
(2007) 06 SHI CK 0016
In the High Court Of Himachal Pradesh

Mohan Meakin Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Citation : (2007) 3 ShimLC 456

Hon'ble Judges : Deepak Gupta, Acting C.J.;V.K. Ahuja, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This judgment shall dispose of the writ petition No. 251 of 1999 filed by the petitioner Mohan Meakin Ltd. This judgment shall also dispose of the writ petition filed by the petitioner in CWP No. 590 of 1999 since the common question of law and facts are involved in both these writ petitions.

2. Briefly stated the facts of CWP No. 251 of 1999 are that the petitioner is a company incorporated under the Companies Act having its registered office in Solan Brewery and is carrying on the business of manufacture and sale of Indian Made Foreign Liquors, (I.M.F.S.) and beers etc. It was alleged that the petitioner company is having a Distillery at Kasauli in Solan District holding a licence in Form D-2. It was further alleged that for blending of Malt Spirit produced at Kasauli Distillery, petitioner imported some quantities of Malt Spirit of over proof strength from its own Distillery at Mohan Nagar in Uttar Pradesh, after getting import permits from the Collector Excise, Himachal Pradesh. The petitioner also transported some quantities of Malt Spirit of over proof strength from M/s. Rangar Breweries Ltd., Mehatpur, Distt. Una as well as some quantities of spirit from its Distillery at Mohan Nagar, Distt. Ghaziabad to Solan Brewery during the year 1997-98 and 1998-99.

3. It was further alleged that prior to 1.4.1996 there was no provision which required payment of permit/transport fee on transportation of I.M.F.S., country spirit, beer etc. It was alleged that it was for the first time that permit/transport

fee was levied as per announcement for excise auctions for the year 1996-97 dated 12.3.1996. It was alleged that as per the letter issued by the Excise and Taxation Commissioner, Himachal Pradesh, a permit fee at the rate of Rs. 2.50 per bulk litres on denatured spirit, Rs. 2.00 per proof litre and Rs. 1.00 per proof litre on foreign spirit and country liquor respectively was leviable. It was alleged that the permit fee was payable at the time of grant of permission and transport of liquor. A notification was issued in view of the above letter of Excise and Taxation Commissioner Shimla vide which the rates mentioned above were payable by a person who makes an application for the grant of permission to import and/or transport of the foreign liquor or country liquor or both. It was alleged that this fee was inserted by Notification dated 23.3.1996 but no permit/transport fee was charged by excise authorities at the time of issuing import permits for import of Malt Spirit from Mohan Meakin Limited, Mohan Nagar (U.P.) and accordingly vide letter dated 28.10.1997, the then Excise and Taxation Officer had asked the petitioner to deposit a sum of Rs. 8,21,992/- on account of the permit fee on the spirit imported by the petitioner during the year 1996-97. This was followed by other memos and the petitioner was finally asked to deposit sum of Rs. 17,68,346/- upto 6.2.1999, failing which this amount will be declared as an arrear of land revenue and will be recoverable as such.

4. The petitioner further alleged that he had paid to the Government of H.P. per unit licence fee for the manufacture of Indian Made Foreign liquor/spirit under the Distillery licence for different period as detailed in para-11 of the petition. The petitioner also pleaded that he has paid export duty at the rate of Rs. 1.00 per proof litre on Indian Made Foreign Spirit and at the rate of Rs. 0.50 per B.L. on beer with alcoholic content at 5% with alcoholic content exceeding 5% as well as at the rate of Rs. 0.75 per B.L. The petitioner also paid the import fee at the rate of Rs. 6/- per P.L. on spirit imported by it. The notifications issued by the Assistant Excise and Taxation Commissioner, Solan, were alleged to be illegal, without jurisdiction and contrary to the Punjab Excise Act and the rules framed thereunder and the provisions of Constitution of India and were alleged to be liable to be set aside. Hence, the present petition filed by the petitioner.

