(2006) 11 JH CK 0090

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2812 of 2006

Mohan Meakin Limited APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Constitution of India, 1950 — Article 265

Citation : (2007) 2 BLJR 1089 : (2007) 3 JCR 125

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Sujit Narayan Prasad, A. Kumar, R.K. Singh and Rajesh Kumar, for the Appellant; I. Sen Choudhury, S.C.-III, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Through the medium of this writ petition, a direction has been sought for refund of an amount of Rs. 25,88,003.70 paise along with interest on account of excess excise duty, paid by the petitioner on the stocks of Indian made foreign liquor and beer. Petitioner is a company, duly registered under the Companies Act, 1950. The company has its branch office at Paragon Finance Compound, Kokar, Ranchi. The company secured a wholesale trade license for the year, 2004-05, duly issued by the Collector under the signature of the Assistant Commissioner, Ranchi, on 6th April, 2004. Under the State Excise Rules the company was required to keep minimum of 14000 LPL of foreign liquor in terms of Notification No. 332 dated 5th February, 2002. Accordingly, the company acquired the requisite stocks for its trade. The excise duty levied on the Indian made foreign liquor and beer is required to be paid at the time the stocks are acquired. At the relevant time i.e. at the time of grant of license and acquisition of the liquor stocks, the excise duty payable on the Indian made foreign liquor, was at the rate of Rs. 100/- per LPL and for beer it was Rs. 12/- per BL. It is alleged that the petitioner paid the requisite duty, levied on the stocks acquired by it. Subsequently, the State Government revised the excise duty on the Indian made foreign liquor and beer with effect from 1th July, 2004 vide Department''s Notification Nos. 968 and 969 both dated 30th June, 2004 respectively. These notifications were issued in terms of the provisions of State Excise Act by the Secretary, Excise and Prohibition Department, Government of Jharkhand, Ranchi. In terms of the new excise policy, duty for Indian made foreign liquor was reduced from Rs. 100/.- per LPL to Rs. 10/- per LPL for ordinary; Rs. 20/- per LPL for medium and Rs. 30/- per LPL for premium brand. Similarly the duty on mild beer was reduced from Rs. 12/- to Rs. 1.50 paise per BL; on strong beer it was reduced from Rs. 12/- to Rs. 2/- per BL and on super strong beer it was reduced to Rs. 3/- per BL from Rs. 15/- per BL. As a consequence of the reduction in the excise duty, the Excise Commissioner, Jharkhand, Ranchi vide its letter No. 960 dated 29th June, 2004 directed all the District Excise Authorities to verify the available stocks with all the licensed traders as on 30thJune, 2004, with a view to charge the excise duty in accordance with the reduced rates. It is stated by the petitioner that its stocks were also verified and checked as on 30th June, 2004 by the Excise authorities and report in this regard was sent to the Excise Commissioner, Jharkhand, Ranchi vide letter No. 509 dated 10th March, 2005. In view of the reduction in excise duty, the petitioner claimed refund of excess amount of duty, paid by it at the time of issuance of license and acquisition of the stocks. A number of representations dated 14th August, 2004, 20th September, 2004, 15th October, 2004 etc. are said to have been made, claiming refund of the excise duty or for adjustment of the excess amount paid towards the future payment of duty. It is further alleged that the Assistant Commissioner, Excise, requested the Excise Commissioner, Jharkhand, Ranchi for settlement of the claim of the petitioner on the basis of his representations and also informed him that a substantial amount is to be refunded or adjusted. After having failed to seek any response from the respondent-State in regard to the refund/adjustment of the excess amount of duty paid by the petitioner, the present writ petition has been filed before this Court seeking a direction for refund of the excess duty along with interest or its adjustment against the future duty and import fee.

