(2021) 01 UK CK 0061

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1335 Of 2020

M/S VLCC Personal Care Ltd. IIE Sidcul — APPELLANT

Vs

State Of Uttarakhand & Others — RESPONDENT

Date of Decision : 12-01-2021

Acts Referred:

United Provinces Excise Act, 1910 — Section 3(9), 3(12), 63
Constitution Of India, 1950 — Article 19(6), 19(6)(ii), 245, 298

Citation : (2021) 01 UK CK 0061

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Siddhartha Sah, Shobhit Saharia, M.C. Pandey

Judgement

Sharad Kumar Sharma, J

1. As a consequence of the impugned order dated 31.07.2020, which was passed by the respondent no. 2, it was based on the basis of the inspection

report dated 30.06.2020, by virtue of which on its basis, the petitionerâ??s FL-43, licence was quashed by an order of 01.07.2020 and, as a

consequence thereto, a penalty has been imposed upon the petitioner to the tune of Rs. 8,10,296/- and also leading to the consequential effect of

cancellation/quashing of FL-43 licence granted on 08.06.2020 bearing Licence No. 0/83/VLCC Personal Care Ltd./FL-43 Lic./2020-21.

2. Looking to the nature of the controversy and, particularly the argument extended by the learned counsel for the petitioner to the effect, as to

whether at all the petitioner under the law would be required to have a licence for the purposes of procurement of a denatured spirit for manufacturing

of the hand sanitizers, which he was doing prior to the procurement of the FL-43 licence granted on 08.06.2020, which has been cancelled by one of impugned orders, which is under challenge in question and is a subject matter to be answered in the light of the entries, which are contained in relation

to the said subject in Schedule VII List 1 of the Constitution of India.

3. Besides this the issue argued by the petitioner, is that they are procuring denatured spirit, which is not potable liquor, in view of its definition

provided under Section 3(9) of the Excise Act of 1910, and also because the provisions of Section 63, under which the penalty has been imposed,

contemplates its applicability on â??possession of intoxicantâ?, his argument is that since the Act of 1910, has independently defined intoxicant under

its sub-section (12) of Section 3, the imposition penalty under Section 63 will not apply as it applies to intoxicant, which are potable, since denatured

spirit, which the petitioner is procuring as raw material, for the finished product of hand sanitizer, it will be outside the scope of the Section 63. Hence

action is bad.

4. Learned counsel for the petitioner further supports his argument, that the liability as imposed upon them cannot be harnessed upon him for the

purposes of denatured spirit, where a procurement of denatured spirit is being made exclusively for industrial purposes and it is not used for potable

purposes and, particularly a reference has been made to the judgment â??Mohan Meakin Limited vs. State of Himachal Pradesh and Othersâ??

reported in 2009 (3) SCC 157, reliance placed is to the contents of paragraph 20, which is referred to hereunder:

â?? 20. The State has to make distinction between a Malt Spirit of over proof strength and potable liquor. Entries 8, 51 and 66 of List II of the

Seventh Schedule of the Constitution of India confer jurisdiction upon the State only to exercise its legislative control in respect of matters which are

covered thereby. Industrial alcohol or spirit having regard to Entry 52 of List I of the Seventh Schedule of the Constitution of India cannot be subject

matter of any regulation or control by the State; it being not alcoholic liquor for human consumption.

The question is well-settled in view of the decision of a Seven-Judge Bench of this Court inS ynthetics and Chemicals Ltd. and Others v. State of

U.P. and Others [(1990) 1 SCC 109] wherein it was categorically held:

53. It was further submitted by the State that the State has exclusive right to deal in liquor. This power according to the counsel for the State, is

reserved by and/or derived under Articles 19(6) and 19(6)(ii) of the Constitution. For parting with that right a charge is levied. It was emphasised that

in a series of decisions some of which have been referred to hereinbefore, it has been ruled that the charge is neither a fee nor a tax and termed it as

privilege. The levy is on the manufacture, possession of alcohol. The rate of levy differs on its use, according to the State of U.P. The impost is also

stipulated under the trading powers of the State under Article 298 and it was contended that the petitioners and/or appellants were bound by the terms

of their licence. It was submitted that the Parliament has no power to legislate on industrial alcohol, since industrial alcohol was also alcoholic liquor for

human consumption. Entry 84 in List I expressly excludes alcoholic liquor for human consumption; and due to express exclusion of alcoholic liquor for

human consumption from List I, the residuary Entry 97 in List I will not operate as against its own legislative interest. These submissions have been

made on the assumption that industrial liquor or ethyl alcohol is for human consumption. It is important to emphasise that the expression of a

constitution must be understood in its common and normal sense. Industrial alcohol as it is, is incapable of being consumed by a normal human being.

The expression `consumption' must also be understood in the sense of direct physical intake by human beings in this context. It is true that utilisation in

some form or the other is consumption for the benefit of human beings if industrial alcohol is utilised for production of rubber, tyres used. The

utilisation of those tyres in the vehicle of man cannot in the context in which the expression has been used in the Constitution, be understood to mean

that the alcohol has been for human consumption.

54. We have no doubt that the framers of the Constitution when they used the expression `alcoholic liquor for human consumption' they meant at that

time and still the expression means that liquor which as it is is consumable in the sense capable of being taken by human beings as such as beverage

of drinks. Hence, the expression under Entry 84, List I must be understood in that light. We were taken through various dictionary and other meanings

and also invited to the process of manufacture of alcohol in order to induce us to accept the position that denatured spirit can also be by appropriate

cultivation or application or admixture with water or with others, be transformed into `alcoholic liquor for human consumption' and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we

were told. We are, however, unable to enter into this examination. Constitutional provisions specially dealing with the delimitation of powers in a

federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made.

In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant time of its interpretation, it is not possible to

proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are capable of or able to become. It is also not

possible to accept the submission that vend fee in U.P. is a pre-Constitution imposition and would not be subject to Article 245 of the Constitution. The

present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.""â??

4. Looking to the nature of controversy and on considering the rival arguments as extended by the learned counsel for the petitioner, this Court is of

the view that in order to balance the equities, at an interim stage, the petitioner is directed to deposit a sum of Rs. 5 lakhs before the Registry of this

Court, which would be kept in a fixed deposit in a nationalized bank, bearing maximum interest and, as a consequence of the deposit, which is directed

to be made within a period of three weeks from today, the effect and operation of the impugned orders dated 31.07.2020 and 01.07.2020 would be

kept in abeyance, till the next date of listing.