(1980) 07 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 121 of 1979

Mohan Meakin Breweries Limited and Another — APPELANT

Vs

Excise and Taxation Commissioners and Others — RESPONDENT

Date of Decision : 02-07-1980

Acts Referred:

Punjab Brewery Rules, 1932 — Rule 10.2, 10.28, 10.28(5), 10.32, 10.33
Punjab Excise Act, 1914 — Section 3(14), 3(6), 31, 32

Citation : (1980) ShimLC 301

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Bhagirath Dass and K.D. Sud, for the Appellant; Inder Singh, General and Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—The Petitioner company carries on the business, inter alia, of breweries and distilleries. It has a licensed brewery at Solan. It manufactures, amongst Ors. , beer. On 24th March, 1979 Excise Inspector wrote a letter (Annexure P.1) to the Manager of the Petitioner informing the latter that the government "has decided to enforce Rule 10.34 of the Punjab Brewery Rules in Solan Brewery w.e.f. 1-4-1979. You are, therefore, requested to comply with the provisions of the said rule". The company objected to the enforcement of the rules on various grounds but the government over-ruled the objections. The result is the present petition challenging the vires of the said rule as well as proviso (b) to Section 32 of the Punjab Excise Act.

2. Mr. Bhagirath Dass, learned Counsel for the Petitioner, contends that if Rule 10.34 is enforced then the State would be levying excise duty on the total quantity actually brewed which does not tally with the "excisable article" as mentioned in Clause (a) of Sub-section (6) of Section 3 of the Punjab Excise Act, 1914. It is submitted that duty could be imposed only at a stage when the article becomes an alcoholic liquor for human consumption, and that liquor in the "wort"

contains no alcohol whatsoever. The Petitioner has submitted affidavits as well as the certificates of well-known distillers and brewers to show that "wort" does not contain any liquor.

3. At this stage the relevant provisions of the Punjab Excise Act, 1914 and the rules framed thereunder may be noticed to appreciate the contentions of the Petitioner. Section 3(6) defines "excisable article". According to this definition it means "(a) any alcoholic liquor for human consumption: or...." "Liquor" is defined by Sub-section (14) of Section 3. It reads thus:

"liquor" means intoxicating liquor and includes all liquid consisting of or containing alcohol; also any substance which the State Government may by notification declare, to be liquor for the purposes of this Act.

Sub-section (6-b) of this section is in the following words:

''excise duty'' and ''countervailing duty'' mean any such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 of list II in the Seventh Schedule to the Constitution.

Section 31 is the charging section whereas Section 32 lays down the manner of levying the duty. Section 31 empowers the State to levy excise duty on any excisable article. The relevant part of Section 32 is in the following terms:

Subject to such rules regulating the time, place and manner as the Financial 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-

X X X X X X

(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 State Government may prescribe;

(c) on tari, by a tax on each tree from which the tari is drawn;

4. Now the relevant rules of the Punjab Brewery Rules, 1932 may be noticed. Rule 10.2 defines various words. ''Beer'' is defined as "any liquor prepared from malt or grain, with or without the addition of sugar and hops, and includes ale, porter and stout." ''Mashtun'' means "any vessel in which malt or grain is exhausted in the course of brewing." ''Fermenting vessel'' means "any vessel in which worts are fermented by the action of yeast." ''Worts'' means "the liquor obtained by the exhaustion of malt or grain or by the solution of saccharine matter in the process of brewing."

5. Rules 10.28 to 10.33 prescribe in detail the duties of the licensee in the course of preparation of beer. They read thus:

10.28. The licensee shall keep a book in form B.5 and shall observe the following rules in relation to it and to the entries to be made therein:

(1) He shall keep the book in some part of his licensed premises ready at all times, for the inspection of the inspector and other officers, and shall permit any excise officer who it authorised to inspect the brewery, at any time, to inspect the same and make extracts therefrom.

(2) He shall enter separately in the book the quantity of malt, corn, sugar, hops and hop substitutes which he intends to use in his next brewing, and also the day and hour when such next brewing is intended to take place.

(3) He shall make such entry, so far as respects the day and hour of brewing, twenty-four hours at the least before he shall begin to mash any malt or corn or dissolve any sugar, and, so far as respects the quantity of malt, corn, sugar, hops and hop substitutes, two hours at the least before the hour entered for brewing.

(4) He shall, two hours at the least before the hour entered for brewing, enter the time when all the worts will be drawn off the grains in the mashtun.

(5) He shall within one hour of the worts being collected in the fermenting vessels, or, if the worts be not collected before six in the afternoon, before eight in the forenoon of the fallowing day, enter the dip and gravity of worts produced from each brewing, and also the description and number of the vessels into which the worts have been conveyed.

(6) He shall, at the time of making any entry, insert the date when the entry is made.

(7) He shall not cancel, obliterate or alter any entry in the book, or make therein any entry which is untrue in any particular; should it be necessary to collect any entry, a line shall be drawn through the incorrect entry in such a manner as to leave it distinctly visible, and the amended entry shall be inserted above it; every correction shall be initialled by the person making it at the time.

(8) He shall, if so required by the Financial Commissioner, send notice in writing, to the inspector, of his intention to brew forty- eight hours before such brewing is to take place.

10.29 The licensee shall keep the total produce of brewing separate from the produce of any other brewing for the space of twenty-four hours, unless an account of the first mentioned produce, shall have been sooner taken by the inspector.

