(1971) 12 MP CK 0010

In the Madhya Pradesh High Court

Case No : M.P. No. 95 of 1970

M/s. Suneeta Laboratories, Indore APPELLANT

Vs

State of Madhya Pradesh, Bhopal and others RESPONDENT

Date of Decision : 21-12-1971

Acts Referred:

Constitution of India, 1950 — Article 277
Government of India Act, 1935 — Section 143
Madhya Pradesh Excise Act, 1915 — Section 25
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2, 3

Citation : (1972) MPLJ 565

Hon'ble Judges : S.P. Bahrgava, J;R.J. Bhave, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; J.P. Bajpai, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhave, J.

The petitioner firm manufactures certain drugs in the process of which rectified spirit or pure alcohol is used for purification, crystallization etc. The end product, however, does not contain any alcohol.

The petitioner was granted a licence in form L-2 under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, framed under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. u/s 3 of the said Act read with the Schedule, medicinal preparations containing alcohol and which are capable of being consumed as ordinary alcoholic beverages are liable to duty at the rate of Rs. 3.85 per liter, while on other preparations a duty at the rate of 1.10 per liter is charged.

As the drugs manufactured by the petitioner did not contain any alcohol nor could they be used as alcoholic beverages, the petitioner claimed that recovery of duty at Rs. 3.85 per liter from it was not justified. The petitioner, therefore, by its letter dated 15-2-1966, prayed for refund of duty in excess of Rs. 1.10 per liter. Between 5 2 1966 to 25-8-1966 the petitioner had paid Rs. 18,865 byway of duty on the alcohol supplied to it. Subsequently, by letter dated 26-9-1966, the petitioner claimed refund of the entire amount on the ground that the end product did not contain any alcohol and as such no duty was payable under the abovesaid Act.

The District Excise Officer rejected this demand. On appeal, the Excise Commissioner accepted the contention of the petitioner that under the Medicinal and Toilet Preparations (Excise Duties) Act no duty was chargeable on the drugs manufactured by the petitioner. The Commissioner also held that the licence in form L-2 was wrongly issued to the petitioner. The Commissioner, however, rejected the demand for refund on the ground that rectified spirit or pure alcohol supplied to the petitioner was chargeable to the same duty under Notification dated 16 3-1966 issued u/s 25 of the Madhya Pradesh Excise Act. Being aggrieved by the said order of the Excise Commissioner, the petitioner has filed this petition for quashing the Notification dated 16-3-1966 and the order of the Excise Commissioner passed on the basis of the said Notification. The petitioner has also prayed for a writ restraining the respondents from recovering any duty from the petitioner on the rectified spirit supplied to it and also for any other suitable relief.

The main contention of the petitioner is that the State Legislature has no authority to impose excise duly on rectified spirit or alcohol and as such the impugned Notification is liable to be quashed.

Entry 84 of List I in 7th Schedule to the Constitution reads:

Duties of excise on tobacco and other goods manufactured or produced in India except-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Entry 51 of the State List is to the following effect:

Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

These two Entries clearly show that the State can impose excise duty on ''alcoholic liquors for human consumption'' and that two if they are not medicinal preparations. This position is also clear from the provisions of the Madhya Pradesh Excise Act itself. Section 25 of the Act under which the Notification was issued provides that excise duty can be levied on ''all excisable articles''. Clause (6) of section 2 of the said Act defines ''excisable article'' to mean (a) any alcoholic liquor for human consumption ; or (b) any intoxicating drug. When the abovesaid definitions are read with section 25 of the M. P. Excise Act, it becomes apparent that the provisions of the State Act are in consonance with the provisions of the Constitution and that section 25 authorises imposition of duty only on "alcoholic liquor for human consumption.

It will have, therefore, to be seen if rectified spirit or pure alcohol can be described as ''alcoholic liquor for human consumption.'' The Shorter Oxford English Dictionary defines liquor to mean "liquid for drinking and now usually means a drink produced by fermentation or distillation." In Blacks''s Law Dictionary, alcoholic liquor is defined to mean "Intoxicating liquor which can be used as a beverage and which when drunk in excess will produce intoxication." It is thus clear that ''alcoholic liquor'' is a ''beverage containing alcohol''. The word ''alcoholic'' also indicates that the ''alcoholic liquor'' is something different from alcohol or rectified spirit and does not include pure alcohol as well.

