

(1997) 12 SC CK 0129

In the Supreme Court Of India

Case No : Civil Appeal No's. 4355 of 1985, 4381 of 1986 and 1832 of 1994

Deccan Sugar and Abkari Co. Ltd.

APPELLANT

Vs

Commissioner of Excise, A.P.

RESPONDENT

Date of Decision : 11-12-1997

Acts Referred:

Citation : (1998) 4 JT 292 : (1998) 3 SCC 272

Hon'ble Judges : S. B. Majmudar, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In all these matters, amongst others, one of the important questions which falls for consideration is whether the appellants-distilleries which are manufacturing rectified spirit could be asked to pay excise duty on manufactured rectified spirit by the authorities functioning under the Andhra Pradesh State Excise Act.

2. Show-cause notices were served on the appellants-distilleries by the authorities acting under the said Act alleging that the appellants did not manufacture rectified spirit as required to be manufactured in the light of the norms alleged in the show-cause notices based on utilisation of molasses. The notices were replied to by the appellants and ultimately orders were passed by the Commissioner of Excise, Andhra Pradesh State computing the alleged loss in the manufacture of rectified spirit and on that basis excise duties were computed and were directed to be paid by the appellants concerned. They went in writ petitions before the High Court. The writ petitions were heard and ultimately dismissed. By obtaining special leave to appeal under Article 136 of the Constitution of India the present appeals have been filed.

3. We were informed that these appeals reached hearing before a Bench of this Court earlier and were heard for a couple of days. Thereafter, hearing could not be completed and the matters were not treated as part-heard. These appeals

again reached hearing before us and were heard for a day and half. Amongst other points, learned Senior Counsel, Mr. Sanghi, submitted in the forefront one contention relying upon a Constitution Bench judgment of this Court in the case of Synthetics and Chemicals Ltd. v. State of U.P., especially placing emphasis on the observations of the Constitution Bench in paras 74, 85 and 86 of the report. He submitted that the State authorities had no power to levy excise duty on rectified spirit manufactured by the appellants-distilleries as rectified spirit which was ethyl alcohol has to be treated as industrial alcohol and it is not fit for human consumption. Consequently, it was outside the legislative powers of the State to levy excise duty on such manufactured rectified spirit. Reliance was also placed in this connection on a three-Judge Bench decision of this Court in the case of State of U.P. and Others Vs. Modi Distillery and Others, especially on observations of paras 10, 11 and 12 of the said judgment. However, a later judgment of this Court rendered by a Bench of two learned Judges in the case of Bihar Distillery and Another Vs. Union of India (UOI) and Others, speaking through Jeevan Reddy, J. was also brought to our notice. At pp. 743-744 dealing with rectified spirit manufactured by the distilleries the following observations were made in the said judgment:

"The line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit. Where the removal/clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be of the Union but where the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be that of the States. This calls for a joint control and supervision of the process of manufacture of rectified spirit and its use and disposal. We proceed to elaborate:

(1) So far as industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacture of potable liquors), whether after denaturing it or without denaturing it, are concerned, they shall be under the total and exclusive control of the Union and be governed by the IDR Act and the rules and regulations made thereunder. In other words, where the entire rectified spirit is supplied for such industrial purposes, or to the extent it is so supplied, as the case may be, the levy of excise duties and all other control including establishment of distillery shall be that of the Union. The power of the States in the case of such an industry is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, is not diverted or misused for potable purposes. They can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product (rectified spirit) and are entitled to verify their correctness. For this purpose, the States will also be entitled to post their staff in the distilleries and levy reasonable regulatory fees to defray the cost of such staff, as held by this Court in Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. Vs. State of Gujarat and Another, and M/s. Gujchem Distillers India Ltd. Vs. State of Gujarat

and another,

(2) So far as industries engaged in the manufacture of rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquors -- or supplying the same to the State Government or its nominees for the said purpose -- are concerned, they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery. In other words, where the entire rectified spirit produced is supplied for potable purposes -- or to the extent it is so supplied, as the case may be -- the levy of excise duties and all other control shall be that of the States, According to the State Governments, most of the distilleries fall under this category.

(3) So far as industries engaged in the manufacture of rectified spirit, both for the purpose of (a) supplying it to industries (other than industries engaged in obtaining or manufacturing potable liquors/intoxicating liquors) and (b) for obtaining or manufacturing or supplying it to Governments/persons for obtaining or manufacturing potable liquors are concerned, the following is the position: The power to permit the establishment and regulation of the functioning of the distillery is concerned, it shall be exclusive domain of the Union. But so far as the levy of excise duties is concerned, the duties on rectified spirit removed/cleared for supply to industries (other than industries engaged in obtaining or manufacturing potable liquors), shall be levied by the Union while the duties of excise on rectified spirit cleared/removed for the purposes of obtaining or manufacturing potable liquors shall be levied by the State Government concerned. The disposal, i.e., clearance and removal of rectified spirit in the case of such an industry shall be under the joint control of the Union and the State concerned to ensure evasion of excise duties on rectified spirit removed/cleared from the distillery. It is obvious that in respect of these industries too, the power of the States to take necessary steps to ensure against the misuse or diversion of rectified spirit meant for industrial purposes (supply to industries other than those engaged in obtaining or manufacturing potable liquors) to potable purposes, both during and after the manufacture of rectified spirit, continues unaffected. Any rectified spirit supplied, diverted or utilised for potable purposes, i.e., for obtaining or manufacturing potable liquors shall be supplied to and/or utilised, as the case may be, in accordance with the State excise enactment concerned and the rules and regulations made thereunder. If the State is so advised, it is equally competent to prohibit the use, diversion or supply of rectified spirit for potable purposes."

4. It is to be kept in view that the aforesaid decision rendered in Bihar Distillery Case (Supra) by a Bench of two learned Judges of this Court was strictly concerned with the question whether the State could cancel licences given to a distillery manufacturing rectified spirit on the grounds as alleged to be relevant for such cancellation. Therefore, strictly speaking there was no occasion for this Court in Bihar Distillery Case (Supra) to consider the wider question whether any excise duty can be levied by the State on the manufactured rectified spirit which

may ultimately be used for production of potable liquor. Even that apart the aforesaid observations made in Bihar Distillery Case (Supra) by the Division Bench of this Court prima facie run counter to the scheme of legislative competence as examined by the Constitution Bench of this Court as well as in the three-Judge Bench decision of this Court in Modi Distillery (Supra). Consequently, in our view these matters are required to be placed for decision before a larger Bench of three learned Judges of this Court for reconsideration of the judgment in Bihar Distillery Case (Supra). We therefore direct the Registry to place all these appeals for disposal before a larger Bench of three learned Judges. Registry to obtain orders of the Hon'ble the Chief Justice of India in this connection so that the matters can be disposed of at the earliest. We make it clear that learned Senior Counsel, Mr. Sanghi, appearing for one of the appellants, also sought to challenge the decision of the High Court even on merits and submitted that according to him, final order passed by the Commissioner runs counter to the show-cause notice issued to the appellant and similar contentions were also advanced by learned counsel appearing for the appellants in the cognate appeals. These questions also will obviously be considered by the larger Bench as all the matters are being referred for decision of the larger Bench.