5. On similar allegations CWP No. 590 of 1999 was filed. The facts of the case are given as under:

6. The petitioner alleged that it is a company having its registered office at Solan Brewery in Himachal Pradesh and the company has been carrying on the business of manufacture and sale of Indian Made Foreign Spirit (hereinafter referred to as IMFS). It was alleged that the petitioner company has been granted permission to manufacture IMFS and beer and the excise licence was granted by the State Government. It was alleged that till 1983 the State Government was charging Rs. 1,000/- per annum as fee for distillery licence and Rs. 500/- per annum for brewery licence under the Excise Act. The same was raised to Rs. 75,000/- per annum for distillery licence and Rs. 10,000/- per annum for brewery licence in 1993. Thereafter, the State resorted to imposition

of licence fee on per bottle basis and accordingly, the distillery licence fees which was only Rs. 1,000/- per annum in 1983 became around Rs. 12 Lacs in 1996-97 and the brewery licence has arisen from Rs. 500/- per annum to over Rs. 8 Lacs per annum in 1996-97. It was alleged that this fee was being sought to be charged in addition to the excise duty and various other levies which are being paid by the petitioner to the State Exchequer. The petitioner has challenged the imposition of licence fee as without an authority of law being unconstitutional, arbitrary and ultra vires the Constitution. It was alleged that the fee is not in the nature of fee but is in the nature of tax which is ultra vires the provisions of Constitution. It was alleged that the levy has no quid pro quo. The licence was issued in favour of the petitioner D-2 for distillery unit at Kasauli including the spirit bottling section of Solan Brewery as well as B-1 licence for Brewery at Solan was for the period upto 31.3.1999. The distillery licence renewal fee which was raised to Rs. 75,000/- per annum in 1993 was fixed at Rs. 2/- per unit of 750 mis. (one bottle) of IMPS subject to minimum of Rs. 75,000/-. Similarly, the Brewery licence renewal fee was fixed at Rs. 1/- per bottle unit of 650 mis, subject to a minimum of Rs. 10,000/- per annum and these were enhanced as per notifications marked as Annexures P-8 and P-9.

7. The petitioner made a representation to the State Government and the licence fee was reduced vide notification dated 31.5.1994 From Rs. 2/- per unit to Rs. 0.25 per unit and that of Beer was reduced from Rs. 1/- per bottle to Rs. 10,000/- per annum. The petitioner made another representation but of no avail. It was alleged that in 1997, the licence fee for IMFS was further raised from Rs. 0.50 per unit to Rs. 0.75 per unit of 750 mis. It was further raised to Rs. 0.90 per unit of 750 mis vide notifications (Annexures P-16 and P-16/A). The petitioner company had alleged that during the year 1996-97 and 1997-98 it had paid per unit licence fee as under:

Year	In respect of Distillery	In respect of Brewery
	Licence in Form D-2.	Licence in Form B-1.
1996-97	Rs. 11,60,888/-	Rs. 8,30,488/-
1997-98	Rs. 10,26,842/-	Rs. 4,03,244/-

8. The petitioner company had also allegedly paid amount as manufacture and export duty/fee on export of IMFS and Beer during the period from 1.4.1996 to 31.3.1997 and 1.4.1997 to 31.3.1998 as under:

Year	On export of Indian Made	On export of Beer.	Foreign Liquor.
1996-97	Rs. 12,25,000/-	Rs. 16,00,000/-	Rs. 7,22,263.50/-
1997-98	Rs. 5,75,835/-		

9. The petitioner also alleged that it was also paying licence fees on license in Form L-1 and L-1 A attached to Distillery and Brewery amounting to Rs. 60,000 and Rs. 1,60,000/-.

10. Thus it was pleaded that the impugned levies are detrimental to the petitioner as well as to the public at large as well as State of H.P. which levy is arbitrary and unconstitutional, hence the writ petition filed challenging the levy of the fees raised by the State Government vide impugned notifications.