10.30 The licensee shall not mix the produce of one brewing with that of another, except in his store vats or casks, unless he shall have given previous notice, in writing, to the inspector, and be shall specify the quantity and gravity of the worts when mixed.

10.31 All grains in a mashtun must be kept untouched for a space of one hour after the time entered in the book, as the time, for the worts to be drawn off, unless the inspector has attended and taken accouut of such grains.

10.32 All worts shall be removed successively, and in the customary order of brewing, to the underback coppers, coolers and fermenting vessels, and shall not be removed from the last-named vessels until an account has been taken by the inspector, or until after the expiration of twenty-four hours from the time at which the worts are collected in these vessels.

10.33 When worts shall have commenced running into a fermenting vessel, the whole of the produce of the brewing shall be collected within eighteen hours.

Rule 10.34 is in the following terms:

10.34 (1) The duty on beer, at the prescribed rate shall be charged on the total quantity actually brewed as entered in the brewing book by the licensee or as ascertained by the inspector, whichever is higher, less an allowance of 10 per cent for wastage.

(2) The duty on beer shall become due, immediately the account of brewing has been taken by the inspector but the Financial Commissioner may cause the charge to be made up at the close of each quarter in respect of all the brewings within that quarter, and may, if the licensee executes a bond in form B-16 for its payment, defer the payment to a date not later than the fifteenth day of the month succeeding the quarter in respect of which the duty was charged.

6. Rule 10.35 gives a right to the licensee to object to the amount of duty demanded from him whereas Rule 10.36 provides, amongst Ors. , for remission or refund of duty in the event of beer being destroyed or becoming unfit for human consumption.

7. It is not denied by the learned Advocate General that unless and until wort is put in fermenting vessel and yeast is added, the State has no power to tax. Therefore, the question to be decided is whether Rule 10.34 attempts to levy the tax before any liquor results from fermentation of the mixture called ''wort''. It may be that the word ''wort'' is used in the manufacturing trade to denote a mixture before yeast is added and fermentation starts. But that is not relevant for our decision since the word ''wort'' has been defined specifically. As already stated, the word ''wort'' used in the rules refers to the liquor which has been obtained by the exhaustation of malt or grain.

8. The rules extracted above show that the licensee is to keep a faithful record of each stage of manufacture of beer. It will be noticed that Sub-rule (5) of Rule 10.28 enjoins upon the licensee to enter the dip and gravity of worts produced from each brewing within one hour of the worts being collected in the fermenting vessels. The licensee is also required under Rule 10.32 to remove all worts to, amongst Ors. , fermenting vessels, and not to remove them from it until an account has been taken by the Excise Inspector. It is not disputed that yeast is added the moment the worts are removed to the fermenting vessels for the

purposes of fermentation. After all this has been done only then, under Rule 10.34, the duty is leviable on the total quantity actually brewed as entered in the brewing book or as ascertained by the Inspector. 10% is allowed as wastage and, therefore, not taxed. Provision has been made to settle the disputes which may arise on account of the duty demanded from the licensee.

9. We have, therefore, no hesitation in repelling the contention of the Petitioner that Rule 10.34 seeks to levy the duty at a stage when no alcoholic liquor is present.

10. The last contention of the learned Counsel for the Petitioner is that the alcoholic liquor present at the stage referred to in Rule 10.34 is not fit for human consumption since something more has to be done to manufacture beer. In this connection reference is also made to entry 51 list II of Seventh Schedule to the Constitution which permits the State to levy duty "on alcoholic liquor for human consumption". It is contended that it should be read as "alcoholic liquor fit for human consumption".

11. It is well known that various types of alcoholic liquors are manufactured. For instance there is alcoholic liquor known as ''Industrial liquor''. State has been permitted to tax only that alcoholic liquor which is meant for human consumption. It admittedly a distillery or brewery is manufacturing alcoholic liquor for human consumption and once the stage in manufacture has reached where alcoholic liquor has come in existence, it is immaterial whether something more still may have to be done to make it consumable by human beings. No such restriction has been laid by the said entry 51, and we are not prepared to read into this entry the further words that the manufacture of alcoholic liquor should reach a stage when liquor should be fit for human consumption. It is in that light that we must read Clause (b) of the first proviso of Section 32 reproduced earlier. The calculations under Rule 10.34 are sought to be made on the basis of the quantity of material used. It may be noticed that Clause (c) to this proviso permits the State to levy duty on ''Tari'' by levying a tax on each tree from which it is drawn. In other words, these are the methods of calculating the quantity of alcoholic liquor produced for the purposes of tax.

12. Mr. Bhagirath Dass cites Delhi Cloth and General Mills Co. Ltd. v. Excise Commissioner, U.P. [1973 A.L.J. 629] in support of his contention that tax cannot be levied till the alcoholic liquor has become fit for human consumption. We have gone through this judgment. In this case the Petitioner company was manufacturing rectified spirit which is, admittedly, not for human consumption. The Court interpreted "any alcoholic liquor for human consumption". It was ruled that the expression "for human consumption" means "intended or meant for human consumption" at the stage of manufacture". On facts it was held that "rectified spirit is not manufactured for direct human consumption". In the instant case alcoholic liquor (beer) is intended or meant for human consumption and, therefore, the former case is of no help to the Petitioner.

13. The petition is, therefore, dismissed with costs.