(2004) 11 PAT CK 0006

In the Patna High Court

Case No : CWJC No. 3080 of 2004

M/S Samrat Laboratories Industrial Area APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 90

Citation : (2005) 1 PLJR 29

Hon'ble Judges : Nagendra Rai, Acting C.J.;S.N. Hussian, J

Bench : Division Bench

Advocate : Ranjan Kumar Sinha and Basant Kumar Chaudhary, for the Appellant; R.K. Dutta and Rajnandan Prasad, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, A.C.J.

1. The petitioner, registered as Small Scale Industrial Unit by the Darbhanga Industrial Area Development Authority for manufacturing of Ethyl Acetate and organic solvents from special denatured Alcohol as raw material, has filed the present writ application for declaring the Rule 111 of the Rules framed u/s 90 of the Bihar Excise Act (hereinafter referred to as the Rules) as ultra vires and invalid as well as the order dated 12.1.2004 passed by the respondent No. 3, the Member, Board of Revenue, whereby the literage fee at the rate of Rs. 1.50 per bulk litre has been charged from the petitioner for supply of industrial alcohol (special denatured alcohol which is not fit for human consumption).The case of the petitioner is that it being registered as Small Scale Industrial Unit holds license in Form 24 for use and storage of industrial special denatured alcohol issued by the Commissioner of Excise, Bihar, Patna on 21.12.2001. The petitioner manufactures Ethyl Acetate for which raw material is denatured alcohol. The Excise Department issued allotment orders or permits for procuring denatured spirit from different manufacturers. The unit had been given 36000 bulk litre per month quota of special denatured spirit after depositing Rs. 5/- per bulk litre of

licence fee in advance.

2. It appears that earlier the petitioner had come to this Court where he did not challenge the Rule 111 of the Rules but claimed that in view of the newly added proviso to the said rule, fees on concessional rate at the rate of Rs. 1.50 per bulk litre be levied. The said writ application (CWJC No. 11539 of 2003) was allowed and direction was issued to the concerned authority to consider with regard to grant of licence fee on concessional rate. Thereafter, the order dated 12.1.2004 was passed by the Member, Board of Revenue allowing the concessional rate at the rate of Rs. 1.50 per bulk litre as licence fee or literage fee.

3. The petitioner has challenged the vires of Rule 111 of the Rules on the ground that the State or its authorities are not competent to levy taxes on industrial alcohol (denatured spirit). The demand of licence fee also cannot be termed as compensatory fee as no service is rendered and as such there is no question of co-relationship between the services rendered and the fee demanded. Once the spirit is converted into denatured spirit, the State has no power to levy fee either as compensatory fee or by way of regulatory measures.

4. The State has filed a counter affidavit and its case is stated in paragraph 13 thereof wherein it is stated that the State Government has exclusive privilege to deal in potable liquor in all its forms. Although the denatured spirit is not fit for human consumption but it is liable to misuse by those dealing with it and to divert for the purposes of being sold and consumed as potable liquor. Thus, the State Government is required to deploy its machinery in order to prevent the misuse and diversion of the denatured spirit for potable purposes so as to prevent the occurrence of huge tragedy. As preventive measures, the State is regulating the dealing in denatured spirit. Thus, the State has power to regulate the dealing in denatured spirit so as to prevent it from the use as potable liquor. It is also necessary in public interest, public health and hygiene as well as for maintenance of law and order which is exclusive prerogative of the State Government. The State Government is justified in insisting upon the licence being obtained for the purpose of dealing in denatured spirit and to impose licence fee for the same so as to meet the expenses of carrying out its regulatory measures.

5. Thus, the only question is as to whether the Rule 111 of the Rules is valid or not and the State can levy literage fee on the denatured spirit admittedly purchased by the petitioner for the purpose of use as raw material for their product as stated above.

6. The Rules have been framed in exercise of power u/s 90 of the Bihar Excise Act which has been enacted to amend and re-enact the law in the Province of Bihar and Orissa. Rule 111 was amended from time to time. The rule as it stood after 1982 and after amendment are as follows:

"The fee payable on licences for wholesale vend of denatured spirit shall be Rs. 100 for sales upto 5,000 litres a year, and for further sale over 5,000 litres, there shall be additional fee at the rate of 35 per 1,000 litres subject to a maximum of Rs. 1,500. The fee shall be payable in advance. Licences of wholesale denatured spirit or for use and possession of such spirit in excess of limit of retail sale shall deposit licence fee (literage fee) in advance at the rate of Rs. One and fifteen paise per bulk litre on the quantity for which an application is made for an import or transport pass for taking issue from a distillery:

(Provided in the case of denatured spirit supplied to the industrial units registered by the Industries Department, fees may be levied at the concessional rate of 20 paise per bulk litre by the order of the Board of Revenue on the recommendation of the Director of Industries Bihar).