11. In reply filed by the respondents to the writ petition they have pleaded they the petitioner has been granted the Distillery licence on his request and subject to the conditions as stipulated in the said licence which was to manufacture various types of spirit. It was pleaded that the first condition of the licence was that the licensee shall observe the provisions of the Punjab Excise Act 1 of 1914 and all rules made thereunder applicable to manufacture, issue and sale of spirit. The licence was granted for a period of one year which was in the nature of a contract subject to fulfillment of the conditions and strict observance of the rules governing the licence. It was pleaded that the Government is the exclusive owner of the privilege to trade in liquor and the notification is duly covered by Entry No. 8 of List II of the Seventh Schedule. Therefore, the permit was essentially regulatory in nature. It was pleaded that the objective of the permit is to regulate transport including import as well under Entry No. 8. Thus, the fee was leviable by the State in respect of services performed by it for the benefit of the individual, whereas a tax was payable for the common benefits conferred by the Government on all tax payers. It was pleaded that the amount of fee is based upon the expenses incurred by the State in rendering the services. It was pleaded that the Excise and Taxation Department regulates the production, manufacture, transport etc. "intoxicating liquors" irrespective of whether those are meant for human consumption or otherwise and maintains not only a large establishment for regulation of these activities and observe compliance of the terms of the permit for the import and transport of liquors and, therefore, levy of fee was constitutional. Thus, it was pleaded that the levy of fee envisaged under the provisions of Rule 7.2A of the Punjab Liquor Permit and Pass Rules, 1932 is applied to the State of H.P. which is in accordance with the law and the petitioner was liable to pay this amount with effect from 1.4.1996 as per the rate of fee amended from time to time. The fee was payable on making of an application for the grant of permission to import and/or transport of the foreign liquor or country spirit or both. It was pleaded that the fee is neither a tax nor duty so as to attract the provisions of Entry 42 of List I of Seventh Schedule to the "Constitution of India". The fee was leviable on import of liquor and was charged on every permit to import/transport the liquor whether inter-state or intra state for the services. Thus, it was pleaded that the notification issued by the Excise Department cannot be said to be illegal and against the constitution and as such, there is no merit in the writ petition.

12. In reply to CWP No. 590 of 1999, it was pleaded by the respondents that the licence was granted in favour of the petitioner on the condition that the licensee shall observe the provisions of the Punjab Excise Act and rules made thereunder as applicable to manufacture, issue and sale of spirit. It was also submitted that the Punjab Distillery Rules, 1932, as applied to the State of Himachal Pradesh were framed under the Punjab Excise Act, 1914, which provide for the grant of licence in Form D-2 for the manufacturing of intoxicating liquors. Likewise the Punjab Brewery Rules provide for the grant of licence in Form B-1 for the manufacturing of Beer. It was pleaded that under Entries 8 and 51 of List II read

with Entry 84 of List I of the Seventh Schedule to the Constitution, the State Legislature has the exclusive privilege to legislate on "intoxicating liquors" or alcoholic liquor for human consumption. Therefore, the State has the exclusive power to make law with respect to manufacture and production of intoxicating liquors. The Government was the exclusive owner of the privilege to trade in liquor. The citizens do not have any fundamental right to trade or carry on the business in the properties or rights belonging to the Government. The licences granted to the petitioner are in the nature of parting with the exclusive right of the State for a price or consideration and that too on his request. The petitioner as such using the right of the State is obliged to pay the price or consideration in lieu of that. The licences are granted for a period of one year which can be renewed by the Government on request and the petitioner has nowhere been put under compulsion to obtain the licence every year. Since the petitioner has been continuing with the licence after getting it renewed every year, he is estopped to challenge the impugned licence fee being arbitrary, exorbitant and illegal and more so when the burden of the fee is bound to pass on to the consumers.

13. We have heard learned Counsel for the parties and have gone through the record of the case.

14. The first submission made by the learned Counsel for the petitioner were in regard to the question as to whether the amount being claimed by respondent No. 2 was in the shape of tax leviable by the Central Government under the provisions of Entry 42 of List I of Seventh Schedule to the Constitution of India or it was in the nature of fees leviable by the State Government under the powers vested in it under Entry 8 and Entry 66 of List II of Seventh Schedule. The State Government in its reply and during the course of arguments have conceded that this amount being levied or claimed was not a tax but a fees and as such it falls under List II of Seventh Schedule and under Item No. 8, the State Government was competent to levy the fee. Thus, the plea raised by the petitioners have to be considered as to whether this fee could be levied under the powers vested in the State Government or not and admittedly, it was not a tax being levied which could not be levied by the State Government under the provisions of Constitution.

