(1981) 11 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : L.P.A. No. 19 of 1970

Municipal Committee APPELLANT

Vs

Jai Dayal and Others RESPONDENT

Date of Decision : 16-11-1981

Acts Referred:

Punjab Excise Act, 1914 — Section 16
Punjab Municipal Act, 1911 — Section 61

Citation : (1981) 10 ILR HP 526

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Pratima Malhotra, for the Appellant; Ramesh Chand Sood, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—This appeal is directed against the judgment of Hon''ble T.V.R. Tatachari, J., dated 17th June, 1970, passed in C.W.P. No. 83 of 1969, by which the writ petition of the Respondent, Jai Dayal, was allowed and the resolution, dated 24th February, 1969 (Annexure C) passed by the Municipal Committee, Nahan (hereinafter referred to as the Committee), and the order, dated 29th May, 1969 (Annexure D) passed by the Deputy Commissioner, Sirmur District at Nahan, were quashed, and the present Appellant and Respondent No. 2 were directed to refund the excess octroi realised from Respondent No. 1 from November, 1967.

2. The brief facts of the case are that Jai Dayal, Respondent No. 1, is a contractor of liquor and was authorised to sell country liquor at Nahan for the financial years 1967-68, 1968-69 and 1969-70. He was holding L-14 licence and was running a country liquor shop at Nahan.

3. In the years 1956-57 and 1957-58, the Municipal Committee (where the country liquor was being sold by the contractor) used to charge octroi on the total amount of the cost price of the liquor which included excise duty. Under

Government instructions No. LSG. 62-41/42-II, dated 17th September, 1958 (copy of which is Annexure B) it was ordered that octroi is to be charged on liquor on the invoiced price at the time of import only and not on the basis of current price. In compliance with these instructions of the Government, the Committee stopped the previous method of assessment and began charging octroi in accordance with the invoiced price of the liquor at the time of its import, with the result that the excise duty paid by the contractor directly at the time of taking out of liquor from the brewery was not added in the price and, therefore, no octroi was paid on the excise duty so paid by the contractor.

4. The Government of Himachal Pradesh by another letter No. 14-22/64-LSG., dated 21st October, 1967, ordered that the octroi should be levied on liquor on the basis of current price, i.e., the sale price including the excise duty and in pursuance to this letter, the Superintendent of the Committee started assessing and realising octroi from Jai Dayal (writ Petitioner) on the current price, i.e., price calculated after adding excise duty.

5. The writ Petitioner challenged the above mode of calculation of octroi and claimed that under Rule V. 17(3) of the Punjab Municipal Account Code, as applied to Himachal Pradesh, such calculation of octroi was without any authority of law. He filed representations, etc. but did not succeed. An appeal was also filed to the Deputy Commissioner, District Sirmur at Nahan, under the provisions of the Punjab Municipal Act, but this appeal was also rejected on 29th May, 1969 (Annexure C). Aggrieved from the resolution of the Committee by which it had decided to charge octroi on the current price (after adding the excise duty) and the order of the Deputy Commissioner, dated 29th May, 1969, the writ Petitioner filed this C.W.P. No. 83 of 1969 in the High Court. Hon''ble Tatachari, J., held that under Rule V. 17(3) of the Municipal Account Code, the amount of excise duty cannot be added in the invoiced price for calculation of octroi, and as a consequence, the resolution of the Committee, dated 24th February, 1969 (Annexure C) and the order of the Deputy Commissioner, Sirmur District, dated 29th May, 1969 (Annexure D) were quashed. The Committee and the Superintendent of the Committee as also the Deputy Commissioner, Nahan, were further directed to refund the excess octroi illegally realised from the Petitioner from 1967.

6. In this appeal, Mrs. Pratima Malhotra, Advocate, appearing on behalf of the Appellant has contended that the approach of the learned single Judge is wrong and that under Rule V. 17(3), the Committee is authorised to realise the octroi duty on the current price of the liquor, i.e. the price of the liquor after adding the excise duty. It was also contended by her that octroi duty leviable on liquor is on ad valorem basis, and the word ''ad valorem'' means the actual value of the liquor at the time of its entry within the municipal limits, and consequently the price of the liquor as well as the excise duty which had been paid by the contractor for bringing the liquor to the municipal area is to be considered for charging the octroi. It was contended that the invoice gives only the price of the

liquor before its removal from the brewery which is not a genuine price for the purposes of calculation of octroi and that the Octori Superintendent is supposed to add the excise duty in the value of the liquor for calculating octroi. The learned Counsel also contended that the excise duty will be deemed to be a part of the invoice. Various provisions of the rules contained in Chapter 5 of the Municipal Account Code and specially Rules V. 12, V. 13, V. 17 and V.1(g) were quoted by the learned Counsel. It was also contended that the excise duty is a fixed amount on each bottle of liquor. In support of her contentions, she relied upon Mohan Meakin Breweries Ltd. Vs. Municipal Corporation of Jullundur City and Others,

7. Shri Ramesh Chand Sood, Advocate, appearing on behalf of the Respondent, contended that the judgment of the learned single Judge is correct and that the same is a well reasoned judgment.

8. We have considered the contentions of the learned Counsel for the parties and have also gone through the relevant provisions of the Punjab Municipal Act, the Punjab Municipal Account Code, the Punjab Excise Act as well as the annexures attached with the writ petition.

