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(2001) 08 MAD CK 0131

In the Madras High Court

Case No : Writ Petition No''s. 2036 to 2038 of 2001

C. Raja Kumar etc. APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Madras Prohibition Act, 1937 — Section 54
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 6
Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 66, 83
Tamil Nadu Spirituous Preparations (Control) Rules, 1984 — Rule 10, 3, 3(1), 5, 6

Citation : (2001) 08 MAD CK 0131

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : G.S. Thamby for Isaac Mohanlal, for the Appellant; K. Mahendran, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—All these writ petitions raise a common question. Petitioners are manufacturers of Ayurvedic medicines after obtaining licence under the Drugs and Cosmetics Act, 1940. All the three Petitioners are preparing the following items of Ayurveedic medicines:

(1) Kanakasavam (2) Jeerakarishtam (3) Ashokarishtam According to them, the District Collector and the Superintendent of Police insist that they must obtain L-2 Licence under the Medicinal & Toilet Preparations Act, 1955 when there is no requirement to obtain a licence under the said Act for the purpose of manufacturing all these three items of medicines. Hence, they have filed the above writ petitions praying for the issue of a writ of mandamus to forbear the Respondents from insisting upon them from obtaining L-2 Licence.

2. The questions raised by the Petitioners are no longer res integra. The Kanyakumari District Sidha and Ayurveda Vaidyar Sangam, by raising a similar contention, sought for a direction not to insist upon licence under the Medicinal &

Toilet Preparations Act. As against the dismissal of their writ petitions, the matter was taken up to the Supreme Court, and in Kanyakumari District Sidha and Ayurveda Vaidyar Sangam and another Vs. Government of Tamil Nadu and others, , which confirmed the judgment of the High Court. The claim of the Sangam in that case was that the provisions requiring licence for the sale of indigenous system of medicine by those holding licence under the Medicinal & Toilet Preparations (Excise Duties) Rules, 1956 or holders under the Drugs and Cosmetics Act, 1940 amounts to unreasonable restrictions of their right of wholesale and retail dealers to deal with such indigenous system of medicine. It was further argued on their behalf that they are dealing in many products of indigenous system of medicine and all of them do not contain alcohol. In other words, majority of medicinal preparations are neither spirituous preparations nor restricted preparations containing any alcohol. This contention was rejected as of no significance or consequence. Their Lordships held as follows:

Once it is found that the Appellants have been dealing and selling in medicinal preparations through indigenous system of medicines which can be held to be restricted preparation or spirituous preparation, then the provisions of the Rules shall be attracted and the Appellant can deal only on the basis of licence being granted for the same.

The primary object is to regulate the sale of medicinal or toilet preparations containing alcohol and/intoxicating drugs which is consistent with the scheme and provisions of the Act, i.e. prohibition of manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu.

(emphasis added)

3. The contention of Mr. Thamby, Learned Senior Counsel, for the Petitioners in the present writ petitions is identical.... According to him, for the manufacture of the three items of Ayurvedic medicines permitted under the drug licence, there is no need for obtaining L-2 Licencse under the Medicinal and Toilet Preparations Act and Rules. It is further submitted that L-2 Licence is not required under the Medicinal and Toilet Preparations Act and Rules for the manufacture of those three drugs.

4. A learned Judge of this Court in W.P. Nos. 161333 of 1991 and 2870 of 1992 dated 17.4.2000, dealing with an identical prayer, held that Petitioners therein are required to obtain a licence for the manufacture of Ayurvedic products containing self-generated alcohol. It was held that if the requirement of licence is not insisted upon, then there will be no effective control, and supervision over the manufacturing activity carried on by the manufacturer and it will lead to unregulated preparation on which the State will have no control and it will ultimately affect the public health and hence, dismissed the writ petitions. In those writ petitions also, the prayer was for the issue of writ of mandamus directing the Respondents to forbear from requiring the Petitioners therein from taking out L-2 Licence for preparation of medicines under the Medicinal & Toilet

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Preparations (Excise Duty) Act and Rules and from in any manner interfering with the business of manufacturing of as was and arishthas. The Petitioner also claimed that they are hereditary Ayurveda Vaidyars preparing these medicines and they were holding L-2 Licence under the provisions of the Medicinal and Toilet Preparation Act, 1955. They were also holding drug licence. Though the Tamil Nadu Spirituous Preparations (Control) Rules, 1984 are not applicable to them, they have applied for licence under the said Act, but it was rejected and hence, they had filed the writ petitions on the ground that holding L-2 Licence is not necessary for manufacturing of as was and arishthas under the Act. However, the learned Judge refused to accept the case of the Petitioners in that case. Since nil duty has been prescribed the goods manufactured by them are not dutiable on the ground that Clause 2 of the Schedule to the Medicinal & Toilet Preparations (Excise Duty) Act, 1955 has to be read along with Rule 66 that no duty shall be levied on ayurvedic preparations containing self-generated alcohol in which the alcohol content does not exceed 2% spirit. The Rule also provides that where the percentage of spirit exceeds 2%, duty will be livable when they are capable of being consumed as ordinary alcohol beverages or not. It was further held that the goods manufactured by the Petitioners attract duty and they are liable to pay duty as provided for under the Medicinal & Toilet Preparations (Excise Duty) Act, 1955.

