(1992) 05 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Appeal No''s. 1189 and 1634 of 1980

Modi Industries Ltd. and Another — APPELLANT

Vs

Lt. Governor of Delhi and Others — RESPONDENT

Date of Decision : 27-05-1992

Acts Referred:

Country Liquor Bonded Warehouses Rules, 1976 — Rule 31
Punjab Excise Act, 1914 — Section 3(6)

Citation : (1992) 3 Crimes 1054 : (1992) 48 DLT 209 : (1992) 24 DRJ 149 : (1993) 1 ILR Delhi 28 : (1992) RLR 411

Hon'ble Judges : Y.K. Sabharwal, J;Sunanda Bhandare, J

Bench : Division Bench

Advocate : D.S. Narula and S.K. Mahajan, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) By public notice dated 2nd March 1978 the Commissioner of Excise, Delhi, invited applications from only the working distilleries for the grant of licenses in Forms CLW1 and L-9, for running the bonded warehouses in Delhi for supply of ordinary spiced country liquor during the period from 1.4.1978 to 31.3.1979. The terms and conditions for grant of licenses, inter-alia, were that the licensee shall be bound to observe Delhi Country Liquor Bonded Warehouses Rules 1976, as amended from? time to time (for short ''the Rules'') the Punjab Excise Act, 1914 (I of 1914) as enforced in the Union Territory of Delhi (for short "the Act'' and other rules and) regulations framed under the Act and instructions issued by the Excise Commissioner, Delhi, from time to time. The terms also provided that the licensee shall be allowed to import country liquor into Delhi only on execution of a bond for payment of the excise duty on the consignment.

(2) M/S.MODI Industries Ltd (Petitioner in C.W.No. 1189/80) and M/s. Co-operative Company Limited (Petitioner in C.W. 1634/80) filed applications for grant of the licenses. By letter of the Collector of Delhi dated 29th March 1978 the petitioners were informed that the Lt. Governor of Delhi had accepted their

tenders subject to petitioners executing bonds as required u/s 16 of the Act and on complying with other formalities by the petitioners in terms of the letter of acceptance of tender. The petitioners executed the necessary bonds and completed the other formalities and thus the requisite licenses were issued.

(3) During the license period certain quantity of consignment of country liquor imported into Delhi by the petitioners was not issued from the licensed bonded warehouses as the said quantity was found in leaked and broken bottles. There is no dispute about the quantity of such consignment of country liquor which was not issued from the bonded warehouse on account of it having been contained in leaked and broken bottles. The only dispute is whether excise duty is payable or not on such quantity of liquor which was not issued from the bonded warehouses but was part of consignment of country liquor imported into Delhi.

(4) By notice dated 22nd March 1980 the Collector of Excise informed M/s. Co-operative Company Ltd. that out of the country liquor imported during the period 1.4.78 to 31st March 1979 a quantity of 20686.926 Lpl of potable liquor was not issued from the licensed bonded warehouse since the same was found, according to records, to have been contained in leaked and broken bottles, each of 50 degree Up strength and consisting of 50,218 bottles of 750 Ml, 8509 bottles of 375 Ml and 2886 bottles of 180 Ml and duty of Rs. 5,64,339.35 was livable u/s 31 of the Act on the said country liquor imported into Delhi and has been agreed by the licensee to be paid on demand. The licensee was called upon to pay the said amount failing which to show cause in writing why further legal action to enforce the recovery of dues may not be taken. The notice was replied by the licensee and the liability to pay was disputed. The Collector of Excise by order dated 19th July 1980 rejected the various pleas taken by the licensee and came to the conclusion that the licensee was liable to pay the excise duty. The appeal preferred by the licensee was dismissed by the Commissioner of Excise by order made on 24th October 1980.

(5) The petitioner M/s. Co-operative Company Ltd seeks quashing of the order of the Collector initiating the proceedings, impugned order of the Collector dated 19th July 1980 and the impugned order of the Commissioner of Excise dated 24th October 1980.