2. Counter affidavit has been filed by the Assistant Commissioner, Excise, Ranchi. While admitting the reduction of the excise duty, quantum of stocks of the petitioner and the verification/checking of the stocks as on the crucial date i.e. 30th June, 2004 in accordance with the direction of the Excise Commissioner and also lodging of the claim of the petitioner for refund/adjustment, it has been stated that the petitioner has sold the stocks after 30th June, 2004 without seeking any permission from the Excise authorities. It is, accordingly, stated that it is not known whether the stocks available with the petitioner as on 30th June, 2004 had been sold at the old rates or the revised rates.

3. The petitioner has chosen to file a rejoinder to the counter affidavit, refuting the contention of the respondents as regards the sale of stocks after 30th June, 2004 is concerned. It has been specifically averred that under the Excise Act and the Rules made thereunder, no stocks can be removed from the premises of the

company without the authority and signature of the authorized officer of the Excise Department, permanently posted at the godown or the premises where the stocks are kept. It has also been specifically mentioned that all stocks sold by the company after 30th June, 2004 and even prior to that, were cleared/taken out under the express authority/signatures of the authorized officers and the statement for removing all the stocks indicates not only the quantum of the stocks but also the price and the excise duty, charged from the buyer. This information is duly communicated to the Assistant Commissioner, Excise, by the authorized officer and, thus, the Excise Department is fully aware of the clearance of stocks, the rates at which the stocks are sold and the amount of excise duty levied/charged from the buyer.

4. These averments do establish that all necessary details in respect to the excisable goods, particularly the liquor, which are removed from the bonded house, are available with the Excise Department. The acquisition, retention and disposal of the liquor is totally controlled, monitored and regulated by the provisions of the Excise Act and the Rules, made thereunder. Therefore, the contention of the respondent-State that any stock could have been sold by the petitioner without permission of the Excise Department appears to be without any substance and basis and if it has so happened, the blame lies with the officials of the Excise Department and they can not absolve themselves of their responsibility enjoined upon them under law. Apparently, no instance has been given as to when and how any stock was removed by the petitioner from it authorized/specified premises without the permission. The allegation besides being vague appears to be a ploy to deprive the petitioner of its lawful claim.

5. Excise duty is the duty payable on the manufacture, sale and import of the excisable goods. It is not in dispute that the petitioner paid the excise duty at the rates prevalent at the time of acquisition of the stocks of Indian made foreign liquor and beer at the rates, which were admittedly higher than the rates, notified and made effective before 1st July, 2004. It is also not in dispute that as on 30th June, 2004 the petitioner had sufficient stocks on which the excise duty at the higher rate was paid. Admittedly, the excise duty was reduced with effect from 1st July, 2004. Even according to the respondents, most of the stocks were cleared by the petitioner after 30th June, 2004 i.e. with effect from 1st July, 2004 when the excise duty was reduced. Excise duty was payable at the time of clearance of the stocks from the godown of the petitioner''s company. On the available stocks petitioner was liable to pay only the reduced amount of excise duty and any amount paid in excess on its stocks at the time of its acquisition became refundable with the reduction of duty. Respondents were/are bound to refund, the excess amount received from the petitioner in view of reduction of the duty, which has not been either refunded or adjusted against the future duty payable by the petitioner. Article 265 of the Constitution of India prohibits the levy as also the collection of any tax, which includes the duty, without authority of law In view of reduction of duty, levying of excess amount and its collection becomes unauthorized and without authority of law. Therefore, the respondents

are bound to refund the excess amount on the stocks available with the petitioner as on 30th June, 2004. The respondents have the details of the stocks of Indian made foreign liquor and beer, which were in the godown of the petitioner as on the close of 30th June, 2004. Differential in duty paid by the petitioner and leviable under the revised notifications has to be calculated and. paid to the petitioner either by way of refund or adjustment against the future duty.

6. In view of the above circumstances, this petition succeeds and a direction is issued to the respondents to either refund the excess excise duty on account of reduction in duty on the stocks of the petitioner as were available on 30th June, 2004 or adjust the same for the future payments by the petitioner towards the excise duty or the import fee, payable under the provisions of the Excise Act and the Rules thereof.

7. Let the refund/adjustment be made within a period of three months from the date a copy of this order is served upon the respondents.

