(2005) 01 OHC CK 0020

In the Orissa High Court

Case No : Writ Petition (C) No. 2610 of 2003

Laxminarayan Mohanty APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 — Rule 6A, 6A(2), 6A(5)

Citation : (2005) 99 CLT 389 : (2005) OLR 423 Supp

Hon'ble Judges : A.K. Patnaik, J;A.K. Parichha, J

Bench : Division Bench

Advocate : N. Patra, A.K. Patra and B.N. Shadangi, for the Appellant; D. Das, Additional Government Advocate, for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner was a licencee in respect of three I.M.F.L. ''OFF'' shops in the district of Balasore for the years 1997-98, 1998-99 and 1999-2000. For each of the three shops, an agreement was executed between the petitioner and the Collector, Balasore which, inter alia, provided that the petitioner will sell a Minimum Guaranteed Quantity (for short, ''MGQ'') per month. The petitioner submitted a representation dated 5.12.2000 for reduction of MGQ for the said three shops and by Order dated 26.4.2002 the Government of Orissa in the Excise Department allowed a reduction of 20% on the existing MGQ for the three shops for the years 1997-98,1998-99 and 1999-2000. Pursuant to the said Order dated 26.4.2002 the petitioner has been asked to deposit arrear Government revenue amounting to Rs. 59,79,401/-towards short-drawn MGQ of IMFL and Beer for the aforesaid three shops during the years 1997-98 to 1999-2000 by a demand notice dated 22.7.2003 issued by the Superintendent of Excise, Balasore in Annexure-9 to the Writ Petition. Aggrieved, the petitioner has filed this Writ Petition under Article 226 of the Constitution praying for quashing the said demand notice dated 22.7.2003 in Annexure-9 to the Writ Petition.

2. Mr. N. Patra, Learned Counsel for the petitioner submitted that under Rule 6-A

of Orissa Excise (Exclusive Privilege) Foreign Liquor, Rules, 1989 a licencee is required to lift the MGQ of foreign liquor every month, but if he lifts less than the MGQ in any month, he will not be liable for any duty for short drawn MGQ if he sells the entire MGQ of foreign liquor for the excise year before expiry of the term of the licence. He submitted that in the present case, during all the three years, 1997-98, 1998-99 and 1999-2000 the petitioner had sold the entire MGQ of IMFL and Beer fixed for the excise years for the three shops, and therefore, even if the petitioner was not able to Iift the MGQ in any particular month he was not liable to pay any excise duty on account of short drawn MGQ during any particular month. Mr. Patra cited the decisions of the Supreme Court in Mohammad Ali Khan and Ors. v. Commissioner of Wealth-tax AIR 1997 SC 1165, State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, and Grasim Industries Ltd. Vs. Collector of Customs, Bombay, for the proposition that a provision of a statute has to be given its plain and literal meaning. He submitted that it will be clear from the plain and literal language of Sub-rule (5) of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 that a licencee can sell the entire MGQ of foreign liquor fixed for the excise year before expiry of the term of the licence.

3. Mr. Patra submitted that this is also the interpretation given by the State Government in the communication dated 25.1.2001 of the Government of Orissa in the Excise Department to the Excise Commissioner, Orissa, Cuttack, a copy of which has been annexed to the Writ Petition as Annexure-7 which states that if any licencee having short fall in lifting of MGQ comes up with a request to allow him to lift the short-drawn MGQ before expiry of the term of the licence, the Excise Commissioner may allow such cases. He submitted that pursuant to the said communication in Annexure-7 a number of foreign liquor shops have been allowed adjustment of monthly short drawn MGQ against the total quantity of foreign liquor during the term of the licence. In this context, he referred to the copy of the Order dated 1.2.2001, Annexure-10 to the rejoinder affidavit of the petitioner by which eleven IMFL shops mentioned therein have been allowed such adjustment of short drawn quantity of MGQ against total quantity lifted during the financial year by the Excise Commissioner, a copy of the Order dated 1.3.2001 in Annexure-11 to the rejoinder affidavit of the petitioner by which six IMFL ''OFF'' shops have been allowed such adjustment of monthly short drawn MGQ against the total lifting before expiry of the term of the licence by the Excise Commissioner and the copy of the Order dated 12.3.2001 in Annexure-12 to the rejoinder affidavit of the petitioner by which five IMFL OFF shops have been allowed such adjustment of monthly short fall of MGQ against the total quantity lifted during the financial year by the Excise Commissioner. Mr. Patra vehemently argued that if the petitioner is denied similar adjustment of short fall of monthly MGQ against the entire quantity of IMFL and Beer lifted during the excise years, the petitioner will suffer discrimination and his right to equality guaranteed under Article 14 of the Constitution will be violated. He cited the decisions of the Supreme Court in Ramana Dayaram Shetty Vs. International