(6) A show cause notice dated 22nd March 1980 on almost identical facts was also issued to M/s. Modi Industries calling upon it to pay duty of Rs. 4,27,897.69P. The notice was replied by M/s. Modi Industries and it also disputed the liability to pay the amount. The notice dated 22nd March 1980 has been challenged by M/s. Modi Industries in C.W. 1189/80. It has been explained in the petition that normally licensee would have waited for adjudication by the Collector and possibly gone up in appeal to the Excise Commissioner but straightaway, without waiting for adjudication, the writ petition has been filed in view of the fact that almost all the questions of law had already been decided by the same Collector and repelled in the order relating to the same year in the case of M/s. -Co-operative Company Ltd. In the counter affidavit objection was taken

by the respondents that the writ was premature as the matter was still pending before the authorities empowered under the Act for adjudication. During hearing of arguments, however, learned counsel for the respondents did not press the said objection and submitted that the petition be heard on merits otherwise it would cause further delay. This judgment would dispose of C. Ws. 1189 and 1634 of 1980.

(7) Before dealing with the rival contentions it would be useful to reproduce Section 3(6), 16, 22, 23, 31 and 32 of the Act which read as under:-

SECTION 3(6): - "excisable article" means- (a) any alcoholic liquor for human consumption; or (b) any intoxicating drug;" Section 16:- No intoxicant shall be imported exported or transported except: (a) after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment, and (b) in compliance with such conditions as the Chief Commissioner may impose."

SECTION- 22:-"The Excise Commissioner, subject to such restrictions or conditions as the Chief Commissioner may impose, may (a) establish or license a warehouse wherein any intoxicant may be deposited and kept without payment of duty; (b) discontinue any warehouse so established."

SECTION- 23:-"No intoxicant shall be removed from any distillery, brewery, Warehouse, or other place of storage established or licensed under this Act, unless the duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof."

SECTION- 31:-"An excise duty or a counter-veiling duty as the case may be at such rate or rates as the Chief Commissioner shall direct may be imposed, either generally or for any specified local area, on any excisable article- (a) imported, exported or transported in accordance with the provisions of Section 16: or (b) manufactured or cultivated under any license granted u/s 20: or (c) manufactured in any distillery established or any distillery or brewery licensed u/s 21:

PROVIDED as follows:- (i) Duty shall not be so imposed on any article which has been imported into India and was liable on importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878. (ii) Omitted." Section 32: Subject to such rules regulating the time. place and manner as the Chief commissioner may prescribe, such duty shall be levied rateably, on the quantity of excisable article imported, exported, transported, collected or manufactured in, or issued from a distillery, brewery or warehouse;

PROVIDED that duty may be levied (a) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp plant, or by a rate charged on the quantity collected; (b) on spirit or beer manufactured in any distillery established, or any distillery or brewery licensed, under this Act in accordance with such scale of equivalents, calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort. as the case may be, as the Chief Commissioner may prescribe. (c) on tari, by a tax on each tree from which the tari is drawn:

PROVIDED further that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed u/s 22 (a), it shall be made,- (a) if the Chief Commissioner by notification so directs at the rate of duty which was in force at the date of import of that article, or (b) in the absence of such direction by the Chief Commissioner at the rate of duty which is in force on that article on the date when it is issued from the warehouse."

(8) Learned counsel for the petitioners, has vehemently contended that excise duty is payable only on the liquor which is issued from the bonded warehouse and not on the liquor which is not issued and may have been contained in the leaked and broken bottles .According to petitioners the incidence of excise duty arises at the time when the liquor leaves the bonded warehouse premises. In support the petitioners rely upon section 22, 23, 31 and 32 of the Act. The respondents, on the other hand, rely upon Section 16 and also on terms of the bond that the licensee had agreed to pay on demand excise duty on consignment of liquor imported into Delhi. Section 16 contains a bar for import of any intoxicant into Delhi except after payment of duty to which it may be liable under the Act or execution of a bond for such payment. Sections 22 and 23 of the Act are to be interpreted keeping in view the charging section 16 of the Act. In view of clear provision of Section 16 it is not possible to accept the contention of the petitioners based on Sections 22 and 23 that excise .duty would not be payable if liquor is not removed from the warehouse. Section 23 refers to duty payable under Chapter V of the Act. The two sections in Chapter V are Sections 31 and 32. Section 31. inter-alia, provides that the excise duty, at such rate or rates as the Lt. Governer of Delhi shall direct, may be imposed either generally or for any specified local. area on any excisable article imported in accordance with the provisions of Section 16 of the Act. Section 32, inter-alia, provides for the manner in which the duty may be levied on the quantity of excisable article imported, exported, transported, collected or manufactured in or issued from a distillery, brewery or a warehouse. A bare reading of Section 31 shows that on import of excisable articles the excise duty is payable in accordance with the provisions of Section 16. In our opinion Section 16 is the charging section. It is not disputed that the petitioners had executed bonds in terms of section 16 of the Act. One of the term of grant of license was also that the licensee shall be allowed to import country liquor into Delhi only on execution of a bond for payment of excise duty on the consignment. The incidence of excise duty arises on the import of intoxicant in Union Territory of Delhi. u/s 16 the basic liability to pay the duty arises at the time of the import. The execution of the bond only postpones the time and the manner of the payment of the excise duty. We do not find any merit in the contention that excise duty would not be payable on liquor imported into Delhi on the ground that it was not issued from the Warehouse.