15. Coming to the question as to whether the State Government was competent to levy fees, the submissions made by the learned Counsel for the petitioner were that there has to be some co-relation with the services being rendered before the amount can be claimed as a fee. It was submitted by the learned Counsel for the petitioner that the State Government was already charging a huge amount in the form of licence fee and other fees at the time of grant of licence for manufacture and sale of the liquor, spirit etc. and since no specific amount has been detailed which was being spent by the State Government for performing some services at the time of import of spirit from outside, it was a quid pro quo before levying any fees. It was not present there in the present

facts and as such, this fee was not leviable. It was further submitted that the question of quid pro quo between the services rendered by the State at the rate of levy of fee charge arises for consideration and there has to be co-relation in between the services rendered by the State in charging this specific levy and the rate of levy of fee being charged for some services. It was submitted that there has to be proof of the amount being spent by the State for the services rendered by the State and since there was no proof on record which was quid pro quo before levy of any fees, therefore, it was unconstitutional.

16. The learned Counsel for the petitioner has relied upon the following decisions:

17. The decision in State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others, , shows that it was observed in para-44 of the judgment as under:

Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under Rule 2 for such regulation. Indeed, the justification for levying the fee under Rule 3(a) is the identical justification given by the State for levying the fee under Rule 2. Presumably, a full complement of excise officers and staff are appointed by the State in the Excise Department to carry out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. Having regard to the decision in Vam Organics-I we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol. There is nothing to show that there has been any deployment of any additional staff to oversee the possibility of renaturation of the denatured spirit.

18. It was further observed that the State has not produced any material to show that it was incurring any additional cost for any further regulation of denatured spirit. It was further held that in the absence of any such correlation, the fee under Rule 3 is not a fee at all levied for the purpose of additional regulation or for any service rendered but is really a tax in the garb of a fee.

19. The decision in Solomon Antony and Others etc. Vs. State of Kerala and Others, , was also relied upon, which shows that it was held that the contractors were not entitled to deny their liability to pay excise duty by way of kist and challenge the legality of the levy. It was further held that the contractors were liable to pay the duty on even unlifted portion of the designated quantum of rectified spirit. The observation made in para-16 are relevant and are being reproduced below:

The facts as stated above make it clear that the contractors are required to pay the consideration payable to the State for sale of the liquor, namely arrack and by importing designated quantity of rectified spirit in respect of which the consideration payable is equivalent to excise duty. Thus the High Court is justified in holding that the contractors are bound to pay the amount which is a measured excise duty payable on the designated quantum of rectified spirit in terms of Rule 8 of the Rules and had undertaken in the agreements executed by

them.

20. The reliance was also placed upon the decision in *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, wherein it was held that the power of State to regulate the use of alcohol and misuse of industrial alcohol can only justify a fee based on quid pro quo, but not the present heavy revenue earnings, inclusion of alcohol industries in the list of scheduled industries in Industries (Development and Regulation) Act detracts from the power of States to impose any levy. Levy of vend fee cannot also be justified as a pre-constitutional levy.

21. On the other hand, the learned Advocate General had submitted that the State Government has to spend extra amount for the services being rendered at the time of grant of licence to import spirit in the State by issuing necessary permits for the same, maintaining a record of the permits and for keeping the staff at the barriers for checking as to whether the spirit being imported was in accordance with the permit issued or not. It was submitted that it is not possible to place on record as to how much extra staff was being placed at the barriers for implementation of the orders issuing import permit in favour of the petitioners. It may be that the same staff posted was doing this additional work or some extra staff was posted in view of the import licence given in favour of the petitioners which requires deployment of extra staff and it is not necessary that before said levy is charged, the State Government should place on record the details of the amount being spent by it in services being rendered by it as a quid pro quo of the levy. It was submitted that though the earlier view of the Hon'ble Apex Court was that it was necessary to place on record also the amount being spent for the services being rendered by the State Government. For the present it was not necessary and the same could be presumed that in case an import licence was issued in favour of the petitioner, the State Government will be performing some extra duties in implementing the import licence issued in favour of the petitioner for which a proper check will have to be maintained. The learned Advocate General has relied upon the following decisions to substantiate his point:

