
(1996) 07 PAT CK 0049

In the Patna High Court

Case No : C.W.J C. Nos. 1374 and 1576 of 1996 (R)

Braj Kishore Jaiswal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Citation : (1996) 07 PAT CK 0049

Judgement

S.K. Chattopadhyaya, J.—As both these writ applications involved a common question of law, both the applications govern by this common order.

2. In both the applications the Petitioner is the same, who is a wholesale licence dealer in country made liquor. It is not in dispute that the Petitioner was appointed as a whole sale dealer for Hazaribagh and Dhanbad respectively. Whereas in case of dealership for Hazaribagh Zone, licence is effective from 1.7.1995 to 31.3.1996 and in respect of Dhanbad Zone, his licence is effective from 11.7.1995 to 31.3.1996. He purchased country made liquor from the distilleries and after paying duty stock the same for sale to retailers. The Petitioner brought the country made liquor in his stock before 31.3.1996 by paying duty at the prevalent rate of Rs. 26/- per LPL. The liquor as stocked was 25606.3 LPL on both the Zones namely, Hazaribagh and Dhanbad. With effect from 1.4.1996 the rate of Excise duty was enhanced from Rs. 26/- to Rs. 35/- per LPL and as such, by a letter dated 3.4.1996 the Respondents directed the Petitioner to deposit difference amount @ Rs. 91/- per LPL on the liquor already stocked by the Petitioner before 1.4.1996.

3. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the Petitioner, has strongly contended that the Petitioner cannot be compelled to pay Excise duty in enhanced rate of Rs. 35/- per LPL on the liquor which was purchased and already stocked before 31.3.1996. Referring to Annexure 3, he contends that the State Government has clarified an equivocal term that the enhanced duty shall be made effective with effect from 1.4.1996. However, as the concerned Respondents were restraining the Petitioner from selling the whole stock, the

Petitioner had no option but to deposit the difference of duty @ Rs. 9/- in pursuance of the order as contained in Annexure 3.

4. The Petitioner has impugned the order dated 3.4.96 (Annexure 2) and 4.3.96 (Annexure 3) in CWJC No. 1374/96 (R) and orders dated 31.3.96 (Annexure 2) and 4.3.96 (Annexure 3) in CWJC No. 1576/96 (R).

5. Mr. P.D. Agrawal, learned Counsel appearing on behalf of the Respondents, however, contended that in view of second proviso to Section 28 of the Bihar Excise Act, 1915, the authority is entitled to direct the Petitioner to pay the balance amount of the stock purchased before 1.4.1996 @ Rs. 9/- per LPL. It is further contended that though the Petitioner has purchased the country made liquor under the old rate but he has started charging the enhanced rate of duty from the retail vendors and as such the claim of the Petitioner is not justified. In reply to the said submission, Mr. Sinha has contended that the Petitioner undertakes to sell the aforesaid stock to the retail vendors at the old rate.

6. Section 28 of the Bihar Excise Act, 1915 (hereinafter referred to as the "Act") reads as follows:

28. Ways of levying such duty.- Subject to any rules made u/s 90, Clause (12) any duty imposed u/s 27 may be levied in any of the following ways.-

(a) on an excisable article imported-

(i) by payment (upon or before importation) in the State or in the State or territory from which the article is brought, or

(ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act;

(b) on an excisable article exported by payment in the State or in the State or territory to which the article is sent;

(c) on an excisable article transported-

(i) by payment in the district from which the article is sent, or

(ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act;

(d) on intoxicating drugs manufactured, cultivated or collected-

(i) by a rate charged upon the quantity manufactured under a licence granted in respect of the provisions of Section 13, Clause (a), or issued for sale from a warehouse established, authorised or continued under this Act, or

(ii) by a rate assessed on the area covered by, or on the quantity or out-turn of, the crop cultivated or collected under a licence granted in respect of the provisions of Section 13, Clause (b) or Clause (c),

(e) on spirit or beer manufactured in any distillery or brewery licenced,

established, authorised or continued under this Act,-

(i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorised or continued under this Act, or

(ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe; and

(f) on tari drawn under a licence granted u/s 14, Sub-section (1)-

by a tax on each tree, from which the drawing of tari is permitted:

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from such warehouse:

Provided further that in case of excisable articles imported or transported on payment of duty according to the provisions of Sub-clause (i) of Clause (a) or Clause (c) of this section, the difference of duty resulting from any provision in the rates of duty subsequent to such import shall be realised from or credited to the account of the importing or transporting licensee according to the revised rate of duty which may be higher or lower than the previous rate and the calculation thereof shall be made on the balance stock of excisable article on the date the revised rate of duty comes into effect:

Provided also that no tax shall be levied in respect of any tree from which tari is drawn only for the manufacture of gur or molasses and under such special conditions as the Board may prescribe.