(9) Next, relying upon Rule 38, it was contended that no duty was payable on liquor found to be contained in leaked and broken bottles. Rule 38 on which

reliance was placed by the petitioners reads as under:- Rule 38: "Duty": No duty shall be chargeable from the licensee on any liquor found to be contained in defective/leaked/ broken bottles." This Rule was deleted on 27th March 1978. Thus, when the tenders of the petitioners were accepted on 29th March 1978, there was no such Rule 38 on which reliance has been placed. The licensee was granted for the period from 1st April 1978 to 31st March 1979 and relied upon Rule 38 had already been deleted. A new Rule 38 was incorporated in the Rules in the year 1980. That Rule reads as under:-

"DUTY:-''The wholesale licensee shall import potable country liquor into the Union Territory of Delhi on payment of special duty or on execution of a bond as required u/s 16 of the Punjab Excise Act, 1914: Provided that when liquor is imported on execution of a bond, the Lt. Governor of Delhi may direct that the special duty in respect of the potable country liquor issued for sale from the Bonded Warehouse, shall be paid by the retail seller: Provided further that the wholesale licensee shall be liable to pay special duty on liquor which is or has been contained in bottles found damaged to transit or found broken or defective in the Bonded Warehouse, except the liquor which is found defective being non-potable."

(10) The above quoted Rule 38 was enforced on 18th April 1980. Rule 38. in fact, had been added to the Rules on 19th March 1980 but the second proviso was again substituted by Notification dated 18th April 1980. Under the Notification dated 10th March 1980 the second proviso read as:-

"PROVIDED further that the wholesale licensee shall be liable to pay special duty on the liquor which is damaged in transit or found broken or defective in the bonded warehouse except the liquor which is found defective being non potable."

This proviso was changed by Notification dated 19th April 1990 and the rest of Rule 38 remained same as was framed by Notification dated 18th March 1980. From above narration of facts regarding the rules it cannot be doubted that under Rule 38 which was deleted on 27th March, 1978 excise duty on liquor contained in leaked/broken bottles was not payable. There is also no doubt that between 27th March 1978 and 10th March 1980 there was no Rule slating one way or the other about the payment of excise duty for liquor contained in broken/ leaked bottles. On these aspects the contention of Mr. Narula, learned counsel for petitioners, was two fold. Firstly, it was contended that the petitioners are not bound by the deletion of Rule 38 on 27th March 1978 as the said Rule existed when the tenders were submitted by the petitioners and the petitioners are, thus, not liable to pay excise duty on liquor contained in broken/leaked bottles. Secondly, it was contended, that assuming the respondents could rely upon deletion of the Rule on 27th March 1978, the petitioners would still be not liable to pay the excise duty as there was no statutory rule till March 1980 casting an obligation on the petitioners to pay the excise duty on liquor contained in leaked/ broken bottles and admittedly Rule 38 as framed in the year 1980 was not applicable to the petitioners for their license period was up to 31st March, 1979.

Rule 38 was deleted on 27th March 1978. -The petitioners were governed by the Rules as amended from time to time. It is not possible to accept the contention that the petitioners would continue to be governed by Rule 38 which stood deleted before the start of the license period and even rather before issue of letter dated 29th March, 1978 by which communication of acceptance of tender was sent to the petitioners. The first contention of the petitioners is, Therefore, without any substance. There is also no force in the second contention that in absence of specific Rule the petitioners are not liable to pay the excise duty. The liability to pay the excise duty, on all intoxicants imported into Delhi either at the time of import or, later, if bond has been executed, is contained in Section 16 of the Act. The absence of rule is of no significance. There was no provision in the Act or the Rules exempting payment of excise duty on liquor contained in leaked/ broken bottles. In these petitions we are not called upon to decide the constitutional validity of the rule 38 as existed before 27th March, 1978 or as framed in the year 1980. The object of deleting Rule 38 was clearly to withdraw the exemption and the new Rule 38 only clarifies that position.

