
(2002) 06 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2018/98

Gwalior Distillers Limited

APPELLANT

Vs

The Collector (Excise) and Others

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Distillery Rules, 1995 — Rule 6
Madhya Pradesh Excise Act, 1915 — Section 2(13), 2(6)

Citation : (2002) 4 MPHT 12

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : D.P.S. Bhadoriya, for the Appellant; K.N. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—The petitioner/company which is a licence holder in Form D-2 for manufacturing liquor and having licence in Form D-1 for wholesale supply of spirit has filed this petition calling in question the orders passed by the respondents by which an amount of Rs. 6,142/- had been imposed by way of penalty.

2. It is the case of the petitioner that the Collector had issued a show-cause notice on 23-9-1987 in which it was alleged that there was loss of 275.4 proof liters of rectified spirit in transit. The show-cause notice indicates that as to why penalty should not be imposed on the petitioner/company for the aforesaid transit loss. In reply, the petitioner contended that for shortage of rectified spirit, the State Government has no power to impose any excise duty. The reply was rejected and the Collector vide order, Annexure P-5, dated 1-2-1989, imposed the aforesaid penalty.

3. Being aggrieved by the aforesaid order, an appeal was filed before the Excise Commissioner which has been rejected vide order dated 10-1-1990, Annexure

P-4 and a second appeal was filed before the Board of Revenue which had also been rejected by order dated 1-9-1997, Annexure P-3.

4. Shri Bhadoriya, learned Counsel appearing for the petitioner submitted that under the provisions of the Madhya Pradesh Excise Act, 1915 (hereinafter referred to as "the Act"), the State Government has got power to levy the duty on articles which are excisable and excisable articles are defined in Sub-section (6) of Section 2 of the Act, rectified spirit is not alcoholic liquor fit for human consumption or intoxicating drug. As such, it is argued by him that rectified spirit is not an excisable article. It is submitted by him that the excise duty u/s 2 (6) (a) of the Act can be levied only on excisable items. It is also put forth by him that Section 2 (13) of the Act defines "liquor". "Liquor" means intoxicating liquor, and includes spirit or wine and other materials as contemplated under Sub-section (13) of Section 2 of the Act. According to him, rectified spirit is not excisable, and therefore, no excise duty can be levied on the said item. It is, therefore, submitted by him that imposing excise duty on rectified spirit was not permissible. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of State of U.P. and Others Vs. Modi Distillery and Others, and another judgment in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, .

5. Relying on the aforesaid judgments, it is argued by him that the State can levy excise duty only on the material which is alcoholic required fit for human consumption and as rectified spirit is not alcoholic liquor fit for human consumption. Action of the respondents in imposing excise duty cannot be sustained. Apart from the aforesaid, inviting attention to various entries made in VII Schedule of the Constitution of India, it has been argued by him that the State does not have any power to levy excise duty on rectified spirit.

6. It is, therefore, his submission that by the impugned order, levy of excise duty on rectified spirit cannot be sustained and the entire action is liable to be quashed.

7. Refuting the aforesaid submission, Shri K.N. Gupta, learned Govt. Advocate has submitted that the argument of the learned Counsel for the petitioner is misconceived. Inviting my attention to the observations made in the order, Annexure P-4, dated 10-1-1990 passed by the Excise Commissioner, it is argued by him that what is being recovered is not excise duty as contended by the learned Counsel for the petitioner but the penalty is being levied for the loss caused in transit in excess of the permitted limit. Inviting attention to Rule 6 of the Madhya Pradesh Distillery Rules, 1995 and the agreement entered into between the petitioner and the State Government, it is argued by Shri Gupta that as per the agreement, the petitioner while transporting the material from one place to another place is not permitted transit loss beyond the permissible limit. In the instant case, the transit loss of 273 proof liters after deducting the permissible limit was caused by the petitioner and for this loss, penalty has been imposed on the petitioner and calculation of penalty has been done by taking

into consideration the loss of duty which has been caused to the State Exchequer.

