
(1965) 02 KL CK 0020
In the High Court Of Kerala
Case No : W. A. No. 59 of 1964

D. C. Johar and Sons (P) Ltd

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-02-1965

Acts Referred:

Cochin Abkari Act, 1077 — Section 17, 6

Citation : (1965) KLJ 317

Hon'ble Judges : M. S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K.P. Abraham, for the Appellant; V. P. G. Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

M. S. Menon C. J

1. This is an appeal by the petitioners in O. P. No. 2268 of 1962. Govindan Nair J. dismissed that petition by his judgment dated 24--10--1963 and the appeal is directed against that dismissal. The proviso to Section 6 of the Cochin Abkari Act, I of 1077, provides that the Commissioner may, subject to the orders of the Diwan, permit the import of liquor or intoxicating drugs on payment of the duty, if any, to which the same is liable under the Act; and Section 17 of the said enactment says that a duty of such amount as the Diwan may prescribe, shall, if he so directs, be levied on all liquor and intoxicating drugs permitted to be imported under the proviso to Section 6.

2. Section 18 of the Act prescribes the ways in which the duty may be imposed; and one of the ways prescribed is by way of import duty. The appellants obtained a permit--Ext. P. 3 dated 9--5--1962--for importing 870 cases of what is called, rather curiously, "Indian made foreign liquor" on payment of a duty of Rs. 58,508.40. The amount of duty was calculated under the notification then in force, Ext. P. 1 dated 18--3--1961.

3. Subsequent to the issue of the notification above-mentioned and prior to the

import of the goods into this State on 20--7--1962 the notification was amended and the rate of duty enhanced by Ext. P. 4 dated 30--6--1962. The amending notification was published in the Kerala Gazette dated 3--7--1962.

4. Ext. P. 4 specified the date on which the amendment should come into force. It said that it shall come into force "on and from the 11th July 1962."

5. According to the Department the crucial date is the date of import and the appellants are liable to pay the import duty at the rate introduced by Ext. P. 4 prior to the date of import and in force on that date. On this basis a demand was made for Rs. 29,254.20, the difference between the duty paid when the permit was issued and the duty payable under Ext. P. 1 as amended by Ext. P. 4. The demand is evidenced by Ext. P. 5 dated 26--7--1962, and it is Ext. P. 5 that was unsuccessfully challenged in the O. P. from which this appeal arises.

6. Counsel for the appellants does not contend that the duty leviable under Ext. P. 1 before or after its amendment by Ext. P. 4, if it amounts to an import duty as contended by the Department, is ultra vires the Constitution or invalid on any account. The only contention urged before us is that the crucial date for the calculation of the duty is the date on which the permit was issued and not the date on which the import was effected.

7. We cannot agree. Reading Sections 6 and 17 of the Act by themselves or in the context of the other provisions of the Act leaves no room for doubt that the taxing event is the import--the passage of the goods into this State across its borders--and not the issuance of a permit like Ext. P. 3.

8. Counsel for the appellants drew our attention to rule 9 of the rules framed under the Cochin Abkari Act, I of 1077, and published in the Statutory Rules and Notifications of Travancore-Cochin, 1953, Volume I, page 54. All that the rule omitting the proviso thereto which is not material, says is:

No foreign liquor shall be imported into the State except under a permit issued by the Officer in charge of the Division to which the liquor is to be imported. Such permits will be granted only on proof of payment of the excise duty if any payable to this State except where some special arrangements exist between the State of Travancore-Cochin and the State from which the import is made for the collection of such duty.

The rule, as we see it, does not by any means alter the taxing event from the factum of import to the issue of a permit. The import or taxing event having taken place only subsequent to the amendment of Ext. P. 1 by Ext. P. 4 we think it must follow that the appellants are liable to pay at the enhanced rate, that Ext. P. 5 is justified, and that this appeal should be dismissed. We do so, and direct the appellants to pay the costs of the respondents.