(11) The ''excisable article'' under the Act means any alcoholic liquor for human consumption or any intoxicating drug. The petitioners contended that the liquor contained in leased/broken bottles cannot be said to be liquor for human consumption and thus excise duty is not payable. It was never the case of the petitioners that the liquor contained in leaked/broken bottles was not fit for human consumption. The liquor, on which excise duty has been levied by the impugned orders/notice, was imported into Delhi. The breakage/leakage did not take place during transit from distillery to Delhi where the warehouse is located. Petitioners had not set up the case that the liquor was destroyed because it was not fit for human consumption. It cannot, Therefore, be held that the liquor in leaked/broken bottles was not excisable article.

(12) Learned counsel for the petitioners further contended that the excise duty was a single point duty and in case of a bonded warehouse excise duty was payable only on the quantity of liquor issued from the warehouse for sale and not on quantity of liquor brought into the warehouse. The contention was that so long as the liquor was lying in the bond no excise duty was payable as, in law, the liquor lying in the bond is presumed to be lying it the distillery. In support of the contention reliance has been placed upon a decision of Allahabad High Court in Mohan Meakin Breweries Ltd., Lucknow Vs. State of U.P. and Others, . In that decision the Division Bench of the Allahabad High Court was considering a case in respect of loss of liquor during the process of manufacture, namely, the wastage occurring during bottling process. That is not so in the present case. There was not loss of liquor during the manufacture or bottling process. The cited decision has no applicability to the facts of the present case. Further as noticed hereinbefore it was also not a case of loss of liquor during the transit from distillery to bonded warehouse at Delhi. In our view, the excise duty is payable, u/s 16 of the Act, on the import of liquor into Delhi. The postponement of the time and the manner of the payment of the excise duty because of liquor having

been kept in the bond does not mean that the payment of excise duty can be avoided on the ground that there was loss of liquor on account of breakage/ leakage in the bonded warehouse. No objection was raised by the licensee at the time of destruction of the liquor that it was unfit for human consumption. The reliance of the petitioner on a decision of this Court in the case of Rampur Distillery and Chemicals Co. Ltd. Vs. Collector of Excise and others, C.W. 368 of 1974 decided on 20th August 1975 is also misconceived. That was a case where the liquor was admittedly destroyed on account of the same being unfit for human consumption and as such it was held that the liquor which was admittedly not fit for human consumption could not be an excisable article and, Therefore, there was no liability to pay the excise duty.

(13) In our opinion in view of Section 16 of the Act the excise duty would be payable on all the quantity of liquor imported into Delhi. The excise duty would not be payable on liquor not fit for human consumption as such liquor would not be an excisable article in view of the definition of the term ''excisable article'' as provided in Section 3(6) and go to that extent such liquor not fit for human consumption would not come within the purview of Section 16 of the Act. The liquor wasted in transit would also not be liable to payment of excise duty as to such liquor as well Section 16 would not be applicable. In respect of liquor wasted in transit it would not be possible for the authorities to hold that the liquor was imported into Delhi. Rule 31 shows that even the liquor stored in the bonded warehouse which is lost on account of fire, theft or any other accident is ipso facto not exempt from payment of the excise duty. Rule 31 provides that if a fire, theft or any other accident causing loss or damage to the country liquor stored in the bonded warehouse takes place the Collector of Excise shall immediately cause an enquiry to be held by a gazetted officer as approved by the Excise Commissioner and if in such enquiry it is found that theft/fire has occurred due to connivance or negligence of the licensee, the Collector of Excise shall determine his liability to pay the excise duty on the country liquor wasted. Thus, by implication Rule 31 shows that the exemption for payment of excise duty would be available only in respect of the liquor which may have been lost on account of fire, theft or accident not attributable to the negligence or connivance of the licensee. Apart from the aforesaid, there is no other provision in the Rules granting exemption from payment of the excise duty on liquor brought into Union Territory of Delhi. It cannot be held that the principles as laid down in Rule 31 are liable to be made applicable to the liquor in question. At the time of the destruction and even later the petitioners never contended that the leakage/ breakage had occurred on account of fire, theft or any other accident on account of reasons beyond their control. The petitioners cannot thus take any benefit of Rule 31.

(14) For the reasons stated above, both the petitions are dismissed leaving the parties to bear their own costs.