On the subject of nature and composition of alcohol, useful information is collected in M/s. S.B.P. & B Ltd. v. Municipal Corporation, Hyderabad ILR (1960) 2 AP 517, From that decision, it would appear that, according to the Pharmacopoeia of the United States, alcohol contains not less than 92.3 per cent of weight, corresponding to 94.9 per cent by volume at 15-56? of CH2, H. Generally, absolute alcohol contains more than 95 per cent of ethyl alcohol and rest is water and the same is obtained by distillation of fermented saccharine liquids or by synthesis. In Shorter Oxford English Dictionary, London proof is described to mean "standard of strength of distilled alcoholic liquors; now, the strength of a mixture of alcohol and water having a specific gravity of 0.91984, and containing 0.495 of its weight, or 0.5257 of its volume, of absolute alcohol." We understand that all alcoholic liquors are even milder in strength than the London proof described above and that alcohol (Pure) or rectified spirit as such cannot be utilised as a liquor.

It cannot be disputed that pure alcohol or rectified spirit cannot be used by human beings as a beverage. It was, however, urged by learned Deputy Advocate General that rectified spirit or pure alcohol can be diluted and made consumable by human beings and hence in that sense it comes within the definition of ''alcoholic liquor''. We find it difficult to accept this contention. In re Sea Customs Act, S 20 (2) A I R 1963 SC 1760 it was observed by their Lordships of the Supreme Court (majority judgment) :

The taxable event in the case of duties of excise is the manufacture of goods and The duty is not directly on the goods but on the manufacture thereof.

This observation was quoted with approval in another Supreme Court case, Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc., It has, therefore, become necessary to see what was the character of the product at the stage of its manufacture ; was it an alcoholic liquor, that is to say, a beverage containing alcohol or was it alcohol which could not be directly used by human beings as a beverage? If it is of the latter kind, the State Legislature, it is obvious, has no right to impose any excise duty notwithstanding the fact that, by some process, alcohol can be turned into an alcoholic liquor. It may be that at the stage it is turned into alcoholic liquor the State Legislature may get an authority to impose excise duty bur, till that stage is reached, it is only the Parliament that can impose the excise duty. The decision of the Supreme Court in The State of Bombay v. F.N. Balsara AIR 1951 SC 318 is not relevant in the context of this case. In this view of the matter, it must be held that that part of the impugned Notification which imposes duty on rectified spirit or pure alcohol is ultra vires the provisions of the Constitution as well as the M. P. Excise Act and is liable to be struck down.

At the time of the arguments, the learned Deputy Advocate General tried to show that under the C. P. and Berar Excise Act, before the Government of India Act, 1935, came into force, a duty on rectified spirit was validly imposed and that duty was continued u/s 143 of the Government of India Act and Article 277 of the Constitution. He, therefore, urged that even if it was assumed that the impugned Notification was ultra vires the provisions of the Constitution, the original duty imposed would survive. When it was pointed out to him that such a duty would have no validity beyond the Mahakoshal Region, he urged that he should be permitted to collect relevant material vis-a-vis Indore area also. In fact, after the case was closed for orders, he filed an application for amendment of the return supported with some notifications and statutes governing that area. We are, however, not inclined to consider this submission raised at this late stage, firstly, because the Excise Commissioner had only relied on the impugned Notification and, secondly, because the material put before us is not sufficient. It is no doubt true that under Article 277 of the Constitution duties validly imposed are continued and it has also been held by the Supreme Court that the State has even legislative power to that limited extent, that is to say, that it can abolish that duty or it can reduce it. But in this particular case it will have to be further considered as to what happens when, by a notification, that duty is abolished and a new duty under purported exercise of power under another statute is imposed and when that imposition is found to be without authority. Can. it be said that because the imposition of new duty is rendered invalid, the exercise of admitted power of withdrawing a validly imposed duty is also rendered ineffective? We find it difficult to record any final conclusion on the basis of the material put before us.

In the abovesaid circumstances, the petition is allowed. The part of the Notification dated 16th March 1966 (Annexure R-2) imposing duty on pure alcohol or rectified spirit is quashed. So also the appellate order of the Excise

Commissioner passed on 4th July 1067. The case is remitted to him for a fresh decision according to law. It will be open to the State to canvass the points left undecided by us. The petitioner will get its costs from the respondents. Hearing fee Rs. 100 The security amount shall be refunded to the petitioner.