Airport Authority of India and Others, , Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, and Iron and Metal Traders Pvt. Ltd., Bombay Vs. M.S. Haskiel and Another etc., in support of his contention.

4. Mr. D. Das, Learned Additional Government Advocate, on the other hand, submitted relying on the different averments in the counter affidavits filed by the Opp. Parties that a plain reading of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 would show that the MGQ has to be lifted every month and any short drawn MGQ of the previous month can be made good in the succeeding month if the Collector or the Commissioner permits such adjustment but in no case the short drawn MGQ of a subsequent month can be made good by excess drawal over and above the MGQ in a previous month. Mr. Das submitted that the petitioner, therefore, cannot claim that the short drawn MGQ of different months can be adjusted against the excess MGQ of the previous months and that he will not be liable for any duty on account of short drawn MGQ during a month if he has lifted the MGQ fixed for the entire excise year during the term of his licence.

5. In reply to the contention of Mr. Patra that some IMFL shops have been allowed adjustment of monthly short fall of MGQ against the excess quantity lifted during the entire year in Annexures-10, 11 and 12 to the rejoinder affidavit of the petitioner, Mr. Das submitted relying oh the affidavit of the Excise Commissioner filed on 20.9.2004 that the Excise Commissioner has allowed such adjustment to some of the IMFL licencees pursuant to the Order dated 25.1.2001 of the State Government in Annexure-7 to the Writ Petition on applications made by such licencees before expiry of the term of the licence but the petitioner has not made any such application to the Excise Commissioner or the Collector before the expiry of the licence period. He submitted that in any case the said affidavit would show that any excess lifting of foreign liquor during a previous month cannot be adjusted against short drawn MGQ during any subsequent month more particularly after the clarification of the State Government in the notification dated 27.3.2001.

6. The first question to be decided in this Writ Petition is whether short drawn MGQ of any month can be made good by lifting of foreign Iiquor in excess of the MGQ in any other month by the licensee under Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989. The said Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 is extracted herein below :

"6-A. Miminum guaranteed quantity of India Made Foreign Liquor: (1)(a) Every successful bidder of Foreign Liquor "OFF" Shop/licensee of IMFL "ON" shop shall before obtaining licences, guarantee the sale of the minimum guaranteed quantity of foreign liquor as fixed by the Excise Commissioner. The bidder/ licensee shall, before obtaining licence submit monthly distribution statement to the concerned Collector. The Licensee before the 30th June, may revise and resubmit the monthly distribution statement for the portion of the Excise year from August to March. The Collector shall be competent to revise and approve such revised statement. There shall be no further changes in the distribution statement so approved.

(b) MGQ in LPL and duty thereon will be fixed by the Excise Commissioner from time to time subject to approval of Government.

