(2005) 12 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : C.W.P. No''s. 2 of 1998 and 1144 of 2004

Mohan Meakin Limited APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:
Constitution of India, 1950 — Article 277
Punjab Excise Act, 1914 — Section 16, 21, 22, 23, 3

Citation : (2006) 1 ShimLC 143

Hon'ble Judges : V.K. Jhanji, J;Surjit Singh, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; M.S. Chandel, General and D.C. Pathik, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—We dispose of both the writ petitions by this common judgment as identical question of facts and law are involved in these petitions. For the purpose of the decision facts are being taken from CWP No. 2 of 1998.

2. The petitioner is aggrieved by orders dated 21st September, 1996 and 12th September, 1996 passed by the Collector (Excise) (South Zone) Shimla. The petitioner is also aggrieved by the order of the Excise and Taxation Commissioner-cum-Financial Commissioner (Excise), Himachal Pradesh, dated 12th August, 1997 passed in appeal against orders dated 21st September, 1996 and 12th September, 1996.

3. In brief, facts are that the petitioner company has a Distillery at Kasauli, in District Solan and is holding a licence in Form D-2 granted u/s 21 of the Public Excise Act, 1914 as is applicable to the State of Himachal Pradesh (hereinafter referred to as "the Act"). The bottling plant from where Indian Made Foreign Spirit from Malt Spirit is manufactured and bottled, is located at Solan Brewery. Brewery is a port of Kasauli Distillery and is covered under the same D-2 licence. Petitioner for the purpose of blending of Malt Spirit produced at Kasuali Distillery,

imports Malt Spirit of over proof strength from its own Distillery at Mohan Nagar in Uttar Pradesh after getting import permits from the Collector Excise, South Zone Shimla, Himachal Pradesh.

4. According to the petitioner, prior to 1st April, 1988 there was no import duty on I.M.F.S. (Indian Made Foreign Liquor), country liquor or rectified spirit. Further according to the petitioner, it was for the first time that fee on I.M.F.S. was levied as per announcements, excise actions for the year 1988-89 issued by the Excise and Taxation Commissioner, Himachal Pradesh. According to the announcement dated 7th March, 1988, import fee of Re. 1/- per bottle was to be levied on beer upto 5% alcoholic contents and Rs. 1.50 paise per bottle on beer upto 8.25% alcoholic strength imported from out side Himachal Pradesh became recoverable at the time of issuing import permit. It also provided fee of Re. 1/- per proof litre on import of all types of I.M.F.S., country liquor and rectified spirit except on industrial alcohol. The excise announcement was followed by a notification-dated 29th March, 1988 by which a new item No. 4-A in para 1 of notification No. 1-17/64-E&T dated 28th October, 1965 was added, which was to the following effect:

4-A. In import fee of Re. 1/- per proof litre shall be levied on all sorts of IMPS, country liquor and rectified spirit except on industrial alcohol imported from out side Himachal Pradesh and shall be recoverable at the time of issuing import permit.

Copies of the notifications 28th October, 1965 and 29th March, 1988 have been attached as Annexures P-3 and P-4, respectively to the writ petition. According to the petitioner, by an order bearing No. 8-6/93, Collector (Excise) Himachal Pradesh, South Zone, Shimla, created a demand of Rs. 22,85,900.55 paise on account of import fee alleged to be payable by the petitioner on the Malt Spirit imported by it during the years 1989-90 to 1991-92 and directed the amount to be deposited within 30 days.

5. The petitioner being aggrieved by the order preferred an appeal before the Excise and Taxation Commissioner, who vide order dated 17th July, 1995, remanded the case to the Collector (Excise) South Zone, Shimla with the direction that he should examine the records of the case and afford an opportunity to the petitioner to represent against the proposed action. Pursuant to the directions issued by the Excise and Taxation Commissioner by his order dated 17th July, 1995, Collector (Excise) issued a show cause notice dated 20th July, 1995, directing the petitioner to appear before him on 5th August, 1995 and show cause why it should not be directed to deposit the amount of alleged import duty/fee. It appears that the petitioner filed a detailed reply to the show cause notice. Thereafter the petitioner was heard by the Collector and by order dated 21st September, 1996 an amount of Rs. 22,85,900.55 paise was found to be payable by the petitioner on account of import duty/fee on malt spirit imported by the petitioner during 1989-90 to 1991-92.

6. Another show cause notice dated 20th July, 1995 was issued by the Collector (Excise) South Zone, Shimla, whereby the petitioner was asked to appear before him on 5th August, 1995 and to show cause why it should not be directed to deposit a sum of Rs. 15,08,487.45 paise on account of import duty/fee payable by the petitioner on the quantity of Malt Spirit imported by it during 1992-93 and 1993-94. The petitioner submitted a detailed reply to the said show cause notice and after hearing the petitioner the Collector (Excise) by order dated 12th September, 1996 directed the petitioner to deposit the import duty/fee of Rs. 15,08,487.45 paise.

