(1997) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12773 of 1990

Mc. Dowell and Company Ltd. APPELLANT

Vs

Govt. of A.P. and Another RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:
Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 12, 5

Citation : (1997) 4 ALT 177

Hon'ble Judges : N.Y. Hanumanthappa, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : P. Sitarama Raju, for the Appellant; G.P. for Excise, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—This writ petition is filed seeking a writ of Mandamus declaring the levy and collection of import fee on the imports of Malt Spirit/Grape Spirit from other States to the State of Andhra Pradesh as illegal, unauthorised and without jurisdiction and consequently direct the respondents to refund the amounts paid by the petitioner towards import fee on the imports of Malt Spirit/ Grape Spirit or otherwise adjust the said amounts towards other amounts due and payable by the petitioner to the Excise Department.

2. The petitioner is a public limited company having distilleries and breweries throughout the country including the State of Andhra Pradesh at Hyderabad. It manufactures reputed brands of alcoholic liquors for human consumption. It has also obtained licence to deal in import and export of Malt Spirit/Grape Spirit. Malt Spirit/Grape Spirit is an unfinished produce which cannot be consumed directly like Indian Made Foreign Liquor (IMFL) unless the same is matured and blended as IMFL. The business of the petitioner either importing or exporting Malt Spirit/ Grape Spirit - is governed by the provisions of the A.P. Excise Act, 1968 and the rules framed there under and the A.P.Foriegn Liquor and Indian Liquor Rules, 1970 (for short ''the Rules). Rule 12 of the said Rules was amended authorising

the State to levy fee on different types of liquor to be exported. The same is extracted hereunder:

"12. Issue of an export permit:-

(2) That the applicant has paid and produced the original challan in token of having credited into the Govt.Treasury export fee at the following rates:

Beer, Cider, Ale, Stout porter or other fermented liquor usually from malt of foreign liquor - One rupee per bulk litre,

(ii) Any other Indian Liquor including Arrack - Two rupees per bulk litre,

(iii) Malt Spirit/Grape Spirit - Two rupees per bulk litre.

3. Regarding importing of liquor, Rule 5 of the Rules deals about imposing of such levy but it is silent as far as importing of Malt Spirit/Grape Spirit is concerned. The case of the petitioner is that in law, the petitioner is not liable to pay either export fee or import fee as importing or exporting of Malt Spirit/Grape Spirit is only for the purpose of blending or preparing IMFL. In spite of the same, they had to pay under protest nearly a sum of Rupees One Lakh Twenty Thousand to the authorities. The further case of the petitioner is that the State Government cannot make any law imposing fee or tax in respect of intoxicating liquors, which are subjected to import and export. Such an imposition can only be made by the Central Government and not by the State Government since the subject in question falls under Item-42 of list-I of Schedule-VII. No service is rendered by the Government so as to demand import duty on the imports of Malt Spirit/Grape Spirit. It is the further case that under item-51 of Schedule-VII(ii), the State Government can make law providing for levy of excise duty and countervailing duty on alcoholic liquors for human consumption. Similarly, under item-8 of the State list, the State can make law in respect of intoxicating liquors namely production, manufacture, possession, transport, purchase and sale of intoxicating liquors. Under item-66 of the State list, the State can make law providing for levy of fee in respect of matters which are enumerated in those items. According to the petitioner, levying and demanding fee on Malt Spirit/ Grape Spirit is without jurisdiction and the law made in that respect is beyond the capacity of rule making power of the Legislature.

4. Sri P. Sitarama Raju, learned advocate appearing on behalf of the petitioner while reiterating the averments made in the writ petition contended that such a law is not made any where in the country except in this State. According to him, the idea behind making amendment to Rule 12 of the Rules was to import as much as possible Malt Spirit/Grape Spirit as the State was in need of such a spirit and to impose a fee on export of the same so as to prevent exporting of such liquors from the State of Andhra Pradesh to other parts of the country. Thus object behind the levy was to encourage import as much as possible of Malt Spirit/Grape Spirit and to discourage pumping or sale of Malt Spirit/Grape Spirit outside the State. If that was not the intention, definitely there would have been

an amendment to Rule 15 of the Rules specifying that a licensee shall be liable to pay fee even on the spirit imported. According to him, imposition of import fee and making a demand is quite illegal and unjust. Any amount paid by the petitioner was under protest and the receipt of the payment by the State amounts to unjust enrichment, and so, the State is liable to refund the amount so collected.

5. Sri Vijay Kumar, learned Government Pleader appearing for the Excise Department while refuting the contentions of the learned Counsel for the petitioner urged that Rule 12 was incorporated in the statute book with a view to regulate both import and export of Malt Spirit/Grape Spirit. Although the import of Malt Sprit/Grape Spirit does not find a mention in Rule 12 as amended, when fee is levied on its export, it is implied that in case of import also similar liability will be on the licensee or the person who is importing-According to him, the amount collected in pursuance of the demand is quite legal and the State is not liable to return the said amount. Thus contending he sought that the petition be dismissed.