22. A perusal of decision in *State of Bihar and Others Vs. Shree Baidyanath Ayurved Bhawan Private Ltd. and Others*, shows that it was observed by the Hon'ble Apex Court in para 30 of the judgment that the next part of the case relates to question of quid pro quo between the services rendered by the State and the rate of levy of fee charged. It was submitted that the vend fee for the grant of licence had no connection or relationship with the services rendered by the Government. On this point, the High Court held vide impugned judgment that there was nothing to show that the levy was set apart for the performance of some work. The High Court observed that there was nothing to show that the fee had not merged in the public revenue and therefore the State of Bihar was not entitled to charge any amount in the form of fees or fixed payment. According to the High Court, the State in the garb of fees or fixed payment was

trying to impose tax/excise duty which could not be done as the State was not competent to levy excise duty on medicinal and toilet preparations which are already subjected to duty under the provisions of the 1955 Act. According to the High Court the same products cannot be subjected to double taxation. The reasoning of the High Court was held to be erroneous. The Apex Court held that the State was competent to enact a law in respect of use and possession of Ayurvedic preparations containing alcohol as alcoholic beverages. As a part of regulation and control of such activity, the State was entitled to call upon the manufacturers to obtain a licence on payment of fees. The State has to incur expenses incidental to regulation and control of such activities. Hence, the fee leviable and payable by the manufacturers under the impugned notification is in the nature of regulatory fee for which quid pro quo is not necessary. It was held that the rate of fee was also reasonable.

23. The above decision suggests that for imposing such a levy quid pro quo is not necessary and it is not necessary that the State must furnish particulars of the amount being spent by it on the services rendered by the State.

24. The learned Advocate General had also relied upon the decision in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, The observations made in paras 18 and 19 are relevant and are being reproduced below:

No citizen has any fundamental right guaranteed under Article 19(1)(g) of the Constitution to carry on trade in any noxious and dangerous goods like intoxicating drugs or intoxicating liquors. The power to legislate with regard to intoxicating liquor carries with it the power to regulate the manufacture, sale and possession of medicinal and toilet preparations containing alcohol, not for the purpose of interfering with the right of citizens in the matter of consumption or use for bona fide medicinal and toilet preparations, but for preventing intoxicating liquors from being passed on under the guise of medicinal and toilet preparations. It was within the competence of the State legislature to prevent the noxious use of such preparations, i.e. their use as a substitute for alcoholic beverages.

The general test for determining what medicinal preparations containing alcohol are capable of being misused and, therefore, must be considered intoxicating within the meaning of the term "intoxicating liquor", is the capability of the article in question for use as a beverage. The impugned provisions have been enacted to ensure that rectified spirit is not misused under the pretext of being used for medicinal and toilet preparations containing alcohol. Such regulation is a necessary concomitant of the police power of the State to regulate such trade or business which is inherently dangerous to public health.

25. In para-25 of the judgment reference was made to the observations of the Hon'ble Apex Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, , in which it was held as under:

The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.

It was observed further in para-25 as under:

To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs. 2 per every hundred rupees to Rs. 3. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation.

26. The observation made in para-27 are relevant and are being reproduced below:

No one has a fundamental right to the supply of rectified spirit which is an intoxicating liquor. It is up to the State to control and regulate its supply from a distillery or a spirit warehouse in the State under and in accordance with the terms and conditions of a licence or permit its import from outside by grant of a privilege and charge a fee for the same. A fee may be charged for the privilege or benefit conferred, or service rendered, or to meet the expenses connected therewith. A fee may be levied to meet the cost of supervision and may be, something more. It is in consideration for the privilege, licence or service. The State is undoubtedly entitled to levy excise duty on the rectified spirit issued from a distillery u/s 17(f) of the Act read with Rule 13 of the Kerala Rectified Spirit Rules, 1972, but it refrained from making any such levy by reason of Rule 21 of the Central Rules and has, therefore, by proviso to Rule 8, allowed a manufacturer of medicinal and toilet preparations to draw rectified spirit from a distillery without payment of duty. It is thus a privilege conferred on the licensee. To claim the privilege he must comply with the conditions prescribed. If one of the conditions is the payment of cost of establishment u/s 14(e) of the Act read with Rule 16(4) of the Central Rules, the manufacturer of such preparations must necessarily bear the burden as the licensee gets services in return in lieu of such payment.

