
(1975) 11 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6790 of 1974

Central Wines

APPELLANT

Vs

Deputy Commissioner, Commercial Taxes

RESPONDENT

Date of Decision : 28-11-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) 1 APLJ 71 : (1976) 37 STC 467

Hon'ble Judges : Lakshmaiah, J;Kondaiah, J

Bench : Division Bench

Advocate : P. Babul Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kondaiah, J.—This application under Article 226 of the Constitution of India, by the petitioner, a wholesale dealer in liquor who imports liquor from other States, gives rise to a short question of law, viz., whether the State Government is competent to levy sales tax on the turnover pertaining to countervailing duty paid by the purchasers of the liquor stored in the bonded warehouse belonging to the petitioner-dealer.

2. In order to appreciate the scope of the question, it is necessary to briefly state the facts, which lie in a short compass and gave rise to the same. The petitioner is a dealer in liquors having its place of business at Basheerbagh, Hyderabad. The petitioner-firm owns a bonded warehouse at Boggulakunta, Hyderabad, where, in the course of its business, various categories of liquor such as whisky, brandy, gin, etc., purchased from various manufacturers outside the State are stored. The petitioner adopts the practice of making a bill for the value of the goods (liquor) sold to the intending purchaser and after the preparation of the bill of sale, the purchaser pays the requisite excise duty in his own name for the liquor purchased by him and the excise departmental officials would permit the removal of the liquor purchased by the customer-buyer from the bonded

warehouse. According to the petitioner, the customer, who purchases the goods lying in the bonded warehouse, agrees to pay the price of the liquor alone to the petitioner and he should himself pay the excise duty before the removal of liquor so purchased from the bonded warehouse. For the assessment year 1971-72, the Commercial Tax Officer, Hyderabad III, by his order dated 16th August, 1972, imposed sales tax on a turnover of Rs. 7,17,264.35 representing the excise duty paid by the purchasers separately and which was not included specifically in the bills issued by the petitioner-assessee. However, on appeal, the Assistant Commissioner deleted the disputed turnover pertaining to the excise duty paid by the purchasers directly from the assessment holding that the duty paid by the purchasers does not, in the circumstances, form part of the turnover of the petitioner-appellant and, on that ground, allowed the appeal by his order dated 26th March, 1973. The Sales Tax Appellate Tribunal in T.A. Nos. 331/73 and 5/74 dated 5th August, 1974, upheld the assessment made under similar circumstances by the Commercial Tax Officer, Vijayawada, on the turnover relating to the excise duty paid by the purchasers to the manufacturers of liquors, M/s. Shah Wallace & Co. In the circumstances, the respondent by virtue of the powers vested in him u/s 20 of the Andhra Pradesh General Sales Tax Act, 1957, issued the impugned notice dated 9th October, 1974, to the petitioner to show cause as to why the order passed by the Assistant Commissioner on 26th March, 1973, should not be set aside restoring the original assessment order of the Commercial Tax Officer dated 16th August, 1972. The petitioner was also requested to file objections and adduce evidence in support of its contentions within 7 days from the date of receipt of that notice. Aggrieved by that notice, the petitioner rushed to this Court and filed this application for the issuance of a writ or order or direction declaring the petitioner as not liable to pay sales tax on excise duty paid by the purchasers in their own names and for restraining the respondent from proceeding further in pursuance of the impugned notice.

3. In the counter filed by the respondent, it is averred that the respondent is having ample jurisdiction to issue the impugned notice and he is rightly seeking to revise the order of the Assistant Commissioner and to restore the assessment order as, in his opinion, the excise duty paid by the purchasers forms part of the turnover of the petitioner-assessee, that the liability to pay excise duty and countervailing duty is on the petitioner as per the provisions of the Andhra Pradesh Excise Act, 1968, and the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970, and, therefore, the mere payment of excise duty by the purchasers from the assessee-petitioner would not alter the legal position and there is no merit in this writ petition.