9. The undisputed facts are:

(a) Respondent No. 1 (writ Petitioner) is a liquor contractor and holds a licence L-14 for retail sale of country liquor at Nahan.

(b) Under the provisions of the Punjab Excise Act and the Rules made thereunder, liquor is an excisable article and excise duty is levied on such goods which are manufactured or produced in the State.

(c) Liquor could only be imported, exported or transported after payment of excise duty and under a pass and a licence which is to be granted by the Collector. It can only be sold under a licence granted for the purpose by the proper authority

(d) The excise duty which is levied upon liquor is a fixed duty upon every bottle of liquor and that the same is easily ascertainable.

(e) The invoice or the cash memo which is issued to the purchaser, i.e., holder of the licence, only gives the cost price of the liquor which is received by the wholesale supplier of the country liquor and that the amount of excise duty is not entered in such an invoice.

(f) The wholesale supplier of country liquor pays the excise duty to the concerned authorities before taking it out of the brewery and after getting a pass from the authorities for importing, exporting and transporting of liquor.

10. Section 16 of the Punjab Excise Act reads as follows:

16. Import, export and transport of intoxicant.-No intoxicant shall be imported, exported or transported except-

(a) after payment of any duty to which it may be liable under this Act or execution of a bond, for such payment ; and

(b) in compliance with such conditions as the State Government may impose.

11. u/s 61 of the Punjab Municipal Act, the municipality has the authority to levy octroi on the entry of goods into the municipal area for consumption, use or sale in that area. The word ''octroi'' is defined in Rule V. 1(g) as follows:

(g) "octroi" means a cess on the entry into a municipality of goods for consumption, use or sale therein.

12. Rule V. 17 of the Municipal Account Code reads as follows:

V. 17. Agency and method of assessment. (1) The octroi payable in respect of goods imported otherwise than by rail for consumption, use or sale within octroi limits shall be assessed-

(a) by the officer-in-charge of the barrier of import, if:

(i) the octroi is leviable by weight or take, or

(ii) the octroi is leviable ad valorem according to to the provisions of Rule V.12

(b) by the Octroi Superintendent.

(2) When octroi leviable ad valorem is to be assessed by an officer-in-charge of a barrier, he shall calculate their value on the information at his disposal with regard to the invoice produced by the importer or the value declared by the importer.

(3) When octroi leviable ad valorem is to be assessed by the Octroi Superintendent, he shall, if no invoice is presented with the goods, calculate the value of the goods on the information at his disposal with regard to the value declared by the importer, and, if an invoice is presented, calculate the value on the value entered in the invoice plus the cost of freight unless he has reason to suspect that the invoice is not genuine, in which case he shall proceed as if no invoice had been presented.

13. It is admitted that an invoice or a cash memo was being issued to the writ Petitioner as is generally issued by the warehouse authorities regarding purchase of the goods or liquor. This invoice only showed the price of the liquor realised by the warehouse authorities. u/s 16 of the Excise Act, the liquor so purchased could not be removed from the brewery without payment of excise duty. Thus the writ Petitioner was duty bound to pay the excise duty for the liquor so purchased from the brewery. Before entering the municipal limits, the actual price of liquor paid by the writ Petitioner is thus the invoiced price plus the excise duty paid by the writ Petitioner. Under Rule V. 17, the octroi duty is to be charged on ad valorem basis. Even the cost of freight spent by the con tractor is also to be added in the value of the liquor for the purpose of octroi.

14. Sub-rule (3) of Rule V. 17 will be applicable for calculating the octroi which can be levied on liquor when it is to, enter the municipal area for consumption, use or sale in that area. The second proviso of Sub-rule (3) ibid states, that if any invoice is presented then the value of octroi is to be calculated on the basis of the article entered in the invoice plus the cost of freight. The contention of the learned Counsel for the Appellant that the value shown in the invoice should not be deemed to be genuine, has great force in view of the fact that at the time when the liquor enters the municipal limits, the real value of the liquor is, in fact, the value paid by the purchaser in the brewery (as shown in the invoice) plus the amount of the excise duty. If the excise duty had not been paid, then it is not, possible for the wine contractor to bring liquor to the municipal area. Hence the true value of the liquor cannot be said to be as entered in the invoice and the invoice to that extent and for that purpose is not genuine. It is not disputed that if the excise duty had been paid and included in the invoice, then the municipal authorities were within their right to charge octroi on such invoice amount, i.e. value of liquor inclusive of excise duty. Thus the real position in this case is that Respondent No. 1 (writ Petitioner) has to pay the value of the liquor at two places. The real value of the liquor will be the actual value spent by the purchaser at the time of entry of liquor within the municipal limits and the invoice of the brewery did not give the genuine (i.e. real and true) value of the liquor. The municipal authorities thus could determine the real value for charging of octroi.

15. In M/s. Mohan Meakin Breweries Ltd. (supra), a similar view has been taken by a Division Bench of the Punjab & Haryana High Co This view appears to be sound and we prefer to follow the same.

16. As a result of the above discussion, this appeal is allowed and the judgment passed by the learned single Judge is set aside. The writ petition shall stand dismissed.

17. Parties are left to bear their own costs, throughout.

