
(1999) 12 AHC CK 0084
In the Allahabad High Court
Case No : C.M.W.P. No"s. 629 and 943 of 1984

Pilkhani Distillery

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Uttar Pradesh Bottling of Foreign Liquor Rules, 1969 — Rule 6, 7, 7(11)

Citation : (2000) 2 AWC 1156

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : S.K. Suri and V.V. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

S. Rafat Alam, J.—These two petitions have been tiled by the same petitioners, involving a common controversy and therefore, they were heard together and are being disposed of by a common judgment.

2. The petitioner has prayed for quashing of the Notification dated 24.2.1984 (Annexure-1) amending sub-rule (11) of Rule 7 of the U.P. Bottling of Foreign Liquor Rules, 1969 (for Short the Rules) whereby and whereundcr the limit of wastage during the course of bottling of the liquor has been reduced from 1% to 0.8%. Further prayer has been made for quashing of the consequential orders (Annexures-2 and 3) directing the petitioner to pay the amount of duty towards wastage of spirit which had occurred in the course of bottling and also to refund the amount paid thereof- in Writ Petition No. 629 of 1984, a sum of Rs. 6,297.50 for the month of March, 1984 (Annexure-2 to the petition), and in Writ Petition No. 943 of 1984, a sum of Rs. 8,470 for the month of August and Rs. 5,436 for the month of September (Annexure-2 to the petition), has been demanded towards excise duty from the petitioner.

3. The petitioner is a distillery and holds a licence in Form P.D. 2 issued under the U. P. Excise Act (for short the Act) for the manufacture of Indian made Foreign

Liquor. The respondents framed U. P. Bottling of Foreign Liquor Rules. 1969 (hereinafter referred to as the Rules) u/s 41 of the Act to provide bottling privilege of the liquor manufactured by a distiller, brewer and vintner. It came into effect from the date of its publication in the Gazette. Under the aforesaid Rules, a distiller, brewer and vintner can be granted licence in Form F. L. 3 to bottle the liquor manufactured by them subject to the condition prescribed in Rules 6 and 7, Sub-rule 11 (a) of Rule 7 permitted an allowance upto 1% of loss occurring at the point of bottling. By the impugned notification, the aforesaid permissible limit of wastage or loss during the course of bottling of spirit has been reduced from 1% to 0.8% which has been challenged in this writ petition on the ground inter alia that the same is arbitrary and uncalled for, hence liable to be quashed.

4. We have heard learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

5. Contention of the learned counsel for the petitioner is two-fold : Firstly, that the foreign liquor from the distillery is transported to the bottling section through a metallic sealed pipeline for the purpose of bottling. At the time of bottling, certain amount of wastage takes place and, therefore, the respondents after taking into account the relevant factors allowed 1% of loss of the total production of liquor, which is to be exempted from the levy of duty. But without there being any reasonable basis or rationale, by the impugned notification the limit of wastage has been reduced from 1% to 0.8%. The second contention of the learned counsel is that in the State of Uttar Pradesh the excise duty is levied upon issue of an excisable article for sale. Since the liquor is not issued for sale until it is bottled, and, therefore, no duty can be imposed on the loss occurring prior to the stage of bottling. Reliance has been placed on a Division Bench Judgment of this Court in the case of *M/s. Ajudhia Distillery Rajaka Sahaspur v. State of Uttar Pradesh* and another 1980 TIP 2262.

6. On the other hand, learned standing counsel opposed the writ petition and submitted that the duty on foreign liquor is levied and becomes payable before it is issued from the distillery in excess where it is issued under bond. He further submitted that the State is entitled to get duty on the total production of a licensee. Since the liquor is transported from the distillery to bottling section through a metallic sealed pipeline, there is hardly any scope of wastage. Even then considering the relevant factor it has now been fixed to 0.8% which is quite reasonable and within the competence of the department.

