

(1999) 11 MP CK 0065
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3724 of 1999

Pooja Marketing Agencies, Jabalpur

APPELLANT

Vs

Excise Commissioner, Gwalior

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Excise Act, 1915 — Section 2(11), 2(19), 2(9)

Citation : (2001) 1 MPJR 12 : (2001) 1 MPLJ 482

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Ashok Agrawal, for the Appellant; V. K. Shukla For State, for the Respondent

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for issue of writ in the nature of certiorari for quashment of Annexure P-1 whereby the revenue recovery certificate has been issued by the Additional Tehsildar (Excise) Jabalpur.

According to the writ petitioner he was a Wholesale licensee in Form No. 10 of Foreign Liquor in the city of Jabalpur for the financial year 1996- 97. The petitioner used to purchase his stock from various distillery outside the State and transport the stock to its wholesale warehouses, and thereafter the stock used to be exported to the retail F.L-1 licensees outside the city as well as inside the city, there was considerable loss of the stock on account of the leakage, evaporation and breakage due to transportation from one destination to the other. The petitioner claimed certain allowances provided under M.P. Foreign Liquor Rules, 1996, (hereinafter referred to as "the Rules").

For the aforesaid year as the petitioner claimed excess amount for the breakage which is beyond the permissible limit as envisaged under Rule 16, a W.P. No.

3724 of 1999 decided on 18-11-1999. (Jabalpur) demand of Rs. 69,470/- was made from him which the petitioner deposited on 5-3-1997 under protest. While the matter stood thus a further demand of Rs. 23,405/- was raised by the respondents on the allegation that the petitioner was allowed the allowances on import of Foreign Liquor from outside the State though the same was not permissible under the rules. The petitioner submitted a representation on 25-1-1999 but without affording an opportunity of hearing to him a proceeding for recovery as continued in Annexure P-1 has been instituted against him.

It is urged in the petition that the rules permit such allowances but the respondents have erroneously interpreted the rules and has raised such demand. It is also pleaded that the petitioner was not afforded an opportunity of being heard before the demand was raised.

A counter affidavit has been filed by the answering respondents contending, inter alia, that the petitioner was allowed allowances/benefits under the head of import though the same was not to be granted under the rules and on the basis of audit objection the demand was raised.

Mr. Ashok Agrawal, learned Counsel for the petitioner, has raised two fold contentions, namely, the demand could not have been made without hearing the petitioner, and that the petitioner is entitled to have the allowances for import of Foreign Liquor if the rules are interpreted in a purposive manner. It is alternatively submitted by Mr. Agrawal that in case the Court does not accept his contentions, easy instalments should be fixed for payment of the amount in question.

Combating the aforesaid submissions it is studiously urged by Shri v. K. Shukla, learned Government Advocate that the question of affording an opportunity of hearing does not arise in a case of this nature inasmuch as the petitioner very well knew how much allowances he was granted in respect of import of Foreign Liquor. It is further submitted by him that if Rules 16 and 18 are read conjointly with the definitions contained in Section 2(9), 2(11) and 2(19) of the M.P. Excise Act, 1915, it would be graphically clear that the action taken by the respondents is not against the purport of the rules.

I shall advert to the first contention first. Submission of Mr. Agrawal relates to violation of principle of natural justice. It is admitted at the Bar that the petitioner was not afforded an opportunity of hearing before the demand was raised. Ordinarily I would have accepted such a submission and directed the respondents to afford an opportunity of hearing to the petitioner but as the whole question relates to interpretation of rules it is thought appropriate to hear the learned Counsel for the petitioner and dispose of the matter so that the matter is not unnecessarily lingered.

It is not disputed at the Bar that the matter in question relates to grant of allowance on import of liquor. Rule 16 of the Rules reads thus:

16. Permissible Limits of Losses. -- 1. An allowance shall be made for actual loss of spirit by leakage, evaporation etc. and of bottled foreign liquor by breakage caused by loading, unloading, handling, etc. in transit, at the rate mentioned hereinafter. The total quantity of bottled foreign liquor transported shall be the basis for computation of permissible losses.

Wastage allowance on the spirit transported to the premises of F. L- 9 or F.L-9A licensee shall be the same as given in Sub-rule (4) of Rule 6 of the Distillery Rules. 1995.

Maximum wastage allowance for all exports of bottled foreign liquor shall be 0.25% irrespective of distance.

Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licensee and the purchasing licensee belong to the same district. It shall be 0.2% if they belong to the different districts.

If wastages/losses during the export or transport of bottled foreign liquor exceed the permissible limit prescribed in Sub-rule (3) or (4) the prescribed duty on such excess wastage of bottle foreign liquor shall be recovered from the licensee.

Rule 18(4) envisages as under:

All export, import and transport of foreign liquor shall be at the cost and risk of the licensee. No duty import-fee, export-fee, transport-fee or bottle-fee shall be refunded on ground of any loss caused to the licensee.

If both the Rules are read conjointly it becomes graphically clear that it is the obligation of the licensee to export, import and transport foreign liquor at his cost and risk and nothing is to be refunded on the ground of any loss caused to the licensee except what has been provided for under Rule 16. On a bare reading of the said Rule it is apparent that the allowance, is granted on certain conditions in respect of bottled foreign liquor transported and exported. Submission of Mr. Agrawal is that sub-rules (3) and (4) of Rule 16 have to be read in consonance with Sub-rule (1) wherein the words "in transit" have been used. Emphasis is laid by the learned Counsel on these two words to highlight that conceptually the said terms would include any kind of transit which would also engulf inter district movement though the F.L. bottles have been imported from another State. But it is noticed there has been a clarification in the said Rule that the total quantity of bottled foreign liquor exported or transported shall be the basis for computation of permissible losses. Hence the words "in transit" have to be read in the context of the transport or export.

It is to be noted that the words "import, export and transport" have been defined under the Act. Section 2(9) defines export as under:

2(9) Export -- means to take out of the State otherwise than across a Customs frontier as defined by the Central Government.

Section 2(11) defines import as follows:

2(11) Import - (except in the phrase "Import into India" means to bring in the State otherwise than across a customs frontier as defined by the Central Government.

The word transport has been defined u/s 2(19) in the following manner:

Transport means to move from one place to another within the State.

As a different import is attached to the word "import" and it also conveys a different concept altogether and the relevant rule does not use the word import, it cannot be read into the rules to convey that even in leakage or loss in transit relating to import the benefit/allowance would be given to a licensee. That apart the definition given in the dictionary clause of the Act has to be given its due compartment and the rules have to succumb to the same. Hence, the only possible interpretation is that an allowance can only be given in case of loss caused in transportation or export of foreign liquor bottles and not otherwise.

In view of the preceding analysis the submissions of Shri Ashok Agrawal are sans substance.

However taking into consideration the alternative submission of Shri Agrawal, the petitioner is permitted to pay the amount in question within four months from today by three equal instalments.

The Writ Petition is accordingly disposed of. There shall be no order as to costs.