The amendment shall come into force with effect from the 1st April, 1982:

(1) For the words Rupees one and fifteen paise per bulk litre" the words "Rupees five per bulk litre" shall be substituted.

(2) The following proviso shall be substituted at the end of the first paragraph of Rule 111:-

"Provided in the case of denatured spirit supplied to the industrial units registered by the Industries Department, fees may be levied at the concessional rate of Rupee one and fifty paise per bulk litre by the order of the Board of Revenue on the recommendation of the Director of Industries, Bihar."

7. Thus, at present literage fee for possession of denatured spirit is Rs. 5/-per bulk litre but in case of denatured spirit supplied to the industrial units registered by the Industries Department, concessional rate of Rs. 1.50 per bulk litre may be charged if the Board of Revenue passes an order to that effect on the recommendation of the Director of Industries, Bihar.

8. The Supreme Court in the case of Synthetics and Chemicals Ltd. and others vs. State of U.P. and others, reported in (1990)1 Supreme Court Cases 109 held that the State was not competent to levy tax on industrial alcohol, but at the same time it held in the said case that though the power to levy tax or duty on industrial alcohol was with the Central Government, the State Government is still have power to lay down regulations to ensure that non-potable alcohol, i.e. industrial alcohol is not diverted or misused as substitute of potable alcohol.

9. Thus, it is settled law that the State has only power to make regulatory provision and in this connection it can charge regulatory fee for the purpose of payment of salary for the staff and to see that no non-potable alcohol is converted into potable alcohol. However that burden of showing that there is a broad correlation between the fee charged and administrative expenses for imposing regulatory fee, is on the State Government. The said decisions were considered recently by the Supreme Court in the case of State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others, and the conclusion was arrived at in paragraph 43 which is as follows;

"Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in Vam Organics-I to be outside the seisin of the State Legislature. Assuming that denatured spirit may by whatever process be renatured (a proposition which is seriously disputed by the respondents) and then converted into potable liquor, this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in Bihar Distillery industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to Bihar Distillery "denatured rectified spirit, of course, is wholly and exclusively industrial alcohol" (SCC p. 742, para 23)".

10. Thus, it has been held that the State Government can make legislation for the purpose to ensure that industrial alcohol is not surreptitiously converted into potable alcohol, thus, depriving the State from the revenue on the sale of potable liquor, but this power stops with the denaturation of the industrial alcohol. In other words, once there is denaturation of the industrial alcohol and subsequently steps are being taken to convert into potable liquor, the State has no power to make regulatory measures.

11. In view of the admitted fact that the State has power to make regulatory measures and in that connection it can charge fee even on industrial alcohol, the question for consideration is in the present case at what stage the State claims to have taken regulatory measures justifying levying of literage fee.

12. The statement in the counter affidavit has been made in paragraph 13 which has been quoted above, which clearly shows that the fee is being charged in connection with the regulatory measures to be taken subsequent to the denaturation or industrial alcohol with a view to prevent it to be renatured and then it converted into potable liquor. This is not permissible as held by the Apex Court in the case of Vam Organics'' case at paragraph 43.

13. Thus, the State Government is not competent to levy regulatory fee on the petitioner under Rule 111 of the Rules and thus, the contention raised on behalf of the petitioner is fully justified and accordingly, the Rule 111 of the Rules so far as it requires payment of literage fee on the persons possessing denatured spirit or denatured alcohol is held to be invalid.

14. The next question is as to whether the direction for refund can be given. Admittedly, rules were amended long back. The petitioner has been paying the literage fee. He came earlier to this Court and his only prayer was that concessional rate may be allowed in terms of the provision. In that view of the matter, this is not a fit case to exercise the discretion directing for refund of the amount already paid by the petitioner. However, in view of the invalidity of the

rule, there is no liability of the petitioner to pay literage fee. In the result, the writ application is allowed to the extent mentioned above.

S.N. Hussain, J.

15. I agree.