(2) The licensee shall lift the monthly minimum guaranteed quantity approved for that month before 5.00 P.M. on the last working day of that month. The right to lift the monthly minimum guaranteed quantity approved for that month and left unlifted, if any, by 5.00 P.M. on the last working day of the month shall be forfeited. Unless specially permitted to be lifted in the subsequent month or months by the Collector:

Provided that:

(i) The collector may for any special reason permit the licensee to lift the short drawn minimum guaranteed quantity of the previous month in the succeeding month except for obtaining the order of the Commissioner of Excise in case of default and for any special reason, if the period exceeds one month.

(ii) The Commissioner, may, wherever if he deems it necessary permit the licensee to lift the short drawn minimum guaranteed quantity of any month other than the month of March in any subsequent month or months.

(iii) No unlifted quantity of the foreign liquor shall be permitted to be lifted beyond the last day of February.

(3) Subject to the provisions of Sub-rule (1) no licensee shall lift less than the specified minimum guaranteed of foreign liquor in any month. Excise duty of foreign liquor for the months as approved in the distribution statement under Sub-rule (1) shall ensure lifting of the duty paid stock from the ware house. In case of failure on the part of the licensee to lift the stock as guaranteed, action may be taken to make good the loss of Excise duty which shall be recovered from the bank guarantee / advance licensee fee deposited by the licensee at the time of settlement. Subject to provisions of Sub-rule (1) no licensee shall lift less than the specified minimum guaranteed quantity of IMFL in any month. The Excise duty on IMFL for the month as approved in the distribution statement under Sub-rule (1) shall be remitted into the Government Treasury of the District in which the shop is situated by fifth of the succeeding month. In case of default, the Excise duty to the extent of deficit amount without prejudice to any other mode of recovery shall be collected with the licence fee of the succeeding month. In case of further deficit the amount will be collected at the end of the year with 10 percent fine on the deficit amount or as arrear licence fee under the provisions of OPDR Act.

(4) After cancellation of the licence the right acquired by the defaulting licensee shall be liable for re-disposal subject to provisions of Sub-section (1) of Section 22 of the Act.

(5) The licensee shall sell in retail entire minimum guaranteed quantity of foreign liquor for the Excise year before the expiry of the term of the licence. Any balance of foreign liquor found outstanding and unsold at the expiry of the previous year''s licence shall stand forfeited to the Government. The Collector, may permit the succeeding licensee to take over the forfeited quantity of foreign liquor after payment of the Excise Duty and got thereof and adjust it, against the minimum guaranteed quantity of the foreign liquor guaranteed by the succeeding licensee.

(6) The licensee shall have no claim for damages or for remission of consideration money in the case of delayed supply or non-supply of foreign liquor in a particular month which has been subsequently drawn by the licensee in the succeeding months."

It will be clear from Sub-rule (2) of Rule 6-A quoted above that the licencee has to lift the MGQ approved for the month before 5.00 P.M. on the last working day of that month. The said Sub-rule (2) further provides that the fight to lift the monthly MGQ approved for a particular month and left unlifted, if any, by 5.00 P.M. on the last working day of the month shall be forfeited unless specially permitted to be lifted in the subsequent month or months by the Collector. The proviso to the said Sub-rule (2) of Rule 6-A stipulates that (i) the Collector may for any special reason permit the licencee to lift the short drawn MGQ of the previous month in the succeeding month, '' (ii) the Commissioner, may, wherever if he deems fit, permit the licencee to lift the short drawn MGQ of any month other than the month of March in any subsequent month or months and (iii) no unlifted quantity of the foreign liquor shall be permitted to be lifted beyond the last day of February. It is, thus, clear from the aforesaid provisions of Sub-rule (2) of Rule 6-A that the short drawn MGQ of a previous month can be made good by lifting of foreign liquor, in a subsequent month or months in excess of the MGQ. It also appears from the aforesaid provisions that no unlifted quantity of foreign liquor shall be permitted.to be lifted beyond the last day of February. Sub-rule (5) of Rule 6-A, however, provides that the licencee shall sell in retail entire MGQ of foreign liquor in excise year before expiry of the term of the licence. This provision in Sub-rule (5) has to be read in consonance with Sub-rule (2) and so read would mean that the short drawn MGQ for the previous months can be made good in subsequent months if the Excise Commissioner so permits but in any case the entire MGQ for the excise year has to be lifted during the term of the licence by the end of March of a particular year.

