
(2003) 06 JH CK 0074
In the Jharkhand High Court
Case No : W.P.C. No. 2049 of 2002

Naresh Kumar Mehta

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 28
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 608

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : D. Jerath, S.N. Prasad, Rajneesh Mishra, Vivek Singh and Manoj Tandon, for the Appellant; B.S. Lall, Addl. A.G., S. Srivastava and Deepak Prasad, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the short question that falls for consideration is as to whether petitioner is liable to pay difference amount of the excise duty on the Indian made foreign liquor pursuant to increase in duty by notification dated 10.8.2000.

2. Petitioner was issued a wholesale licence for trading in Indian made foreign liquor and beer in the year 1990-91 which was time to time renewed. Petitioner said to have deposited Rs. 1,50,000/- as advance licence fee for the year 2002-03. However, the petitioner received a notice from the respondents Informing him that the Accountant General Bihar and Jharkhand in its inspection report have pointed out that a sum of Rs. 8,41,502.70 being difference of excise duty on account of enhancement was due from the petitioner and therefore he is liable to deposit the said amount. On receipt of the said notice petitioner filed representation before respondent No. 4 Superintendent of Excise, Singhbhum West, Jharkhand stating inter alia that he was not liable to pay difference amount of excise duty as increased rate of duty would not be made applicable to the

stock lying in possession of the petitioner. The representation of the petitioner was rejected and the demand notice for deposit of the aforesaid amount was sent to the petitioner, which is the subject matter of this petition.

3. In the counter affidavit filed by respondent No. 4, Superintendent of Excise, Singhbhum West, Chaibasa, Jharkhand, it is stated that the rate of excise duty of foreign liquor was Increased and the same was duly published by notification in the official gazette on 10.8.2000 mentioning therein that it would be effective from the date of publication. Petitioner stated realizing increased sale price from the retail dealers of foreign liquor. The stock in hand on 10.8.2000 was calculated and the increased duty was also calculated by the inspecting team and the department of Excise was informed about the aforesaid amount due and payable by the petitioner. Similar stand has been taken by the respondent, authorities of the Excise Department in their counter affidavit.

4. Mr. Delip Jerath learned counsel for the petitioner assailed the impugned demand for payment of increased duty as being illegal and wholly without jurisdiction. According to the learned counsel, respondents are not justified in demanding difference of the excise duty on the stock for which excise duty had already been deposited at the time when stock were taken from the warehouse and brought to the godown of the manufacturing company and delivered to the petitioner. Learned counsel submitted that the increased rate of duty cannot be made applicable to the stock available in hand of the petitioner. Learned counsel relied upon an unreported decision of the Patna High Court rendered in CWJC No. 10663 of 1994, a copy of which has been annexed as Annexure-5 to the writ application. In the said decision relied upon by the learned counsel (CWJC No. 10663/1994), a Division Bench of Patna High Court held that the stock in hand of a licensee at the time of enhancement of duty could not be subjected to enhanced duty and the said notification enhancing Excise Duty cannot be made applicable to the stock in hand of a licensee.

5. In the case of Mohan Meakin Breweries Ltd. v. The Commissioner of Excise, Bihar and Ors. (1968) 1 PLJR 115 (SC) the Supreme Court was considering a similar question. In that case Mohan Meakin Company was manufacturing and selling Indian made foreign liquor and its distilleries were situated in Himachal Pradesh and Uttar Pradesh and various depot in different States including Patna and Ranchi. Before issuance of notification enhancing Excise Duty the company imported foreign liquor into the State of Bihar for the purpose of sale at its Patna and Ranchi depot on payment of duty at the existing rate. Subsequently, by notification the duty of foreign liquor was enhanced and pursuant to that notification the Excise Department directed the company to pay the difference of the duty on the opening balance of Indian made foreign liquor in its stock. The Apex Court considering Sections 27 and 28 of the Excise Act and Rule 147 of the Rules observed :

