
(1989) 07 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1198 of 1988

P.V.K. Distillery Ltd.

APPELLANT

Vs

The Nagar Mahapalika

RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 172(2), 28

Citation : (1989) 2 AWC 1167

Hon'ble Judges : K.C. Agrawal, Acting C.J.; R.K. Gulati, J

Bench : Division Bench

Advocate : V.V. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agrawal, Actg. C.J.

1. For the excise year 1988-89, the Petitioner M/s P.V.K. Distillery Limited, which is a public limited company and held licence in Form PD 2, was selected by the Excise Commissioner on the basis of tenders submitted in Form CL 23, for supplying spirit to bonded warehouses and wholesale depots. The Petitioner had a distillery at Nandganj, district Ghazipur. It has bonded warehouses in Varanasi. The Petitioner used to bring country spirit from Nandganj to bonded warehouses in Varanasi.

2. On the basis of a notification issued in exercise of the powers conferred by Clause (b) of Sub-section (2) of Section 172, published in the official gazette dated 7th May, 1986, which came into effect from 8th May, 1986, octroi on goods and animals brought within the octroi limits of the Nagar Mahapalika, Varanasi, for consumption, use or sale therein, was to be levied at the rates shown in the Schedule, subject to the exemption given therein. Entry 19 of the Schedule, with which we are concerned in the present case, under Class I--Articles of food and drink for man and animals, reads as under:

Wines, Liquors and alcohol, Indian or foreign preparation, i.e. all kinds of wine

prepared like foreign mannered described in U.P. Excise Act and Rules whether fermented or distilled. Rs. 200.00 per quintal.

3. Another entry on which arguments were addressed to us is Entry 29, which reads:

Mythelated spirit and denatured spirit. Rs. 6.00 per qtl.

4. The contention of the Petitioner was that Entry 19 of the Schedule did not apply for levying and realising octroi on the country spirit which used to be brought by it from Ghazipur, obtained under the contract system from the Excise Commissioner, to its bonded warehouses at Varanasi for making it country liquor.

5. We may, briefly, refer to the relevant entries in the Constitution. Entry 8 of List 11 of the Seventh Schedule reads:

Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

Entry 51 of List II of the Seventh Schedule confers power of imposition of excise duty. Entry 51 reads in its material particulars as under:

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:

(a) alcoholic liquors for human consumption.

Entry 52, with which we are mainly concerned, in this case, is:

Taxes on the entry of goods into a local area for consumption, use or sale therein.

6. Essential features of tax, which is known as octroi, are:

(a) entry of goods into a local area, and

(b) goods must enter for the purpose of consumption, use or sale therein.

7. The point of entry in a local area is the determining factor to find as to whether the notification issued in pursuance of Entry 52 by a local authority is applicable or not. For the purpose of making the article imported, if some change is necessary or is required, that is not an essential feature.

8. As to what are the requisites for levying octroi has been laid down by the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, .

9. In this case, the argument of the Petitioner's counsel was that what was being brought by the Petitioner within the Varanasi Municipality was not an item covered by Entry 19, and, therefore, no octroi was leviable. Entry 19 being in Class 1 bears the heading "Articles of food and drink for man and animals". It was necessary for levying octroi to establish that each one of the items

mentioned in Entry 19, is fit for human consumption, and as country spirit of 80 per cent v/v imported by the Petitioner into the Corporation limit, is not consumable, Entry 19 under the aforesaid Class I did not apply. In other words, the Petitioner's case is that Entry 19 does not apply to country spirit of high strength. It became alcoholic liquor fit for human consumption only when it is reduced to the prescribed strength for sale by retail dealers.