4. Mr. P. Babul Reddy, the learned Counsel for the petitioner, contended that the incidence of countervailing duty occurs immediately after the importation of liquor into the State but not at the time of or before importation, that it is at the point of removal of liquor from the bonded warehouse that the incidence of excise duty occurs, that the petitioner-assessee is entitled to enter into an agreement with its customers that excise duty must be paid by them alone

directly and as the amount of excise duty paid by the purchaser has not been included in the bill of sale, it did not form part of turnover of the petitioner and, therefore, the impugned notice is without jurisdiction and that there is no justification for the proposed revision of the order of the Assistant Commissioner. In support of his contention, he relied upon Rule 10 of the Andhra Pradesh Indian Liquor (Storage in Bond) Rules, 1959, and a decision of this Court in W.P. Nos. 3698, 3707 and 3797 of 1972 dated 21st September, 1972. This claim of the petitioner is resisted by the learned Government Pleader for Commercial Taxes contending, inter alia, that a statutory liability to pay countervailing duty is imposed upon the importer although the payment is postponed if the goods are stored in a bonded warehouse belonging to the importer and excise duty on liquor is payable at the point of manufacture or production in the State but not at the time of removal of the same from the bonded warehouse and, therefore, the mere non-inclusion of the amount of excise duty in the bill of sale would not absolve the petitioner-assessee from payment of sales tax on the turnover pertaining to excise duty as well as countervailing duty.

5. We have today held in T.R.C. Nos. 27 and 28 of 1974, etc., batch (Shaw Wallace and Co. Ltd. and Others Vs. State of Andhra Pradesh and Others, that it is the manufacturer of liquor that is statutorily liable to pay excise duty on the excisable article so manufactured or produced in his factory and the incidence of excise duty is at the point of manufacture or production but not at the point of removal from the factory or the bonded warehouse and the mere payment of the excise duty directly by the purchasers who have applied for and obtained a distillery pass and transport permit from the concerned authorities would not absolve the manufacturer from paying sales tax on the turnover in respect of excise duty even though it is not specifically included in the bill issued by the manufacturer.

6. We shall now examine the point at which the incidence of countervailing duty, with which we are concerned in this case, arises. u/s 2(10) of the Andhra Pradesh Excise Act, 1968, the definitions of the expressions "excise duty" and "countervailing duty" as given in entry 51 in List II of the Seventh Schedule to the Constitution have been adopted. The scope, meaning and content of the expression "countervailing duties" used in entry 51 in List II of the Seventh Schedule to the Constitution, fell for consideration of the Supreme Court in Kalyani Stores Vs. The State of Orissa and Others, Therein, the learned Judge, Shah, J. (as he then was), speaking for the court, observed thus:

In its etymological sense, it means to counterbalance; to avail against with equal force or virtue; to compensate for something or serve as an equivalent of or substitute for: see Black's Law Dictionary, 4th Edn., 421. This would suggest that a countervailing duty is imposed for the purpose of counterbalancing or to avail against something with equal force or to compensate for something as an equivalent. Entry 51 in List II of the Seventh Schedule to the Constitution gives power to the State Legislature to impose duties of excise on alcoholic liquors for

human consumption where the goods are manufactured or produced in the State. It also gives power to levy countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. The fact that countervailing duties may be imposed at the same or lower rates suggests that they are meant to counterbalance the duties of excise imposed on goods manufactured in the State. They may be imposed at the same rate as excise duties or at a lower rate, presumably to equalise the burden after taking into account the cost of transport from the place of manufacture to the taxing State. It seems, therefore, that countervailing duties are meant 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. If no alcoholic liquors similar to those produced or manufactured imported into the State are produced or manufactured, the right to impose counterbalancing duties of excise levied on the goods manufactured in the State will not arise. It may therefore be accepted that countervailing duties can only be levied if similar goods are actually produced or manufactured in the State on which excise duties are being levied.