27. In referring to the term fees, their Lordships had held that fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose. Further the observations made in paras 25 and 29 may be reproduced as under:

Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet

the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted or service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. Merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Further, the element of quid pro quo stricto sensu is not always a sine qua non of a fee. Quid pro quo is not necessarily absent in every tax. Furthermore, normally a fee is uniform and no account is taken of the paying capacity of the recipient of the service, but absence of uniformity will not make it a tax if corelationship is established.

It was further observed that State has not produced any material to show that it was incurring any additional cost for any further regulation of denatured spirit.

28. Reliance was placed upon the decision in *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, wherein it was held that it is well settled by a catena of decisions that trade in liquor is not a fundamental right. It is a privilege of the State. The State parts with this privilege for revenue consideration. The permissive privilege to deal in liquor is not a "right" at all. Articles 301-304 are therefore rendered inapplicable at the threshold to the activity in question. Further there is not even a single judgment which upholds the applicability of Articles 301-304 to the liquor trade. On the contrary numerous judgments expressly hold these articles to be inapplicable to trade, commerce and intercourse in liquor.

29. The Apex Court also held that the freedom guaranteed by Article 301 is not available to liquor because it is a noxious substance injurious to public health, order and morality. Therefore regulation in the interest of public health and order takes the case out of Article 301: regulation for the purpose of Article 301 not being confined to such regulations alone which will facilitate the trade.

30. It was further held in para 150 as under:

The decision of the Supreme Court in case of *Kalyani Stores Vs. The State of Orissa and Others*, is not applicable to the facts of the present case. The Punjab Act is an existing law under Article 366(10) of the Constitution and its continued application is saved by Article 372 thereof, it is also saved by Article 305 from attack under Articles 301 and 303 of the Constitution. It is well within the legislative competence of the State.

It is clear from the above discussion that the fees are mainly chargeable for the services being rendered by the State Government and though in the earlier decisions it was held that for the charging of levy of any fees, the element of quid pro quo was a sine-qua-non but as per the later decisions it is not necessary and no material is required to be placed on record and the amount being spent extra for the services rendered by the State Government can be presumed only.

In the present case, the State has been burdened with extra work of regulating of import of spirit in the State, due to the import of the same by the petitioners from outside the State. This necessarily involves the maintaining of stationery for issuing of export permits, maintaining a record for issuing a licence as well as keeping a surveillance that the import of the spirit was being made in accordance with the permit issued by the State Government which requires necessarily deployment of special staff for the extra work done by the State Government in lieu of the extra services taken by the petitioners. Coming to the impugned notifications I have already mentioned above that the levy was being made at the rate of Rs. 2.50, Rs. 2.00 and Rs. 1.00 per proof litre on foreign spirit or denatured spirit which by any stretch of imagination cannot be said to be excessive. There is not such substance in the plea raised by the petitioners that the petitioners were paying salary of the staff kept at the Brewery, Solan such the same was in pursuance of the contract awarded in favour of the petitioners, but the necessity to maintain additional staff arose because of the import licence taken by the petitioners for importing spirit from outside the State and as such, the State was competent to levy the fees without rendering the necessary particulars of the charges being incurred extra for issuance of the licence or for maintaining a proper check that the spirit was being imported in accordance with the licence or not.