10. For the excise year 1988-89, the Excise Commissioner, U.P., fixed the strength of country spirit for plain as 28 per cent v/v and for spiced country spirit as 36 percent v/v. On the argument that what is being imported by the Petitioner's distillery to Varanasi is at the strength of 80 per cent to 85 percent v/v, 40 to 50 over proof, which is not fit for consumption, the Petitioner's counsel urged vehemently that no octroi was leviable. Analysing the notification, learned Counsel for the Petitioner urged that country spirit is known by the name of THARRA, which means "EK TARAH KI DESHI SHARAB". Tharra or Deshi Sharab is potable, and as there was no intention to levy any octroi on country liquor, the framers of the rule did not intentionally and deliberately mention the same in Entry 19. Counsel urged that country liquor is generally consumed by the poor who are not well to do in life and as the Nagar Mahapalika did not intend to tax the poor section, the same was exempt by making an implied provision to that effect in entry 19.

11. Great emphasis was led by the Petitioner's counsel before us on the heading of Class I, and it was urged that as country spirit cannot be consumed as it is, Entry 19 would not apply. He urged that not only that Entry 19 does not apply to country spirit as the language employed therein does not bring the same within its scope, but also because of the heading of Class I one has to arrive to an irresistible conclusion that country spirit being not fit for human consumption, is not covered by the same. For this proposition, counsel relied on the decision of a Division Bench of this Court reported in *Kasturi Lal Swatantra Kumar v. State of U.P.* 1988 UP LB EC 91, and that of the Supreme Court in the appeal preferred against the same. The Supreme Court decision is reported in *Nagar Mahapalika Bareilly v. State of U.P.* AIR 1988 SC 850. In the said case, the article which had been grouped together in different classes were from Class I to X. Class III, which bears the heading, "Articles of lighting, fuel, washing and lubricants" contains the following entry at Item No. 7:

7. Methelated denatured and rectified spirit...

Class VI with the heading "Tobacco and other intoxicating goods" contains the following entry at item No. 6:

6. Foreign imported liquor and all kinds of wines made in India...

Re. 1.00 per litre.

In that case the Supreme Court held that rectified spirit was dutiable at the rate of 05 Paise per litre and not on the basis that it was foreign wine or liquor.

12. From the entry quoted above by us in this judgment, it will be found that rectified spirit was specifically mentioned in Entry 7. The Supreme Court negated the contention of the Nagar Mahapalika that the expression "foreign imported liquor or on all kinds of wine" did not fit in the description of the rectified spirit. In the view of the Supreme Court, rectified spirit involved in that case was covered by Entry 7.

13. In the instant case, we will show presently that the entry under which octroi is being claimed by the Nagar Mahapalika, Varanasi, is much different from what was in the case of Nagar Mahapalika Bareilly v. State of U.P. (Supra). The entry of our case is very wide in its amplitude having prescribed that every type of wine, liquor and alcohol prepared like foreign mannered description in U.P. Excise Act and the Rules, whether fermented or distilled, unlike the entry which came up for decision in the case of Nagar Mahapalika Bareilly v. State of U.P. (Supra). In that case the entry was on foreign imported liquor, all kinds of wines made in India. The Supreme Court held that rectified spirit did not fit in with either of the two, and on that account found that Entry 6 of the Schedule of that case did not apply.

14. We wish to deal with the two decisions referred to and relied upon by the Petitioner's counsel. Delhi Cloth and General Mills Company Ltd. v. Excise Commissioner 1973 ALJ 629 and Mohan Meakins Breweries v. State of U.P. 1978 ALR 534. In the former case the controversy was whether Section 28 of the U.P. Excise Act empowered the State Government to impose excise duty on the rectified spirit. The Bench held that rectified spirit was not alcoholic liquor for human consumption and, as such, was not an excisable article. u/s 28 the State Government is empowered to levy excise duty only on alcoholic liquor for human consumption. This ruling is of little assistance for deciding the controversy before us. We are neither concerned with Section 28 of the U.P. Excise Act nor as to whether rectified spirit was alcoholic liquor. Ours is a different controversy.

15. In Mohan Meakins Breweries v. State of U.P. (Supra) also the decision was that rectified spirit of high strength was not alcoholic liquor. It admits of no controversy that a decision is an authority for what it decides. In none of the two cases, the controversy raised before us was in issue.

16. For the reason that the entry before us is differently worded than what was in the case of Kasturi Lai Swatantra Kumar v. State of U.P. (Supra), we find no assistance for the controversy involved in the present writ petition.

