(1989) 06 OHC CK 0012

In the Orissa High Court

Case No : O.J.C. No. 1663 of 1982

Chaitan Kumar Kakani — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 30-06-1989

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 15, 15(1), 17, 28

Citation : (1990) 69 CLT 317

Hon'ble Judges : H.L. Agrawal, C.J;R.C. Patnaik, J

Bench : Division Bench

Advocate : J. Das, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—The question that falls for our consideration in this writ application is as to whether excise duty was exigible on the quantum of breakage of foreign liquor imported under a bond from a distillery/brewery to a warehouse established by the Excise Commissioner u/s 15(1)(c) of the Bihar and Orissa Excise Act, 1915 (shortly stated ''the Act'').

2. Undisputedly, the Petitioner is the holder of a licence for a bonded warehouse established for storing foreign liquors brought from distilleries and breweries situated outside the State without payment of duty. Certain quantity of liquor gets lost due to breakage in transit. On this account, the excise authorities are not giving any discount to the Petitioner, i.e. the quantity of liquor lost on the way, while computing his liability for excise duty.

3. The Petitioner''s contention is that under the scheme of the Act, the incidence of computation of excise duty being only at the time of removal of the liquor from the warehouse, he could not be saddled with the liability for the quantity which is not received by him at all.

4. In the counter affidavit, the stand of the opposite parties, on the other hand,

is that the authorities have the discretion to charge duty at the time of release from the ware-house. Allowing the importer to pay duty at the time of releasing the foreign liquor from the warehouse does not debar the authorities from claiming the countervailing duty on the quantity of foreign liquor imported....

5. In order to appreciate the rival contentions of the parties, it is necessary to refer to some of the provisions of the Act.

Section 15, so far as relevant, reads thus:

15. "Establishment of distilleries, breweries or warehouses-(1) The Excise Commissioner may

(a) xxx xxx

(b) xxx xxx

(c) establish or authorise the establishment of ware houses, wherein any intoxicant may be deposited and kept without payment of duty; and

(d) xxx xxx

(2) No distillery, brewery or warehouse as aforesaid shall be established except by or under the authority of the Excise Commissioner.

Section 17 reads thus:

17. Payment of duty on removal from distillery, brewery, warehouse or other place of storage-No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof.

The other relevant provision which may also have some bearing on the question is the first proviso to Section 28 of the Act dealing with the ways of levying such duty on excisable articles reads thus:

28. xxx xxx

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;

xxx xxx

6. There is no direct authority on the point but certain observations made by a Bench of this Court in the case of Gokul Ram and Anr. v. State of Orissa and Ors. 1982 Tax. L.R. 2903) may be usefully quoted:

.... The question for consideration is as to whether there is any justification to ask for enhanced duty in respect of the stock on which duty had already been paid. Duty is collectible under the scheme at the point when sale takes place and the stock is removed from the ware house....

Apart from the common sense view that when the entry in the warehouse of the Petitioner of any intoxicant for storage is to be without payment of duty, in my opinion, it would not be proper to take a view that what has not even the Petitioner''s warehouse would be a subject- matter of levy of duty. Clause (c) of Sub-section (1) of Section 15 of the Act to my mind makes it amply clear that the stock of intoxicant coming for deposit has to be kept in the warehouse without payment of any duty and the calculation of duty has to be made at the stage of removal of the intoxicant either from the distillery, brewery or from the warehouse which provision is contained in Section 17 of the Act. There may be cases where some breakage may take place in course of storage of the intoxicant in a warehouse and that may give rise to a different consideration but here the undisputed facts are that the Petitioner is claiming immunity from the liability of imposition of excise duty only on that quantity which he did not receive at all and which did not reach his ware house. This is evident not only from the breakage certificates granted to the Petitioner vide Annexure-2, but also from the assessment of the stock account vide Annexure-1. This is also clear from the stand taken in the counter affidavit that the excise authorities are calculating excise duty on that quantity of liquor which was lost in course of transit as if the Petitioner''s liability arose right from the stage of the beginning of the journey of the commodity to his warehouse.

7. In my opinion, the provisions of Sections 15(1)(c), 17 and the First Proviso to Section 28 of the Act do not support this stand of the excise authorities. Taking support from the observations made in the authority cited above I would hold that the Petitioner is not liable for payment of excise duty on the foreign liquor which did not reach his warehouse.

8. In the result, the application is allowed and the question is answered in favour of the Petitioner. The excise authorities are directed to calculate the excise duty against the Petitioner in the light of the observation made above. Let a writ issue accordingly, In the circumstances, I shall make no order for costs.

R.C. Patnaik, J.

I agree.

Application allowed.

