
(2010) 04 P&H CK 0247
In the Punjab And Haryana At Chandigarh

Jatinder Singh and Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 4 RCR(Civil) 186

Hon'ble Judges : Alok Singh, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present writ petition is filed challenging order dated 13.6.2005 (Annexure P-12) refusing to grant refund of Rs. 24,99,500/- and further seeking a relief of mandamus commanding the respondents to refund Rs. 24,99,500/- being the tax recovered without authority of law.

2. Brief facts of the present case are that petitioner was having L-1 and L-2 licences under the Punjab Excise Act, 1914 (hereinafter referred to as the 1914 Act) , for the licencing period April, 2001 to March, 2002. An amendment was carried out by the Government of Haryana in the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the 1973 act) vide notification dated 26.6.2001, omitting the entry with regard to IMFL in Schedule B and inserting the same in Schedule C of the 1973 Act, thereby imposing sales tax on the IMFL sale price of which was more than Rs. 500/- per quart (750 ml). CWP No. 19748 of 2001 (Bharat Singh Kamlesh Kumar Vijay Singh and Company and Ors. v. State of Haryana) was filed, which was disposed of by a Division Bench of this Court vide order dated 7.3.2002, directing the authorities to reconsider the matter on the hypothesis that the sales tax shall not be leviable on the sale of the stocks purchased by the petitioners till the mid-night of June 25, 2001 in the State of Haryana and to pass fresh order accordingly. The petitioners also filed CWP No. 3504 of 2002, seeking same relief as was granted by this Court in CWP No. 19748 of 2001 vide order dated 7.3.2002. Writ petition filed by the petitioners was also decided vide order dated 13.3.2002 in the light of the judgement of this

Court dated 7.3.2002. After the judgement dated 7.3.2002 passed by a Division Bench of this Court, the respondents refunded the sales tax collected on stocks held by the wine contractors as on 26.6.2001. M/s. Ashish Kumar and Company, L-I licensee also got refund of Rs. 39,96,200/- and M/s. S.L. & Company also received refund of the tax amounting to Rs. 12 lacs. Assessment order was passed on 25.8.2002 in favour of the petitioners and the Assessing Officer also directed refund of Rs. 24,99,500/- in favour of the petitioners. However, refund was withheld by respondent No. 2 on the ground that examination is required as to whether the petitioners had passed on the liability and charged the sales tax while selling the stocks held by them as on 26.6.2001. The petitioners again filed CWP No. 3081 of 2004 in this Court. A Division Bench of this Court vide order dated 9.2.2005 having recorded the statement given by the Senior Deputy Advocate General, Haryana, directed the Excise and Taxation Commissioner, Haryana, to pass fresh order in the backdrop of refund granted to other similarly situated companies i.e. Ashish Kumar and Company and M/s. S.L. & Company. The petitioners requested respondent No. 2 to decide their case de novo without making any reference to the stand taken earlier as to whether the petitioners had passed on the liability of the tax on the opening stock on 26.6.2001. However, respondent No. 2 refused to grant refund by taking shelter of judgement of the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , by observing that the petitioners had collected tax from the customers on the stock, which was held by the petitioners on 26.6.2001. Hence, the present writ petition.

3. Respondents contested the writ petition mainly on the ground that if the petitioners had passed on the liability of the tax to the customers on the stock held on 26.6.2001, then the petitioners are not entitled to any refund of the tax. Tax collected by the petitioners from the customers cannot be utilized by the petitioners seeking refund thereof. It is the public money, which can only be held by the State in public exchequer.

4. We have heard learned Counsel for the parties and perused the record.

5. The Apex Court in Mafatlal Industries" case (supra) has held that charged money should either be returned to the customers from whom it was charged or should be deposited in State Exchequer being public money and in no circumstances it should be retained by the person adding to his unjust enrichment.

6. We are of the opinion that for the application of ratio of the judgement of the Supreme Court in Mafatlal Industries" case (supra), it should be established beyond doubt that the dealer has charged the tax from the public, which was ultimately held to be wrongly imposed by the Court. Undisputedly, the petitioners were having two licences, one L-1 and the second L-2.

7. Respondent No. 2 i.e. the Excise and Taxation Commissioner, Haryana in its impugned order dated 13.6.2005 has recorded finding of fact that the petitioners

have sold IMFL to its customers at an enhanced rate. It was further observed in the impugned order that tax paid stock was sold by L-1 licensee through its retail counters of L-2 licence alongwith the opening stock of IMFL available in the morning of 26.6.2001 at a higher rate. It is further observed in the impugned order that though tax was not leviable on the stock found on 26.6.2001, however since IMFL, which was stocked on 26.6.2001, was sold by the petitioners at a higher rate, including tax thereon, hence the petitioners are not entitled to any refund.

8. Learned Counsel for the petitioners vehemently argued that since refund was made in favour of two other similarly situated companies i.e. Ashish Kumar and Company and S.L. & Company and a Division Bench of this Court directed respondent No. 2 to pass fresh order considering the refund made to those two similarly situated companies, hence the respondents cannot take shelter of the judgement of the Apex Court rendered in Mafatlal Industries" case (supra).

9. We do not agree with the submission made by the learned Counsel for the petitioners. Even if refund was directed to be made in favour of two other licensees, the petitioner is not entitled to the refund because in the petitioner"s case, it has been found that the petitioner has charged tax on the stock, which was available with him on 26.6.2001. The petitioner having been found collected tax, cannot take refund thereof simply because imposition of tax was found to be illegal.

10. In view of the above, the petition is devoid of merit and hence, is dismissed.