8. Inviting attention to the observations made in Paragraph 4 of the order dated 10-1-1990, Annexure P-4, it is submitted by Shri Gupta that it is clear from this that what has been imposed is a penalty and not a duty as submitted by the learned Counsel for the petitioner. However, for the purpose of ascertaining the penalty, the amount of loss which has been caused in terms of the duty has been taken as the yardstick, it is therefore, argued by him that no excise duty has been recovered as contended by the learned Counsel for the petitioner but what has been recovered is penalty. The calculation of such penalty has been done in terms of loss caused by way of excise duty. It is further submitted that this aspect of the matter was considered by the Board of Revenue and a perusal of the observations made in Paragraph 6 of the order passed by the Board of Revenue, Annexure P-3, dated 1-9-1997 makes it clear.

9. Shri Bhadoriya, learned Counsel for the petitioner refuted the submission made by Shri Gupta, learned Govt. Advocate for the State and submitted that there is no material to come to the conclusion that the loss of 273 proof liters had occurred, and therefore, imposition of penalty is arbitrary.

10. I have heard the learned Counsel for the parties and perused the record.

11. There is no difficulty in accepting the argument of the learned Counsel for the petitioner that excise duty can be levied only on such items for which levy of duty is permissible under the Madhya Pradesh Excise Act, 1915. It is well settled in law that the duty, tax or excise can be levied on such items which are permissible under the statute. Apparently, in the instant case, the State Government has no authority or right to levy excise duty on the rectified spirit as the same is not permissible in law. But the question is whether the action of the State in the instant case amounts to imposing excise duty or is it an amount recovered by way penalty in respect of loss caused to the State Government. As per the terms and conditions of the agreement and the Madhya Pradesh Distillery Rules, 1995.

12. As has already been indicated hereinabove, a perusal of the order passed by the Commissioner vide Annexure P-4 indicates that after granting permissible wastage, 273 proof liters in excess of permissible wastage had been caused by the petitioner.

13. For the aforesaid loss caused beyond the permissible limit, certain amount by way of penalty is being recovered from the petitioner and for the purpose of assessment of the penalty, the loss in excise duty that has been caused to the State Government has been fixed as the amount of penalty. The aforesaid is also clear on consideration of the order passed by the Board of Revenue as contained in Annexure P-3.

14. A perusal of the impugned order, Annexure P-5 issued by the Collector also indicates that what is being recovered from the petitioner is in fact not excise

duty but penalty for the loss caused to the State by way of transit loss in excess of the permissible limit. The amount of penalty, Rs. 6,142/-, has been assessed as the loss in duty which has been caused. A close scrutiny of the impugned orders indicates that a distinction has to be made between imposing excise duty and imposing penalty and quantification of such penalty by fixing it as equivalent to the loss in excise duty that may be caused to the State.

15. Having considered the aforesaid, I am of the considered view that the contention of the petitioner that respondent-State is imposing excise duty on rectified spirit which is beyond its jurisdiction is a misconceived submission. In fact, the respondent-State has only recovered and imposed penalty for the loss caused to it and for the purpose of assessing the penalty, the loss caused by way of excise duty has been quantified and there can be no illegality in doing so. The competent authorities empowered under the statute, namely; the Collector, the Commissioner and the Board of Revenue have also considered this aspect of the matter and have rejected the contention of the petitioner. The orders impugned are therefore in accordance with law and no interference in the same can be called for.

16. The submission of the learned Counsel for the petitioner that assessment of loss caused was done in an arbitrary manner without giving opportunity of hearing cannot be accepted. Before, order, Annexure P-5 was passed a show-cause notice was issued and on the basis of the reply submitted by the petitioner, all the authorities have come to the conclusion that the petitioner has caused certain loss by way of transit loss to the State Exchequer which has been quantified at 273 proof liters. This being a finding of fact cannot be interfered with in exercise of the powers under Articles 226/227 of the Constitution of India. All the submissions of the petitioner having been negatived. I find no substance in the petition and the same is therefore, dismissed.