7. The rule in question has been framed u/s 41 of the Act which empowers the Excise Commissioner to make rules for regulating the manufacture, supply, storage and sale of any intoxicant subject to the previous sanction of the State Government. It has been made to grant bottling privilege to a distiller, in sub-rule (11) of Rule 7, an allowance upto one per cent on the total quantity of liquor has been allowed for actual loss in bottling and storage. However, a licensee is liable to pay duty on wastage in excess of one percent. It is as under :

"7 (11) (a). An allowance upto one per cent may be made on the total quantity of spirit during a month for actual loss in bottling and storage. The licensee shall be responsible for the payment of duty on wastage in excess of one per cent.

(b) Where the wastage does not exceed the prescribed limit, no action need be taken by the Excise Inspector Incharge but if an excess is found at the time of monthly stock taking the Excise Inspector shall submit a statement to the Collector by fifth day of the month in Form F.L. B-10, showing the quantity of actual wastage and the duty to be paid by the licensee on the excess wastage. On receipt of the statement, the Collector shall recover the duty from the licensee at the full rate of duty leviable on Indian made foreign spirit,"

8. The above rule has now been amended by the impugned notification dated 24.2.1984 reducing the permissible limit of wastage from 1 % to 0.8%. The petitioner is aggrieved only by the reduction of permissible limit. The rule in question does not create any liability or imposes any new duty, but only authorizes to levy excise duty on the excess wastage of liquor in the course of bottling. The whole and sole idea is to prevent unnecessary wastage and also to check the loss of excise revenue. But otherwise on such amount of loss of liquor, the State would have got revenue.

9. In the writ petition, nothing has been stated nor any material has been brought on record to show that the reduction of permissible limit of loss from 1% to 0.8% is arbitrary and unjustified, except a bald statement made in para 14 and ground No. 6 of the writ petition which are as under :

"14. That after series of experiments carried out in the various distilleries, the excise authorities came to the conclusion that during the process of bottling and storage the minimum wastage comes to one per cent and thus provided for an allowance of one per cent of wastage under Rule 7, sub-rule (ii) of the U. P. Bottling Foreign Liquor Rules, 1969.

(VI) Because the said notification is arbitrary and the minimum wastage which was permitted upto 1 per cent was after series of experiments carried out by the excise authorities in the various distilleries and the amendment calling for reduction in the wastage is uncalled for and is liable to be quashed."

10. If actual loss occurs more than 0.8%, in that event, the petitioner before coming to this Court, ought to have taken steps to find out the actual loss and place the facts and figures before the respondents with adequate material to show that the fixation of limit of wastage is not correct. Even before this Court also, no facts and figures have been brought on record in support of this contention. On the other hand, in the counter-affidavit the respondents have stated that the reduction of allowance is justified and based on factual wastage of liquor occurring during the bottling process. Therefore, in the absence of any positive material, it is difficult to hold that the reduction of permissible limit is arbitrary or unjustified.

11. Admittedly, the State is entitled to receive duty on the production of liquor from the distilleries. In the instant case, the petitioner has also been granted licence for bottling under the Rules. Therefore, the liquor produced by it is transferred through a metallic sealed pipeline from the distillery section to bottling section. Had it not been given a bottling licence, whatever amount of liquor would have been produced from its distillery, the State could have received duty on it. But because of P.D. 2 licence which the petitioner holds for bottling, the liquor produced in its distillery is transferred to the bottling section for bottling in which some amount of wastage may take place and therefore, a concession has been granted to an extent of 0.8% which is not established to be unreasonable.

12. As noticed earlier, from a perusal of the aforesaid rule, it is apparent that it does not impose any new duty but only authorizes to levy excise duty on the excess of wastage of liquor in the course of bottling on which otherwise the State is liable to get duty. It further appears that it is of regulatory character to check and control the excess wastage in the hands of the licensee with a view to prevent its unlawful disposal and also to check loss of excise revenue.