6. As far as the law regarding levying of fee is concerned, the learned Counsel for the respondent contended that the State is empowered to make such a law by making reference to the effect of item-51 of Schedule-VII(ii), item 8 and item 66 of the State list and also item-42 of List-I of Schedule-VII, for levying import and export fee on Malt Spirit/Grape Spirit and the same in no way affects the inter-State trade. The effect of similar amendment and competency of the State in levying such a fee is decided both before several High Courts and the Supreme Court and ultimately the Courts found that such powers are vested with the State and not liable to be struck down as unconstitutional. Apart from this, any right or benefit conferred under the Excise Act is purely contractual in nature. If one wants to carry on a particular trade governed by the State Acts and the rules framed there under, he can do so provided he is willing to adhere to the restrictions imposed therein. Thus, keeping licence to carry on business in import or export of Malt Spirit/ Grape Spirit is one such business either enumerated or protected under the Act. Knowing fully well the nature of the trade, the petitioner obtained licence and started carrying on business, and so it is not open for it to challenge the validity of the Act and certain rules. The nature of transaction and the rights and obligations conferred on the parties were considered and'' broadly explained by the Supreme Court in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others,

7. We do not want to pronounce upon the validity or otherwise of Rules 5 and 12 of the Rules, as the petitioner has not challenged the constitutional validity of the Rules. It is well settled that a taxing statute should be construed strictly and that any imposition of burden by way of tax or duty shallbe expressly supported by words and that there cannot be any imposition on inferences. A five judge Bench of the Supreme Court in A.V. Fernandez Vs. The State of Kerala, , speaking through Bhagawati, J (as he then was) laid down the proposition:

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

8. The exposition of law by Rowlatt, J. in Cape Brandy Syndicate v. Inland Revenue Commissioners: 1921 (1) K.B. 64, that "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used" has been followed by our Supreme Court in Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator, , According to the Supreme Court:

"......the subject is not to be taxed unless the charging provision clearly imposes the obligation."

9. Levying of import fee is undoubtedly a burden imposed on the licensee for the purpose of importing Malt Spirit/Grape Spirit. Unless there is an express provision in the Act or the Rules authorising such levy, any levy made in the absence of such a provision is arbitrary and illegal. Rule 12 of the Rules as amended which deals with levy of fee for exporting certain liquors, mentions Malt Spirit/Grape Spirit apart from certain other liquors specified therein. Rule 5 which deals with levy of fee for grant of import permit is in the following terms:

"5. Procedure for payment of Excise duty and grant of an import permit :-

(a) On receipt of an application in Form FL. 1, the collector (or any Excise Officer Specially authorised by the Commissioner) may after such enquiry as he may consider necessary and on being satisfied that there is no objection to issue import permit applied for issue of the permit, subject to the following conditions, namely:

(i) that the applicant has paid and produced the challan in original in token of having credited to the Government Treasury the entire contervailing duty leviable on the liquor to be imported as the rates in force.

(ii) that the applicant has paid and produced the challan in original in token of having credited into the Government Treasury import fee at the following rates:

(a) Beer, Cider, Ale, Stout, or other fermented liquor usually from malt or foreign liquor. - One rupee per bulk litre.

(b) Any other Indian Liquor or excluding arrack. - Two rupees per bulk litre.

10. The words "Malt Spirit/Grape Spirit" do not find mention in Rule 5.

11. In paragraph 2 of the counter affidavit, an averment is made to the effect that Malt Spirit/Grape Spirit comes under the definition of liquor and therefore the State is empowered to levy excise duty on its import. This averment, presumably, is made in order to over come the difficulty due to the absence of the words "Malt Spirit/Grape Spirit" in Rule 5. If that be so, we are at a loss to understand why the same words have been specifically incorporated in Rule 12 by way of amendment vide G.O.Ms. No. 877 Revenue (E), dated 15.9.87 published in the A.P. Gazettee, dated September 18, 1987, when Malt Spirit/ Grape Spirit answer the description of "liquor".

12. From the above discussion, the only conclusion that emerges is that the State did not think of imposing any import fee on the imports of Malt Spirit/ Grape Spirit. Therefore, the demand of money in the form of fee from a licensee on the import of Malt Spirit / Grape Spirit amounts to illegal demand and its receipt amounts to unjust enrichment and it is liable to be refunded.

13. Having held so, in view of the situation obtaining in the case on hand, instead of driving the parties to seek refund of the said amount to a civil Court, we are of the considered opinion that this Court can very well mould the relief and direct the authority who collected such money to refund it. If once again the parties are directed to approach the Court for return of the amount, it leads to multiplicity of proceedings.

14. The Writ Petition is allowed. No costs. It is declared that under Rule 5, the State has no power to impose import fee at the rate of Rs. 2/- per bulk litre on import of Malt Spirit/Grape Spirit inside the State and that the respondents are liable to return Rupees One Lakh Twenty Thousand collected from the petitioner during the period in question in the form of fee at Rs. 2/- per bulk litre on import of Malt Spirit/Grape Spirit within a period of three months from this date. If the petitioner so desires, the Same may be adjusted in respect of any other future liability of the petitioner.