5. The Tamil Nadu Spirituous Preparations (Control) Rules 1984 are framed u/s 54 of the Tamil Nadu Prohibition Act, 1937. These Rules were framed with the object to check effectively manufacture and sale of medicines containing alcohol. They also found that the exemptions granted to medicinal and toilet preparations containing alcohol and/or intoxicating drugs from the provisions of the Prohibition Act subject to certain conditions were found to be inadequate. Spirituous Preparation has been defined under Rule 3(k) as follows:

(i) Any medicinal or toilet preparation containing alcohol whether self-generated or otherwise or any intoxicating drug; or

(ii) Any other substance containing alcohol or intoxicating drugs, whether self-generated or otherwise notified under Rule 5 to be a spurious preparation.

Spurious Preparation also has been defined under Rule 3(1). The explanation to that provision says that aswas and arishtas or other preparations containing alcohol which is only self-generated shall be deemed to be spurious preparation if the alcohol content of any such preparation exceeds 10% by volume unless and otherwise declared by the Expert Committee. Rule 6 dealing with manufacture says that no person shall manufacture any spirituous preparation except under and in accordance with the terms and conditions of the licence. Sub-rule (2) says that all preparations manufactured without licence and those that are found to be spurious shall be liable to confiscation. Sub-rule (3) prohibits manufacture of any restricted preparation. Rule 10 prohibits the possession of any restricted preparation except under and in accordance with the terms and conditions of a licence. The above Tamil Nadu 1984 Rules have been upheld by the Supreme

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Court in the decision referred to above. The definition of spurious preparation is an exhaustive definition in the sense that it includes every preparation, whether self-generated or otherwise and any intoxicating drug. The explanation to spurious preparation also makes this position clear. Therefore, if the Petitioners, though holding Drug Licence, even if they take L-2 Licence under the Medicinal & Toilet Preparations Act and there is no provision for taking out licence for those items manufactured by them, if it comes within the prohibited items under the Tamil Nadu Rules, action could be taken against them.

6. The Medicinal & Toilet Preparations (Excise Duty) Act, 1955 provides for levy and collection of duties of excise on medicinal and toilet preparations containing alcohol. Section 6 of the said Act says that no person shall engage in the production of any dutiable goods except under a licence. The procedure for obtaining licence is set out in Chapter VI of the Medicinal & Toilet Preparations (Excise Duty) Rules, 1956. Rule 83 dealing with the purpose for which licence is required under serial number 3, says that manufacture of medicinal preparations containing self-generated alcohol in ayurvedic for dispensing for the use of patients and not for sale to general public. The Schedule to the Medicinal & Toilet Preparation Act, 1955 provides nil duty for medical preparations containing self-generated alcohol, which are not capable of being consumed as ordinary alcoholic beverages. However, duty is imposed on medicinal preparations containing self-generated alcohol, which are capable of being consumed as ordinary alcoholic beverages. Therefore, whether the Petitioners" are manufacturing items which are not required to be licensed, once it is found that they are making spirituous preparations under the Tamil Nadu Rules, 1984 and that the Petitioners are dealing and selling such preparations on the basis that they are indigenous medicines, the Rules are attracted and they can deal only on the basis of licence being granted for the same. The preparations of the Petitioners, though are outside the purview of the Act, according to the Petitioners, they are coming within the definition of spurious preparations under the Tamil Nadu Rules and therefore, they are liable for action under the Rules. The items of manufacture squarely come under Rules 3 (k) and 3(1) of the Tamil Nadu Spirituous Preparation (Control) Rules, 1984. Sub-rule (2) of Rule 6 provides that all preparations manufactured without licence and those that are found to be spurious shall be liable to confiscation. Therefore, the contention that there is no obligation of obtaining a licence under the Medicinal & Toilet Preparations (Excise Duty) Rules, 1956 in so far as the items manufactured by the Petitioners are concerned is of no significance or consequence, if they are found to be spurious.

7. For all the above reasons, the relief sought for by the Petitioners in the above writ petitions cannot be granted. The writ petitions, therefore, fail and are accordingly dismissed. No costs. Consequently, the connected W.M. Ps. are closed.

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