7. Rule 4 of the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970, requires any holder of a wholesale licence for sale of Indian liquor and foreign liquor and desiring to import the same from outside the State, to apply in form FL-1 with a court-fee stamp of the value of Rs. 2 to the Collector for the grant of an import permit. Rule 5 thereof prescribes the procedure for payment of excise duty and the issuance of an import permit. The Collector may, after such enquiry as he may consider necessary and on being satisfied that there is no objection for the grant of an import permit applied for, require the applicant, who does not possess bonded warehouse licence, to remit the countervailing duty leviable on the liquor to be imported and, on payment of such duty, the Collector may issue the permit. However, where the applicant is a licensee of a bonded warehouse, the Collector need not insist upon the prepayment of countervailing duty before the grant of the import permit. He can grant the import permit to such applicant subject to the provisions of the Andhra Pradesh Indian Liquor (Storage in Bond) Rules, 1969. It is pertinent to notice column No. 10 of the application form in FL-1 required to be submitted by the importer for the grant of an import permit. This column requires the applicant to furnish the details of duty, if any, paid by him along with challan number and date and place of remittance in Andhra Pradesh and state whether the original challan is or is not enclosed. The last but one para of the form of application requires the applicant to agree to pay any duty or fee that is due on the consignment if it is found that it has not been remitted or short-remitted. He is also bound by the provisions of the Andhra Pradesh Excise Act, 1968, and the Rules made thereunder, and he has to obey the rules and regulations in force within the local area through which the consignment passes. The aforesaid particulars indicated in form FL-1, which is prescribed under Rule 4, make it abundantly clear that the liability to pay the countervailing duty has already accrued on the applicant and the payment of the

same has only been postponed in cases where the applicant happens to be a bonded warehouse owner. In any other case, the countervailing duty must invariably be paid before the importation of the liquor into the State.

8. On a consideration of the definition of "countervailing duty" and its nature and character and the provisions of Sections 21 and 22 of the Andhra Pradesh Excise Act, 1968, and the relevant Rules made thereunder, we are of the firm view that the incidence of countervailing duty which is intended and meant 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, occurs or arises at the point of importation of the alcoholic liquor or any other excisable article from outside the State into the State of Andhra Pradesh. We are unable to agree with the submission of the petitioner's counsel that the liability to pay countervailing duty arises only at the point of removal of the liquors stored in the bonded warehouse but not at the point of importation. The mode and method of collection of excise duty as well as countervailing duty cannot be confused with the nature and character of the duties as well as the incidence of taxation. The State is also entitled to provide a machinery for the collection of excise duty as well as countervailing duty on liquors with the prime intendment of encouraging the industry and business and at the same time protecting the interests of revenue. But, however, the incidence of countervailing duty is only at the time of importation and the liability to pay countervailing duty must be held to have arisen or accrued in respect of the liquors imported the moment they are imported into the State. This view of ours gains support from the decision of the Supreme Court in *In re Sea Customs Act*, Section 20(2) AIR 1963 S.C. 1760 Therein, the learned Sinha, C.J., speaking for the court, while holding that the taxable event in the case of duties of excise is the manufacture or production of goods and sales tax is on the act of sale, observed thus:

Similarly, in the case of duties of customs including export duties though they are levied with reference to goods, the taxable event is either the import of goods within the customs barriers or their export outside the customs barriers.... Now, what is the true nature of an import or export duty ? Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country. Such a condition is imposed by way of the exercise of the power of the Union to regulate the manner and terms on which goods may be brought into the country from a foreign land. Similarly, an export duty is a condition precedent to sending goods out of the country to other lands.

9. The aforesaid view expressed by the Supreme Court in respect of an import duty leviable with reference to goods imported into the country would, in our considered opinion, apply with equal force to the case on hand.

10. We shall now consider Rules 10, 11 and 12 of the Andhra Pradesh Indian Liquor (Storage in Bond) Rules, 1969, on which strong reliance has been placed