17. Coming to the argument of the Petitioner's counsel that it is the heading of Class I which will govern the liability of payment of octroi, we do not find any substance. The Supreme Court itself has observed in paragraph 5 of the decision in Nagar Mahapalika, Bareilly v. State of U.P. (Supra) that:

Court should normally give a meaning intended by the framers of the Schedule.

18. The framers of the Schedule were fully conscious of the provisions of the U.P.

Excise Act and the Rules and that is why they have mentioned U.P. Excise Act and the Rule in Entry 19. The expression "country liquor" in paragraph 8 of the Excise Manual does not prescribe any strength nor does it prescribe that country liquor should be potable. The intention of the framers does not appear to be that country spirit of high strength should be exempt from payment of octroi. Had it been so desired or intended, the framers would have clearly made a mention of the same. No distinction has been preserved or maintained in the entry to distinguish country liquor of high strength from the levy of octroi with that of the one which is potable or fit for human consumption. Potability or fitness for human consumption is the requirement of Section 28 of the Excise Act for the purpose of levying duty under that provision.

19. Entry 51 of List II of the Seventh Schedule of the Constitution does lay down that duties of excise would be payable on alcoholic liquor for human consumption, but there is no such requirement for Entry 52, under which octroi is imposed on the goods brought into a local area for consumption, use or sale therein. If the object of Entry 52 of List II of the Seventh Schedule is kept into consideration that will also lead us to the view that potability is not relevant for the purposes of imposition of octroi. Reed Dickerson in his book "The Interpretation and Application of Statutes" at page 95, says:

On the necessity of legislative purpose to legislative interpretation, Llewellyn has said, "If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense." Hart and Sacks have inquired whether it is not true that "The meaning of a statute is never plain unless it fits with some intelligible purpose.

20. Clear words conveying a definite meaning in the ordinary sense of the words used cannot be down or added to so as to alter that meaning. Applying the aforesaid rule, it appears that entry 19 is specific, clear and does not leave out country spirit of the high strength brought into the Nagar Mahapalika.

21. Counsel's submission was that interpretation of Entry 19 should be in consonance with Class I, which gives the broad idea of the articles covered by the aforesaid Schedule. It was contended that if an item is not fit for human consumption, it cannot be considered as an article of food and drink for man. Any heading can only be an approximation and cannot cover all the detailed matters falling within the provision to which it is attached. It has been said in Francis Bennion "Statutory Interpretation", at page 590, that:

However, it is most unlikely to be right to allow the plain literal meaning of the words to be over ridden purely by reason of a heading. (*Pilkington Brothers Ltd. v. I.R.C* 1982 (1) A.E.L.R., 715).

Jagdish Swarup in his book on Interpretation of Statutes says at page 233, that:

These headings or sub-headings cannot either control, restrict or extend the scope of the sections when the language used is free from ambiguity.

22. In our view, the heading of Class I is neither conclusive nor determinative of the various entries which have been prescribed for the purpose of levy of octroi.

Clause (b) of Annexure T to the writ petition provides:

Yadi kisi Zile me sthaniya nikayon dwara desi sharab par chungi li jaye gi to apurti karta desi sharab ke retail bikreta se spirit ke dam atirikt chungi ki dhanrashi pane ka adhikari hoga.

23. Out of the three writ petitions, the Petitioner of writ petition No. 1198 of 1988 obtained a contract from the Excise Commissioner for running the distillery and bonded ware-houses, whereas the Petitioner of writ petition No. 1290 of 1988 was a licensee for retail vend of country liquor for the excise year 1988-89. So is the position of the Petitioner of writ petition No. 1408 of 1987. The year involved in two of these writ petitions was 1988-89. None of the Petitioners had any stay order. It may be reasonable to presume in the circumstance of the present case that all of them must have realised octroi from the consumers to whom country liquor was sold. None of them has to pay the octroi from their own pocket. The Nagar Mahapalika cannot be issued any Mandamus in these circumstances to return the amount realised by it by way of octroi.

24. For what we have said above, we dismiss the writ petition with costs.