(2012) 03 P&H CK 0297

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15587 of 2002

Cantonment Board, Jalandhar Cantt APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 192 ECR 370 : (2012) 166 PLR 826

Hon'ble Judges : M.M. Kumar, J;Alok Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Petitioner-Cantonment Board has invoked writ jurisdiction of this Court assailing the decision of the Government dated 24.01.1991, whereby reimbursement of additional excise duty levied in lieu of octroi to the Cantonment Board, Jalandhar was limited to the actual consumption of liquor in the area of Cantonment Board and remitting the balance amount to the corpus of Punjab Amalgamated Fund was directed; further seeking mandamus directing the respondents to release/reimburse the entire additional excise duty collected by the respondents in lieu of the octroi on liquor within the area of Jalandhar Cantt., as per the arrangement between the Punjab Government and Cantonment Board. Brief facts, inter alia, are that earlier Cantonment Board, Jalandhar was charging octroi on liquor being brought within the territory of the Cantonment Board like other municipalities were charging within the State of Punjab; Punjab Government vide notification dated 30.03.1982 had abolished octroi on country liquor, Indian made foreign liquor and beer imported into the limits of Municipal Corporations/Committees and notified Area Committees situated in the State of Punjab w.e.f. 01.04.1982; State of Punjab to compensate the local bodies had levied additional excise duty on the liquor at source with the direction to reimburse such additional excise duty to the local bodies in lieu of abolition of octroi; petitioner-Cantonment Board vide resolution dated

12.10.1982 had also resolved to abolish the octroi on the liquor being imported within the territory of Cantonment Board and to request the State Government to reimburse the additional excise duty in lieu of abolition of octroi on the liquor being imported in the territory of Cantonment Board; State of Punjab has agreed to the proposal of the Cantonment Board and started reimbursing the additional excise duty levied on the liquor imported within the territory of Cantonment Board. Reimbursement was made till 1988-89; thereafter State of Punjab has taken unilateral decision on 24.01.1991 to limit the reimbursement of additional excise levied in lieu of octroi payable to Cantonment Board Jalandhar only to the extent of actual liquor consumption in the area of Cantonment Board and to remit the balance amount to the Punjab Amalgamated Fund. Petitioner-Cantonment Board had earlier approached this Court under Article 226 of the Constitution of India by way of writ petition being CWP No. 2965 of 1999, wherein pursuant to the interim direction undisputed amount of Rs. 10,63,29,418/- was reimbursed to the petitioner and writ petition was disposed of vide order dated 21.02.2000 to avail other alternate remedy available under the law; petitioner had issued a legal notice dated 08.10.2001 to the respondents in view of the decision of Hon''ble the Supreme Court in the case of 1992 (61) ELT 3 (SC) '' either to pay outstanding amount of Rs. 11,52,60,466/- or to refer the dispute to the High Powered Committee of Secretaries under the Chairmanship of Cabinet Secretary. However, since dispute was not referred to the Committee of the Secretaries, therefore, petitioner had once again approached this Court by way of the present petition.

2. Respondents, in their reply to the writ petition had admitted although the Cantonment Board was not under the State of Punjab, however, keeping in view arrangement made between the Cantonment Board and State of Punjab reimbursement was being made to the Cantonment Board on the additional excise duty levied on the liquor at source in lieu of abolition of octroi. However, a decision was taken on 24.01.1991 limiting the reimbursement to the liquor actually consumed within the territory of petitioner-Cantonment Board. It has further been stated that decision dated 24.01.1991 is a policy decision which cannot be challenged by the petitioner by way of present writ petition.

3. We have heard Mr. Puneet Jindal, learned counsel for the petitioner and Mr. Piyush Kant Jain, Additional Advocate General, Punjab, appearing for the respondents.

4. There cannot be two opinions on the point that State Government shall have absolutely no jurisdiction over any financial matter of the Cantonment Board, however, octroi was abolished by the Cantonment Board to maintain uniformity with the policy decision of the State Government to abolish octroi on country liquor, IMFL and beer being imported within the territory of any local body within the State of Punjab and additional excise duty was imposed at source by the State Government to reimburse the same to the different local bodies to compensate them in lieu of abolition of octroi.

5. It is not disputed that as per the arrangement between the petitioner-Cantonment Board and respondents, additional excise duty levied and collected on the liquor at source was being reimbursed to the petitioner-Cantonment Board continuously for sufficient long period in lieu of abolition of octroi on the liquor being imported within the territory of the petitioner-Cantonment Board.

6. Mr. Puneet Jindal, learned counsel appearing for the petitioner has vehemently argued that any liquor imported in the area of petitioner-Cantonment Board and kept therein for sufficient time would have attracted octroi in lieu of bye-law 13 of Jalandhar Octroi Bye-laws 1991; liquor imported within the Cantonment area is being kept for sufficient long time in the CSD Depo and thereafter is being transferred to different army stations. Therefore, had octroi not been abolished to keep uniformity with the state policy, Cantonment Board would have earned octroi on entire liquor being imported within the territory of the petitioner-Cantonment Board and would have not limited only to that liquor which is actually consumed within the cantonment area.

7. Now question remains as to whether respondent-State was justified in taking unilateral decision dated 24.01.1991 limiting the reimbursement of the additional excise duty imposed on the liquor at source to the liquor which is actually consumed within the cantonment area of the petitioner?

8. Undisputedly, Cantonment Board-petitioner was charging octroi on the country liquor, IMFL and Beer; To maintain uniformity with the policy decision of State Government to abolish octroi and to impose-recover additional excise duty on liquor at source and to reimburse the same to the local bodies, petitioner board has also abolished octroi on the liquor. As per arrangement made, State has been reimbursing entire additional excise duty on the liquor imported in the cantonment area. Therefore, in our considered opinion, once the State Government has decided to compensate all the local bodies including the petitioner-Cantonment Board in lieu of the abolition of the octroi by them by reimbursing the additional excise duty imposed by the State Government on the liquor at source, therefore, unilateral withdrawal of the arrangement seems to be totally unjustified and arbitrary.

9. Learned counsel for the parties have stated that after dispute arose about the reimbursement of the additional excise duty Cantonment Board-petitioner has once again levied octroi on the liquor w.e.f. 01.11.2011. In view of imposition of octroi on liquor w.e.f. 01.11.2011, petitioner would be entitled for the reimbursement till 30.11.2011. In view of the discussions made hereinabove, we are of the view that petitioner-Cantonment Board is entitled for the reimbursement to the entire amount for the liquor imported within the territory of petitioner-Cantonment Board. Petition is allowed. Respondents are directed to reimburse the amount within 60 days from today.