7. Both the orders were challenged by the petitioner before the Excise and Taxation Commissioner exercising the powers of Financial Commissioner (Excise) Himachal Pradesh. Both the appeals were heard together and vide order dated 12th August, 1997 the Excise and Taxation Com-missioner-cum-Financial Commissioner (Excise) dismissed both the appeals, thereby upholding the orders dated 21st September, 1996 and 12th September, 1996 passed by the Collector (Excise), South Zone, Shimla.

8. The petitioner being aggrieved by the aforesaid orders passed by the Collector (Excise) South Zone and also Excise and Taxation Com-missioner-cum-Financial Commissioner (Excise) has filed the present petitions.

9. The submission of the learned Counsel for the petitioner is that Malt Spirit imported by the petitioner from its Distillery at Mohan Nagar, Uttar Pradesh is not an excisable item and no duty or fee could be levied on its import. Further submission of the learned Counsel is that import of Malt Spirit being inter-State trade duty levied by the State on its import is violative of entry 42 of List-I of VII Schedule to the Constitution of India. Learned Counsel further pointed out that if this submission does not find favour, still the duty cannot be justified as no service is being rendered by the State Government in regard to the import of Malt Spirit from Mohan Nagar (U.P.) to District Solan.

10. Another submission made by the learned Counsel for the petitioner is that duty/fee levied is neither pre-constitution nor it would fall under Article 277 of the Constitution of India.

11. On the other hand, learned Advocate General appearing on behalf of the respondents pointed out that the orders passed by the Collector (Excise) and upheld in appeal by the Excise and Taxation Commissioner are legal as the same have been passed in accordance with the provisions of the Act.

12. We have heard learned Counsel for the parties at length arid have carefully gone through the record of this case.

13. Duty and fee to be levied are provided in Chapter V of the Act. Section 31 deals with duty on excisable items and Section 32 prescribes the manner in which duty may be levied. For the facility of reference Sections 31 and 32 are reproduced as under:

31. Duty on excisable articles.--An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government 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 licence granted u/s 23; or

(c) manufactured in any distillery established, or any distillery or brewery licenced 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 Tarriff Act, 1894, or the Sea Customs Act, 1878.

Explanation.--Duty may be imposed under this Section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article.

32. Manner in which duty may be levied.--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--

(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 distiller 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 :

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 State Government 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 State Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

14. Reading of Section 31 shows that the State Government u/s 31 is empowered to levy excise duty or countervailing duty as the case may be at such rates, as the State Government shall direct, on any excisable articles imported/

exported/transported in accordance with the provisions of Section 16 of the Act.

15. The present case is the case of import of Malt Spirit and if we read Section 16 which deals with the import/export/transport of intox cants, we find that no intoxicant can be imported, exported or transported within or outside the State except after payment of any duty to which it may be leviable under the Act or execution of a bond, for such payment and in compliance with such condition as the State Government may impose.

16. Now the question which arises for consideration is whether the Malt Spirit imported by the petitioner from its Mohan Nagar (U.P.) Distillery to its Distillery at Kasauli in Himachal Pradesh would fall within the meaning of ''intoxicant'' as defined under Clause 12-a of Section 3 of the Act. Under this Clause ''intoxicant'' means any liquor or intoxicating drug. ''Liquor'' as defined under Clause 14 of Section 3 means intoxicating liquor, and includes lahan and all liquid consisting of or containing alcohol; also any substance which the State Government may by notification declare to be ''liquor'' for the purpose of the Act.

17. It is not denying the fact that Malt Spirit is nothing, but alcohol and being liquid it would fall within the definition of ''liquor'' and ''intoxicant'' as defined under the Act. Thus, the combined reading of Section 31, Section 16, Clause 12-a and Clause 14 of Section 3 of the Act would clearly demonstrate that the State Government was well within its powers to levy the import duty/fee on Malt Spirit, which was being imported by the petitioner from Mohan Nagar (U.P.) Distillery to its Distillery at Kasauli.

18. In view of the aforesaid conclusion, we do not think that any other submission made by the learned Counsel for the petitioner survives for our consideration.

19. Accordingly, we are of the considered view that the impugned orders passed by the Collector (Excise) South Zone, Shimla and upheld by the Excise and Taxation Commissioner-cum-Financial Commissioner (Excise) do not suffer from any error of law or jurisdiction. Both the writ petitions stand dismissed.

20. In view of the dismissal of both the writ petitions, pending application(s) also stand disposed of and the interim order(s) shall stand vacated forthwith.