by the petitioner's counsel in support of his plea that the countervailing duty or excise duty is leviable only at the point of removal of the liquor stored in a bonded warehouse. Rule 10 prohibits the removal of any Indian liquor stored in a bonded warehouse or transfer the same from a bonded warehouse to any other place except under a pass granted in this behalf and, unless the duty, if any, levied under the provisions of the Excise Act, has been paid. Under Sub-rule (2) of Rule 10, the licensee, who desires to remove any quantity of Indian liquor from the bonded warehouse, shall make an application in that behalf in form BW 3 to the Deputy Commissioner through the officer-in-charge. The licensee has to maintain accounts under Rule 11. He has also to account for loss of Indian liquor under Rule 12. In case of any loss to the Indian liquor stored in bond or issued from the bonded warehouse, the licensee must report to the Commissioner of Excise and, if he fails to satisfactorily account for such loss, the licensee shall be liable to pay excise duty and fees at the full rates payable thereon. The petitioner herein is, no doubt, a person who owned and possessed a bonded warehouse to store the imported liquor manufactured outside the State. The petitioner is, therefore, entitled to have the concession of not paying the countervailing duty on the act of importation before the actual importation. The liability to pay the countervailing duty is postponed till the removal of the imported liquor from his warehouse but, however, it has already accrued and arisen at the point of importation of liquor manufactured outside the State. In such an event, Rule 10 would come into play. The purchaser from the assessee or the assessee himself must actually pay the excise duty and the countervailing duty before the liquor is removed from the bonded warehouse. The insistence on payment of the excise duty and the countervailing duty under the Rules at the point of removal of liquor from the bonded warehouse would not in any way alter the legal position relating to the nature and character or incidence of excise duty as well as countervailing duty. The assessee is, no doubt, entitled to enter into an agreement with his customer to sell the liquor stored in his bonded warehouse. He may also arrange with the customer that he himself should directly pay the excise duty as well as the countervailing duty to the State Government and it may not be included in the bill of sale. Such conduct of the parties would not in any way absolve the assessee of the liability to pay the excise duty or countervailing duty, as the case may be, as it is he that is liable under the statute to pay the same to the State Government. As pointed out earlier, the liability to pay countervailing duty has already accrued even before the liquor was stored in the bonded warehouse of the assessee. As long as it is in the possession of the importer and it can be traced by the concerned Government authorities, the duty to pay the countervailing duty is only on the importer, the assessee herein. The actual payment of such duty only has been postponed as the assessee owns and possesses a bonded warehouse. The date of actual removal of the liquor from the bonded warehouse has been considered to be more proper and appropriate time for collecting the countervailing duty. This concession has been shown by the State with a view to encourage the industry as the State did not like to be harsh on the importer, the excise duty or countervailing duty being an indirect tax,

which will ultimately be passed on to the consumer. It is always open to the State to provide a workable and pragmatic machinery for collection of the excise duties as well as countervailing duty taking into account the growth of the industry, the conditions of the importers and manufacturers and other material facts.

11. We shall now advert to the decision of Madhava Reddy, J., in Writ Petitions Nos. 3698, 3707 and 3797 of 1972 dated 21st September, 1972, on which strong reliance has been placed by the petitioner. Therein, it has been held that the Government is not entitled to prohibit the sale of liquor stored in a bonded warehouse without the payment of the requisite excise duty. But, however, it was held that the liquor shall not be removed until and unless the excise duty is paid. In other words, that decision is an authority for the proposition that sale of liquors stored in bonded warehouses cannot be prohibited as it is open to the owner of the liquor or goods to enter into an agreement of sale or sell the same to his customers and the Government is only entitled for the recovery of excise duty or countervailing duty before the actual removal of the same from the bonded warehouse. That decision, therefore, will not come to the aid of the petitioner herein. The aspect relating to the nature and character of the countervailing duty or excise duty and the statutory liability to pay the same has not been considered by the learned Judge. Any observations made by the learned Judge contrary to the view taken by us in this case as well as T.R.C. Nos. 27 and 28 of 1974, etc., batch (Shaw Wallace & Co. Ltd. v. State of Andhra Pradesh [1976] 37 S.T.C. 448 (AP) with regard to the statutory liability on, and the duty of, the manufacturer or importer of liquor to pay excise duty or countervailing duty, as the case may be, must be considered to be erroneous and illegal. Such view must be held to be no longer good law.

12. For all the reasons stated, our answer to the question is in the affirmative and in favour of the State and against the assessee-petitioner.

13. In the result, the writ petition is dismissed with costs. Advocate's fee Rs. 200.