7. It is well settled that while interpreting the statute, every part of the statute has to be given effect and one part cannot be interpreted in a manner inconsistent with another part of the statue. In Mohammad Ali Khan and Ors. v. Commissioner of Wealth-tax (supra) the Supreme Court has quoted the following observations of the Court in The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, :

"The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of statute should have effect".

Similarly, in Grasim industries Ltd. v. Collector of Customs, Bombay (supra), Arijit Pasayat, J. has observed :

"In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used".

Thus, Sub-rule (5) of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 cannot be interpreted in, isolation from or inconsistent with Sub-rule (2) of Rule 6-A and if the said two provisions in Sub-rule (2) and Sub-rule (5) of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 are interpreted together, then the short drawn MGQ of previous months can be made good by excess drawal over and above the MGQ during subsequent months by the licencee if the Excise Commissioner so permits and in any case, such short drawn MGQ during previous months can be made good by excess drawal over and above the MGQ in subsequent months before expiry of the term of the licence and before the end of February of the excise year.

8. This interpretation of the provisions of Rule 6-A may cause hardship to a licencee who has drawn quantities of foreign liquor in excess of MGQ in previous months and is unable to adjust such excess quantities against the short drawn MGQ of subsequent months. But the Court while interpreting statutes and, in particular, a taxing statute, has to go by the plain language used in the statute irrespective of hardship and inconvenience to a party. In the case of State of Maharashtra and Ors. v. Nanded-Parbhani, ZLBMV (supra) G.B. Patnaik, J. has observed :

"It is a cardinal principle of rule of construction of statute that when the language of a statute is fairly and reasonably clear, then inconvenience or hardship are no considerations for refusing to give effect to that meaning."

We are, thus, of the view that under Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 the petitioner is not entitled to adjust the quantities of foreign liquor of IMFL or Beer lifted by him in the previous months in excess of the MGQ against short drawn MGQ of subsequent months and has to pay duty on the short drawn MGQ of the subsequent months and hardship or inconvenience to the petitioner cannot be a plea for waiving such liability of the petitioner to pay duty on account of short drawn MGQ of the previous months.

9. The communication dated 25.1.2001 of the Government of Orissa in the Excise Department in Annexure-7 to the Writ Petition on which reliance has been placed by Mr. Patra, Learned Counsel for the petitioner is quoted herein below :

"Government of Orissa Excise Department

No. IIEX-4/2000/187/Ex. Dated, Bhubaneswar, the 25.1.2001

From :

Shri B. Majhi, Under Secretary to Government.

To

The Excise Commissioner, Orissa, Cuttack.

Sub : Adjustment of short-drawn MGQ as per the Orissa Excise (Exclusive Privilege) Foreign Liquor (Amendment) Rules, 1998.

Sir,

I am directed to say that a number of applications has been received in this Department with a request to allow them to lift the MGQ which has been considered to be the short-fall.

As per Sub-rule 5 of Rule 6A of the Orissa Excise (Exclusive Privilege) Foreign Liquor (Amendment) Rules, 1998 the licensee shall lift entire minimum guaranteed quantity of foreign liquor for the entire year or portion thereof as fixed by the Excise Commissioner before the expiry of the term of the licence.

Thus, under the above Sub-rule 5, if any licensee having short-fall in lifting of MGQ comes up with a request to allow him to lift the said short-drawn MGQ before expiry of the term of licence, the Excise Commissioner may allow such cases.

Yours faithfully, Sd/-25.1.2001 Under Secretary to Government.

Memo No. 188/Ex. Dt. 25.1.2001.

Copy to All Collectors/All E.D.Cs/AII Superintendents of Excise for information and necessary action.

Sd/-25.1.2001 Under Secretary to Government".

