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In the Bombay High Court

Case No : Writ Petition No. 3229 of 2005

G.M. Breweries Ltd. APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Bombay Prohibition Act, 1949 — Section 11
Constitution of India, 1950 — Article 226
Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 — Rule 2

Citation : (2006) 4 ALLMR 110 : (2006) 6 BomCR 382 : (2006) 5 MhLj 43 : (2006) 44 MhLj 43

Hon'ble Judges : Kshitij R. Vyas, C.J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Pravin Samdani, Chetan Kapadia and O.A. Das, for the Appellant; C.R. Sonawane, Assistant Govt. Pleader for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—By these proceedings under Article 226 of the Constitution, a declaration has been sought to the effect that the expression "Maximum Retail Price" as defined in Rule 2(d) of the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 excludes octroi duty. An appropriate writ has been sought for quashing and setting aside a circular dated 23rd January, 2005 issued by the Commissioner of State Excise in the State Government. By that circular, an earlier direction dated 8th October, 2001 came to be rescinded and it was clarified that the maximum retail price shall be declared so as to include octroi duty.

2. In our view, the answer to the petition lies in the plain language of Rule 2(d). Rule 2(d) defines the expression "Maximum Retail Price" as follows:

2(d) "Maximum Retail Price" means maximum price at which Potable Liquor on pack form may be sold to ultimate consumer and there shall be printed on each pack the words "maximum or Max. Retail Price______ (inclusive of all taxes and duties)" or in the form "MRP Rs._______ (inclusive of all taxes and duties)

Explanation.--for the purpose of this clause, "Maximum Retail Price" in relation to any potable liquor shall include all taxes or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be.

The plain meaning of Rule 2(d) is that the expression "Maximum Retail Price" is inclusive of taxes and duties. Octroi, it is undisputed, would fall within the expression "inclusive of all taxes and duties."

3. The provisions of the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 were challenged before and upheld by a Division Bench of this Court in Baramati Grape Industries Ltd. v. State of Maharashtra 1998(1) Mh.L.J. 245 This Court held that Section 11 of the Bombay Prohibition Act, 1949 permits the manufacture of an intoxicant only on the terms and conditions prescribed in a licence which is granted under the Rules. Therefore, it was held that the Rules could prescribe the maximum retail price at which an intoxicant or liquor could be sold. The power which has been conferred on the State Government to frame rules was upheld against the challenge that it was uncontrolled. Finally, the Bench held that there was no constitutional right guaranteed to the petitioners to recover the price of liquor at any rate and in any event there was a prohibition in dealing with potable liquor except as provided in the Act, the rules and the terms of licence. The learned AGP has stated before the Court that a SLP that was filed before the Supreme Court against the decision was withdrawn.

4. In the present case, there is no challenge to the provisions of Rule 2(d) and rightly so, having regard to the judgment of the Division Bench in Baramati Grape Industries. In the reply filed by the Deputy Commissioner of State Excise in these proceedings, it has been submitted that the definition of MRP makes it clear that octroi is one of the components thereof. Moreover, manufacturers of liquor are well aware of the rate of octroi even though it differs from place to place and which has to be paid to the concerned local bodies. Since it is recovered from the consumer, octroi is included in the MRP. Since the earlier circular dated 9th October, 2001 was found to be contrary to the rules, it was withdrawn and replaced by the circular dated 23rd January, 2005. There are 37 manufacturers of country liquor who have not challenged the circular.

5. For the reasons which are indicated above, we are of the view that there is no merit in the challenge to the circular. The circular only'' clarifies what is the necessary intendment of the definition of "Maximum Retail Price" in Rule 2(d) of the Rules. Octroi is but a tax or a duty and is therefore, within the scope and purview of the components of Maximum Retail Price in Rule 2(d). We, therefore, do not find any merit in the Petition. The Petition is accordingly dismissed.

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