31. Coming to the CWP No. 251 of 1999, the petitioner has prayed for quashing of the notices dated 27.1.1999 and 10.2.1999 issued by the Assistant Excise and Taxation Commissioner, Solan demanding the payment of permit fee as well as to quash the notifications dated 23.3.1996, 31.3.1997 and 30.3.1998 being ultra vires of the Constitution of India. I have already mentioned above that the necessity to impose additional fees arose because of the act of the petitioner who applied for the permission to import the spirit for human consumption which require deployment of extra staff and other expenses. It was within the powers of the State Gpvernment under Punjab Excise Act, 1914 and the Rules made thereunder to levy this fees. The provisions of the Punjab Excise Act and Rules framed thereunder in this regard though were alleged to be ultra vires the Constitution and were alleged to be liable to be struck off, but no specific arguments were advanced as to how they are ultra vires the Constitution. In regard to the plea raised by the learned Counsel for the petitioner that the State Government was not competent to levy such a fees and before levying such a fee, the expenditure likely to be incurred or to be incurred was a quid pro quo before such a levy could be imposed. I have already mentioned above that this fees could be levied by the State Government under its powers and there was no condition of quid pro quo in view of the latest law of the Hon''ble Apex Court and, therefore, the impugned notifications issued under the provisions of Punjab Excise Act and Rules framed thereunder were within the legislative competence of the State and they cannot be held to be the ultra vires of the Constitution and as such, the impugned notifications are not liable to be quashed.

32. Coming to the facts of the case CWP No. 590 of 1999, it is clear that the

Brewery Licence was issued in favour of the petitioner which was revalidated upto 31.3.1999.

33. The petitioner has challenged the notifications Annexures P-8, P-9, P-11, P-12, P-13, P-14, P-14/A, P-16 and P-16/A, vide which the licence fee was enhanced. Similar arguments were advanced in this case also that these notifications are ultra vires the Constitution and are liable to be quashed. I have already held above that the State Government has the power to issue such notifications. Moreover, in the present case apart from the reasoning given in the above case, in the present case, it was a contract in between the parties vide which the petitioner was liable to pay whatever fee was imposed by the State Government during the subsistence of the contract. Brewery licence issued in favour of the petitioner is at Page-90 vide which the licensee is to observe the provisions of Punjab Excise Act and Rules made thereunder and was liable to comply with the directions of the Excise and Taxation Commissioner issued under Rules made under Punjab Excise Act, 1914.

34. The facts of the case are similar to the Punjab case i.e. State of Punjab and Anr. v. Devans Modern Breweries Ltd. and Anr. (supra), wherein also the notifications issued were challenged in regard to import of liquor and the provisions of Punjab Excise Act and the rules framed thereunder were also challenged therein. The observations made in Para 116 are relevant and are being reproduced below:

In the Punjab case the right to import liquor is dependent, on the issue of an import permit on payment of the import fee as consideration for parting with the State's exclusive privilege to import the liquor. It is purely a contractual dealing between the State and the importer and, therefore, no question of violation of Article 301 can arise. The importer had no anterior right to import liquor and hence cannot complain of any violation of Article 301 at that stage as right to trade in liquor is not a fundamental right. His right to import is referable to the import permit which he acquired on payment of the import fee. No further impediment has been created in the import of the liquor, so that Article 301 is not attracted in relation to the payment of the import fee which was prior to getting his privilege of importing.

35. It was held in Para 150 in the above case that the Punjab Excise Act, 1914, is an existing law under Clause 10 of Article 366 of the Constitution and its continued application is saved by Article 372 of the Constitution. It is also saved by Article 305 of the Constitution from attack under Articles 301 and 303 of the Constitution. It was observed that it is well within the legislative competence of the State. Thus, the provisions of Punjab Excise Act were held to be within the legislative competence of the State and the notifications issued were held to be valid.

36. The licensee was also liable to pay all payments which may become due to Government and as such, it was in the nature of contract in between the

petitioner and the State Government and once the licence fees are enhanced in exercise of the powers vested in the State Government under the Constitution and under the provisions of the Punjab Excise Act and Rules made thereunder, the licence fee could have been enhanced by the State Government since the petitioners have got no right to deal in the trade of liquor and accordingly, the enhancement of the fees was within the competence of the State Government. The burden of the fees was to pass to the consumers and it was not affecting any fundamental right of the petitioner to indulge in any trade or business and as such, the challenge made to the impugned notifications Annexures P-13, P-14, P-14/A, P-16 and P-16/A issued vide notifications dated 23.3.1996, 23.3.1996, 30.3.1998, 31.3.1997 and 30.3.1998 are not liable to be quashed in any manner whatsoever.

37. The result of the above discussion is that both the petitions are liable to be dismissed, which are dismissed accordingly. No order as to costs.