By the aforesaid communication dated 25.1.2001, the Government has taken a view that if any licencee having short fall in lifting of the MGQ comes with a request to allow him to lift the short drawn MGQ before expiry of the term of the licence, the Commissioner may allow such cases under Sub-rule (5). In the said communication dated 25.1.2001 it is not stated any where that short drawn MGQ of any subsequent month can be made good by excess drawal over and above the MGQ during any previous month by a licencee. It is only stated that as per Sub-rule (5) of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 the licencee having short fall in lifting the MGQ may be allowed to lift the MGQ before expiry of the term of the licence by the Excise Commissioner. Pursuant to the said communication dated 25.1.2001 the Excise Commissioner, Orissa also appears to have allowed several licencees to adjust short drawn quantities of MGQ against the total lifting during a particular year in his Orders dated 1.2.2001,1.3.2001 and 12.3.2001 in Annexures-10, 11 and 12 annexed to the rejoinder affidavit. But in the said orders, there is no direction as such to allow short drawn quantities of MGQ during any subsequent month to be adjusted against excess quantities drawn over and above MGQ by the licencee during any previous month. On the contrary, in the affidavit filed by the Excise Commissioner, Mr. Vijaya Arora on 20.9.2004 it has been stated in Para 4 at Page 3 as follows :

"Specifically the State Government issued another Notification bearing No. 2053/ Ex.dated 27.3.2001 clarifying the earlier position and has directed that if adjustment of any short drawn MGQ of any previous month during subsequent months of the same year is possible, this may be permitted. Issuing orders now for the adjustment of short drawals of any month during subsequent months of the same year on year to year basis is not barred. However, excess lifting of a month cannot be adjusted against short lifting in future months. The said clarification was given in interpretation of Sub-rule (2) and (5) of Rule 6-A of Exclusive Privilege Rules.........".

10. In any case, in case any licencee has been allowed to adjust short drawn MGQ of any subsequent month by excess drawal over and above the MGQ of any previous month, this is a benefit given to the licencee contrary to the provisions of Sub-rule (2) of Rule 6-A of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989. Such an illegal benefit granted to a licencee cannot be a ground for the Court to direct such illegal benefit to be granted to the petitioner. Article 14 of the Constitution guarantees to every person equality before law and equal protection of law but does not guarantee to any person equality contrary to law and equal protection contrary to law. In Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab and Anr. 1995 (4) SCC 706 the Supreme Court has held :

"Article 14 cannot be extended to legalize the illegal orders though others had wrongly got the benefit of the orders".

11. But the petitioner cannot be denied the benefit of adjusting the excess drawals of subsequent months against the short drawn MGQ during the previous months merely because he has not applied for such benefit during the term of the licence when under Sub-rule (2) the petitioner could be allowed such benefit by the Excise Commissioner. There is also nothing in Rule 6-A which prohibits the grant of such benefit to a licencee after the licence period. Rather Sub-rule (5) of Rule 6-A clearly states that the licencee shall sell the entire quantity of MGQ for the excise year before the expiry of the term of the licence: We therefore hold that the petitioner will be entitled to adjust any short drawn MGQ of any previous months during the years 1997-98, 1998-99 and 1999-2000 against the excess drawal over and above the MGQ during the subsequent months during the aforesaid periods for the three shops. The Excise Commissioner will accordingly pass orders and the arrear of Government revenue will be calculated accordingly and intimated to the petitioner by the Superintendent of Excise, Balasore by the

end of February, 2005 and such arrears of the Government will be paid by the petitioner by the end of March, 2005 and the licence of the petitioner will be extended up to end of March, 2005. If the petitioner does not pay the said arrears by the end of March, 2005 the opp. parties will be entitled to treat him as a defaulter.

12. The Writ Petition stands disposed of with the aforesaid observations and directions. Considering the facts and circumstances of the case, the parties shall bear their own costs.

A.K. Parichha, J.

13. I agree.