13. So far as the second contention that the excise duty can be imposed only when the liquor is issued for sale, is also untenable and cannot be accepted in view of the nature of duty and the legal position. There is no dispute that the Indian made foreign liquor is excisable article under the Act. It is settled legal position that the excise duty is levied upon the goods manufactured or produced in the State. In other words, the taxable event is the manufacturing of goods and the duty is not levied directly on the goods but on the manufacturing thereof. The imposition of duty is on the act of manufacture or production.

14. In the case of *Mcdowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad*, , the Apex Court relying on its earlier pronouncement, held as under :

"This will show that 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. We may, in this connection, contrast sales tax which is also imposed with reference to goods sold, where the taxable event, is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts ; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither cases therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear that the duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income."

15. Thus, the excise duty is imposed on the production or manufacture of excisable goods within the State irrespective of sale and may be collected at the

stage of issuing of the liquor out of the distillery or at any subsequent stage of declaration of excess wastage. The Apex Court again reiterated the similar view while considering the U. P. Excise Act and the Rules imposing excise duty on the wastage of liquor in transit, in the case of State of U. P. v. M/s. Delhi Cloth Mills. AIR 1991 SC 735, wherein it has been held as under:

"A duty of excise u/s 28 is primarily levied upon a manufacturer or producer in respect of the excisable commodity manufactured or produced irrespective of its sale. Firstly, it is a duty upon excisable goods not upon sale or proceeds of sale of the goods. It is related to production or manufacture of excisable goods. The taxable event is the production or manufacture of the liquor. Secondly, as was held in A.B. Abdulkadir and Others Vs. The State of Kerala and Another, , an excise duty imposed on the manufacture and production of excisable goods does not cease to be so merely because the duty is levied at a stage subsequent to manufacture or production. That was a case on Central Excise, but the principle is equally applicable here. It does not cease to be excise duty because it is collected at the stage of issue of the liquor out of the distillery or at the subsequent stage of declaration of excess wastage. Legislative competence under Entry 51 of List II on levy of excise duty relates only to goods manufactured or produced in the State as was held in Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., ."

Their Lordships further held that the aforesaid rule does not authorize the imposition of any new tax but only authorizes the charging of excise duty on the excess wastage of liquor in the course of export which was charged at concessional rates. Thus, the excise duty is related to production or manufacture of excisable goods and it does not matter at which point it is to be imposed and collected.

16. Reliance on the judgment of a Division Bench of this Court in the case of M/s. Ajudhia Distillery Rajaka Sahaspur v. State of U. P. and another (supra), is misplaced and is of no help to the petitioner. Further the opinion of the Division Bench of this Court that the State is not competent to levy excise duty on liquor waste during the transit, has not been approved by the Hon"ble Apex Court in the appeal preferred by the State of U. P., in the State of U. P. v. M/s. Ajudhia Distillery Rajaka Sahaspur JT 1995 (6) SC 527, and the finding that the State has no power to impose excise duty upon such wastage has been reversed and the appeal was allowed in so far as they relate to the levy of excise duty upon wastage of Indian made foreign liquor exported outside the State of U. P. in the case of State of U. P. v. M/s. Delhi Cloth Mills, (supra), the Apex Court observed as under :

The decision in M/s. Ajudhia Distillery Rajaka Sahaspur v. State of Uttar Pradesh. 1980 TLR 2262 (All), quashing such a demand and holding that the exporting State had no jurisdiction to charge duty on the liquor wastage in transit cannot be said to have been correctly decided."

The object and purpose of prescribing the maximum limit of wastage is to control and regulate the excess wastage and to discourage evasion of duty by the licensee during the bottling upon which the State is entitled to get duty. The impugned sub-rule (11) of Rule 7 does not impose any new duty and only envisages the duty upon such wastage exceeding 0.8% on which the State is legally authorized to charge duty and as such, in our view, it cannot be said to be arbitrary or illegal. No other point has been urged on behalf of the petitioner.

17. In view of the discussions made above, we do not find any merit in these petitions and they are accordingly dismissed. However, there will be no order as to costs.