"The main part of Rule 147 applies to foreign liquor imported under bond which, as already stated, is kept in an excise warehouse established under the Act. It

provides that duty imposed on foreign liquor imported under bond shall be paid before removal from the excise warehouse unless a bond has been executed for such payment. Under the proviso to Rule 147 in case of any revision of the rate of duty on an excisable article, the licensee to whom the article has been issued on payment of duty prior to such revision is liable to pay the difference of duty on the quantity of such article that may remain in his possession when the revised rate of duty comes into force. The proviso must be construed with reference to the main part of the Rule : A close scrutiny of the Rule reveals that the main part and the proviso deal with the same subject matter". The expression "an excisable article" in the proviso means foreign liquor imported under bond and other articles on which duty is payable before removal from the excise warehouse or distillery where they are kept. It is for this reason that under the proviso the difference of duty is realized from or credited to the licensee to whom the article has been issued from the excise warehouse or distillery on payment of duty prior to such revision. The proviso does not apply to all imported foreign liquor. It applies only to foreign liquor imported under bond, that is to say, foreign liquor on which duty has been levied u/s 28(a)(ii) by payment upon issue for sale from an excise warehouse. It does not apply to foreign liquor not imported under bond which duty has been levied u/s 28(a)(i). The petitioner's foreign liquor was not imported under bond. The petitioner is not, therefore, liable to pay under the proviso to Rule 147 the difference of duty in respect of its stock of foreign liquor on November 1, 1967. The demand for payment of the difference of duty in respect of this stock is not authorised by the Act or the proviso to Rule 147."

6. In the instant case, as noticed above, it has not been disputed by the petitioner that on the date of notification dated 10.8.2000 by which the duty was increased, there was sufficient stock lying at the hand of the petitioner which is evident from the Audit report. It is worth to mention here that from the date of notification the petitioner started realizing duty at the enhanced rate from the retail dealer and other customers. For better appreciation paragraphs 4 and 15 of the counter affidavit filed by respondent No. 4 is quoted herein below :

"Para 4.--It is essential to bring some facts in the judicial notice of this Hon"ble Court that Mr. Naresh Kumar Mehta, the petitioner is a licensee of Foreign Liquor wholesale shop with the name of M/s Palak Enterprises at Chaibasa, the rate of duty of foreign liquor was increased and the Government duly published it in Government Gazette on 10.8.2000 mentioning therein that it would be affective from the date of publication. The licensee started realizing increased sale price from retail licensee of foreign liquor. The stock in hand as on 10.8.2000 was calculated and increased duty was calculated by the Accountant General Bihar/Jharkhand established the demand in its inspection report."

Para 15.--That with regard to the statement made in para 13 of the writ petition under reply, it is submitted that the condition 22 of sale notification is applicable.

It is submitted that the petitioner has realized the foreign liquor price on

enhanced duty from retail vendors thus the enhanced amount of duty should be deposited in the Government account."

7. The aforesaid fact was neither been controverted nor it has been disputed by the petitioner that from the date of notification he has not been realizing duty at the enhanced rate from the retail dealers and other customers. Moreover, it is well settled that in case of any increase of the rate of duty of excisable article, the licensee to whom article has been supplied prior to such increase of duty is liable to pay difference of the duty on the quantity of that article which remain in his possession when the revised rate of duty came into force. Admittedly, foreign liquor was not imported by the petitioner under a bond upon which duty has been levied u/s 28(a)(i) of the Act. Be that as it may, admittedly, petitioner has realised duty at the enhanced rate from the retail dealer and therefore the petitioner is bound to deposit the difference amount realised by him otherwise it will amount to unjust enrichment which is not permissible in law.

8. Having regard to the facts of the case, I do not find any illegality in the demand raised by the respondents for deposit of difference of the excise duty. There is no merit in this writ application, which is accordingly dismissed.