by the

destructive distillation of wood. But now it is produced by synthetic methods and synthetic production has contributed to the increased industrial use of it. It is an important starting material in chemical industries. Its chemical formula is CH5OH. Its toxity is so high that a dose of 250 mg. can cause death. Lesser quantity can lead to complete blindness, convulsion, circulatory collapse, respiratory failure, etc. Any scientific literature like Organic Chemistry books and Mere Index, will confirm the nature and property of methyl alcohol. It may have an alcoholic smell but is different from it. It is an entirely different organic liquor from alcohol. Alcohol as an intoxicant is ethyl alcohol or ''ethanol'' having the chemical formula C2H2OH. It is used as an alcoholic beverage in suitable solutions. The other uses are as solvent in laboratory and industrial manufacture of denatured alcohol, pharmaceutical and in perfumery. To make ethyl alcohol unfit for human consumption, in other words to denature it, methanol is very often used. Thus methanol far from being a liquor fit for human consumption is mixed to make ethyl alcohol unfit for human consumption. That is the nature and property of methanol and to call it an intoxicating liquor will be totally wrong.

4. One may come across cases where methanol may recklessly be used by the illiterate or uneducated and books on toxicology or medical jurisprudence do contain description of cases where death has occurred by drinking methyl alcohol. That is no reason to say that methyl alcohol is a beverage or an intoxicating liquor. On behalf of the Respondents it is submitted that Methyl alcohol can easily be made potable by the use of potassium permanganate and is a prolific source of illicit liquor and strict control over its issue and use is very necessary. This argument is an admission that methyl alcohol is not fit for human consumption. The taxable event in entry 51 relates to alcoholic liquors for human consumption. From a liquid or substance of a different character and on subjecting it to a chemical process alcohol fit for human consumption may be obtained. That will not make the former liquid an alcoholic liquor fit for human consumption.

5. Entry 8 in List II Seventh Schedule to the Constitution deals with intoxicating liquors, that is to say, the production, manufacture, possession, transport purchase and sale of intoxicating liquors. Duties of excise on alcoholic liquors for human consumption manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India can be imposed by the States under Entry 51 List II. In other words the State has power to legislate and to levy duties of excise on alcoholic liquors fit for human consumption. It is in exercise of this power that Cochin Abkari Act (Act 1 of 1077) has been made law for the whole State of Kerala by Act 10 of 1967. The preamble of that Act shows the legislative purpose of the enactment. It is stated that law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs in the State of Kerala has to be consolidated and for that purpose it is expedient to amend the law relating to it. The history of excise law shows that the state has exclusive right or privilege of manufacture or sale of liquor. The citizen has

no fundamental right to deal with it. The trade in liquor stands on a different footing from other trades. Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The nature of the trade is such that the state confers the right to vend liquor by farming out either in auction or on private treaty. Mental is the consideration for the privilege granted for the manufacturing and vending liquor. See Nashirwar and Others Vs. State of Madhya Pradesh and Others, . In the light of these we have to consider whether Methyl Alcohol or methanol is understood to be a liquor for the purpose of the Abkari Act. As stated earlier the preamble to the Act states that it is expedient to consolidate and amend the law relating to intoxicating liquor and liquor is defined in Section 3(10) thus:

(10) ''Liquor'' includes spirits of wine, methylated spirits, spirits, wine, toddy, beer, and all liquid consisting of or containing alcohol.

All these contain alcohol. In other words liquids containing alcohol alone are taken in by the definition. The Kerala Spirituous Preparations (Control) Rules, 1969 made u/s 29 of the Abkari Act contain the definition of the word alcohol in Section 3(b) thus:

3(b) ''alcohol'' means ethyl alcohol of any strength and purity having the chemical composition C2H5OH.

It may be noticed that the various liquids referred to in the definition of liquor, namely spirits of wine, methylated spirits, spirits, wine, toddy, beer are all liquids consisting of or containing alcohol. Denatured spirit is spirit rendered unfit for human consumption by mixing substances like formalin, liquid soap, casteroil, caustic soda and methylated spirit is made by mixing or adding methanol to denatured spirit. (See the definition of denatured spirit and methylated spirit contained in Cochin Denatured Spirit and Methyl Alcohol Rules). Thus it can be seen that the definition of liquor in the Abkari Act does not take in methyl alcohol or methanol. That this is further clear can be seen from a reference to the other sections of the Act. Sections 6 to 18 deal with import, export, transport, manufacture, possession, tax and duties on liquor and intoxicating drugs. All these are the different facets referred to in Entry 8 and Entry 51 of List II dealing with intoxicating liquors and alcohol fit for human consumption. In the nature of these provisions it is not possible to understand that Abkari Act 1 of 1077 relates to or deals with methyl alcohol and its manufacture or production, transport, sale, import and possession of it. That being so, the Abkari Act has no application.

6. In this connection Section 18 may also be looked into. It relates to duty of excise on liquor and intoxicating drug. The Petitioner is not engaged in the process of manufacture or production of liquor. Luxury tax referred therein is stated to be levied on liquor in the form of a fee for license for the sale of liquor and in the form of gallonage fee or vending fee in other cases. Sub-section (3)(2)(c) of Section 18 provides the rate when levied in the form of vending fee on

denatured spirit including methylated spirit. Denatured spirit and methylated spirit are not methyl alcohol. They are alcohol made unfit for human consumption. Mixture of alcohol with other substances like formalin, liquid soap, casteroil or caustic soda will make it denatured spirit and mixing methyl alcohol with denatured spirit will make the latter a methylated spirit. It is thus seen that none of the provisions of the Act relating to the manufacture, production, sale, export, import, transport and possession of liquor and taxation by way of excise duty or luxury tax does take in methyl alcohol or methanol.