7. Section 28(a)(i) was subject matter of consideration before the Hon'ble Supreme Court in the case of Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise, Bihar and Others, In the aforesaid case by a notification dated 13.10.1967, duty of foreign liquor was enhanced from Rs. 14.40 to Rs. 25.20 per L.P. liters with effect from November 1, 1967. The authority directed the Company to pay the difference in duty on the opening balance of India-made foreign liquor in its stock on November 1, 1967. Legality of such levy was challenged before the Supreme Court. While interpreting the aforesaid provisions, their Lordships held as follows:

In the present case, the foreign liquor was imported before November 1, 1967 on payment of duty of the current rate in the manner indicated in Section 28(a)(i). Duty on imported foreign liquor was enhanced with effect from November 1, 1967. Sections 27 and 28 do not authorise the levy of the enhanced duty on the liquor imported before November 1, 1967 but lying with the importer on that date.

On such interpretation of law, their Lordships set aside the impugned order and the Respondents were prohibited from enforcing the aforesaid order.

8. It appears that in order to overcome the aforesaid judicial pronouncement of the Supreme Court, second proviso to Section 28 has been inserted by Act 4 of 1973.

9. Mr. Agrawal has strongly relied on this proviso and contended that in cases of excisable articles exported or transported on payment of duty according to the provisions of Sub-clause (a)(i) or Clause (c) of this Section 28, the difference of duty can be realised from the dealers. In our view, Mr. Agrawal has missed the first proviso to Section 28, according to which the payment is made at the rate of difference enforced on the date of issue of the articles from the warehouse. Before insertion of second proviso, this method was followed when the liquor was imported under a bond. The form of the bond at page 215 of the Bihar and Orissa Excise Manual, Vol. II. Part I, issued in 1957 shows that foreign liquor imported under bond is kept without payment of duty in a warehouse established with the approval of the Excise Commissioner u/s 15. In view of Section 17 no article can be removed from the warehouse unless duty has been paid or a bond has been executed for the payment thereof. Second proviso to Section 28, it appears, is in relation to excisable articles imported or transported on payment of duty according to the provisions of Sub-section (i) of Clause (a) or Clause (c) of this Section. It is not the case of the Respondents that the Petitioner has either imported or transported the country made liquor from the warehouse situated out-side Hazaribagh or Dhanbad. Under these circumstances, it cannot be said that second proviso to Section 28 will apply in the case of the Petitioner.

10. Similar point fell for consideration before a Division Bench of this Court in CWJC No. 422 of 1995 and by an order dated 23.1.1995 it was held that the increased rate of duty cannot be made applicable to the stock at hand on 7.11.1994 i.e. the date of decision of the State Government. Relying on the aforesaid decision, we are of the opinion that Sections 27 and 28 of the Act do not authorise the Respondents to levy enhanced duty on the liquor stocked by the Petitioner before 31.3.1996.

11. In the result, both the writ applications are allowed and the impugned orders as contained in Annexures 2 and 3 in both the applications are quashed. However, appreciating the apprehension of the Respondents that though the Petitioner has purchased the countrymade liquor and stocked the same before 31.3.1996 at the old rate of Rs. 26/- per LPL, he may sell it out to the retailers at the enhanced rate of Rs. 35/- per LPL, we direct hereby that the Petitioner will fix the label in old stock mentioning the rate of sale at the old rate and will sell the same at the old rate. The Respondent No. 4, the Assistant Commissioner of Excise, Hazaribagh and Dhanbad respectively will see that the Petitioner does not sell the old stock at enhanced rate. The Petitioner, however, may file a representation before the concerned authority for either refunding or adjusting the higher rate of Excise duty already paid by the Petitioner on the ground of threat and if such application is filed the concerned authority will dispose of the same in accordance with law.

12. Both these writ applications are allowed with the aforesaid observations and directions. There will be no order as to costs.

N.N. Singh, J.

13. I agree.