7. In this connection reference has to be made to the Cochin Denatured Spirit and Methyl Alcohol Rules, 1965 framed under this Act. These rules contain the definition of methyl alcohol thus:

2(d) ''methyl alcohol'' means the liquid having the chemical formula CH5OH. Its other chemical names are methanol, carbinol and methyl hydrate and includes wood naptha, wood spirit, wood alcohol pyroxylic spirit and pyroligenous spirit; and

Rules 4, 6 and Form D1 to the rules refer to the requirement of a license and payment of gallonage or vending fee at the rate of 35 paise per liter for methyl alcohol also. This is not warranted by the charging section, namely Section 18. Section 18 does not take in methyl alcohol. It refers only to denatured spirit and methylated spirit which are not methyl alcohol. So to that extent Rules 4 and 6 and Form D-1 in the Cochin Denatured Spirit and Methyl Alcohol Rules are beyond the rule making powers and to that extent invalid.

8. In the light of what is stated above it may not be necessary to consider the alternate argument put forward by the counsel for the Petitioners. The alternate argument proceeds on the assumption that the Abkari Act takes in methyl alcohol also. In developing this argument he contended that the license and the gallonage fee or vending fee demanded from the Petitioners by the State Excise Authorities is in the nature of a tax and the State Legislature has no legislative competence to impose it either in Entry 51 or Entry 62 of List II. The incompetency of the State Legislature is also put forward on the basis of the declaration by Parliament by legislating the Inflammable Substance Act of 1952 which takes in methyl alcohol. And lastly it is contended that the levy of gallonage fee or vending fee violates Article 301 of the Constitution. We shall briefly refer to them. Entry 51 enables the State to levy duty of excise only on alcoholic liquors for human consumption manufactured or produced. The argument is methyl alcohol is not alcoholic liquor fit for human consumption. So entry 51 has no application. Entry 62 relates to tax on luxuries including taxes on entertainments, amusements, betting and gambling. Methyl alcohol is not a luxury item. It is a poisonous substance. Luxury has to be understood to mean something that conduces to enjoyment and different from the necessaries of life. It denotes something superfluous and not indispensible, something resorted to enjoy or amuse oneself. An expenditure on something which is in excess of what is required for economic well -- being will be an expenditure on luxury. It is in

this way luxury has been understood and explained by the Supreme Court in A.B. Abdul Kadir and Others Vs. State of Kerala, . Understanding the word luxury that way methyl alcohol is not a liquor or substance of that character intended to be used as a luxury. It is a poisonous substance, a little misuse of it will end in total blindness or death. So the Entry 62 will not take in methyl alcohol for purposes of taxation. In the light of the scope of Entry 51 and Entry 62 of List II and the nature, character and chemical composition of methyl alcohol this contention of the counsel for the Petitioner has only to be accepted. If Abkari Act takes in methyl alcohol to that extent the Act is ultra vires of the State Legislature.

9. The other contention raised by the Petitioners'' counsel is based on Entry 53 of List I. That relates to regulation and development of oil fields and mineral oil resources, petroleum and petroleum products; other liquids and substances declared by Parliament to be dangerously inflammable. The Parliament has enacted the Inflammable Substance Act, 1952 and there is a declaration in that enactment that methyl alcohol and some other liquids are dangerously inflammable substances. From this it is developed that the State has no competence to legislate on methyl alcohol. Prima facie this contention seems to be right. The scope or ambit of this entry in the way the Petitioners urge, if accepted, may create some difficulty and lead to the conclusion that in respect of ethyl alcohol which is also one of the items declared as dangerously inflammable under the Act, the State will have no legislative competence and Entry 8 of List II will become ineffective. It is not for moment contended by the Petitioners'' counsel that alcohol commonly known as ethyl alcohol is not within the Legislative Entry 8 and the State has no power to legislate on that and also to impose excise duty under Entry 51. So the scope and ambit of Entry 53 List I has to be limited to the use of a substance as an inflammable substance only. Abkari Act 1 of 1077 does not deal with the use of alcohol as an inflammable substance. Its manufacture, production, transport, sale and possession alone are taken in. So the declaration by Parliament that methyl alcohol is dangerously inflammable substance will not by itself take away the power of the State to legislate on it or to impose tax relating to it if the State has power under any of the entries in List II. So this contention cannot stand.

10. The last contention raised by the counsel is that requirement of a licence and payment of a gallonage or vendage fee for importing methyl alcohol into the State and storing them in the factory of the Petitioner restricts the freedom of trade mentioned in Article 301 and therefore invalid. If methyl alcohol is taken in by the Abkari Act there is no substance in this contention because the Abkari Act 1 of 1077 was made law for the whole State by Act 10 of 1967 and the latter Act has received the assent of the President. That is enough for Article 304 read with Article 255(c) to validate the law. But since we have found that methyl alcohol is not taken in by the Abkari Act, the levy of gallonage or vending fee on it when it is sought to be transported or stored is invalid and violative of Article 301.

In the result, these petitions are allowed. It is declared that the Petitioners are not liable to take out a licence or pay gallonage or vendage fee under the Abkari Act 1 of 1077 to import into the State and storing methyl alcohol for use in their factories. Any fee collected from the Petitioners shall be refunded to them by the State within six months from today. In the circumstances of the case there will be no order as to costs.

