(1972) 08 MP CK 0004

In the Madhya Pradesh High Court

Case No : M.P. No. 268 of 1971

Santosh Kumar APPELLANT

Vs

Municipal Committe, Sanawad RESPONDENT

Date of Decision : 19-08-1972

Acts Referred:

Citation : (1972) JLJ 1022

Hon'ble Judges : Bishambhar Dayal, C.J;A.P. Sen, J

Bench : Division Bench

Advocate : S.C. Dutt, for the Appellant; Y.S. Dharmadhikari, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

B. Dayal, C.J.—This is a petition by Santosh Kumar who is a vendor of liquor and has a licence in Form C. S. 2. He obtains his supply of liquor from the warehouse. Before he takes out liquor from the warehouse, he pays as the issue price which is mentioned upon his licence and this issue price has to be deposited in the treasury. In the treasury challan, a form of which has been appended as annexure I to the petition, this issue price has to be bifurcated into the cost price and the excise duty in a particular ratio. The amount is deposited in the treasury and after obtaining a receipt for the whole issue price from the treasury, the petitioner produces that receipt at the warehouse. Against that he receives his liquor. When liquor was imported within the municipal limits of the respondent Municipal Council of Sanawad, the Council imposed an octroi duty. The Council claimed octroi duty on the whole issue price while the contention of the petitioner was that he was liable to pay octroi duty only upon the cost price which he mentions on the treasury challan and the rest being excise duty, he was not liable to pay octroi on the same.Since the Municipal Council did not agree to this, the present writ petition has been filed for a clarification of the position.

2. Rule 17 of the Sanawad Municipal Council Octroi Rules is as follows :-

The first part of this rule provides that octroi duty will be chargeable on the value of the goods and then it goes on to say that the value of the goods shall be deemed to be the real price which the purchaser has paid to his vendor. In this price and cost of carriage or any commission deducted has not to be added. The rule then further goes on to say that the profits and the duty which the vendor might have added to the price in the bijak which he has issued will be considered to be a part of the price. The contention of Learned Counsel for the petitioner is that; in this case to his vendor, who is the distiller, he pays only the cost price which is mentioned in Annexure-I and the rest is duty which is paid to the Government. He therefore, does not pay the excise duty to the vendor and the excise duty cannot, therefore, be added to the price for the purpose of the octroi. This part of the rule, in our opinion, would have been applicable to this case if the vendor had issued a bijak and if the vendor himself had realized the price as well as the duty. The system of payment in the case of liquor is entirely different and, therefore, this part of the rule can have no application. For the purpose of this rule what we have to see is the value of the article in the hands of the applicant who has to pay the octroi and who is the importer of the article within the municipal area. Under his own licence he has to pay a fixed amount as the issue price without paying which he cannot receive the goods. Condition No. 2 of the petitioner''s licence clearly provides as follows :-

"When your supply is taken from the warehouse, you shall, before spirit is issued to you, pay for the spirit at the rates specified above or at such issue price rates as are fixed from time to time by Government into the Government treasury........"

Condition No. 29 of the licence in Form D-1 prescribed in the Distillery and Warehouse Rules of the M.P. Exercise Rules also provides:

"29(1) The issue price to be recovered from vendors for the spirit supplied to them from any of the warehouses of the licensee shall be such as the State Government may from time to time determine and it shall be lawful for the State Government to alter the rates so determined at any time and from time to time during the currency of this licence.

(2) No spirit shall be issued to any licensed vendor from any of the warehouses of the licensee except upon proof of payment into treasury of the issue price recoverable for it"

The petitioner is, therefore, entitled to receive the liquor on payment of the we hire price. When he deposits the issue price in the treasury, it is bifurcated for purpose of the accounting between the Government and the distiller. Exercise duty is a duty on the production of excitable articles and consequently it is the responsibility of the distiller to pay the excise duty to the Government. Since the distiller is entitled to pass on this duty to his purchaser, the price which the purchaser viz., the petitioner, pays to the distiller includes the excise duty which the distiller has to pay to the Governments. By the rules the Government has prepared a scheme under which the duty, instead of being collected from the distiller directly, is collected out of the price which the retailer pays to the distiller and for that purpose the Government has directed that the whole price which the retailer has to pay must be deposited in the treasury. For the facility of the Government the treasury challan has been so printed that this issue price is bifurcated into excise duty and cost price of the distiller. The excise duty is really a part of the price which the retailer must pay before obtaining the liquor from the warehouse. The cost of the liquor in the hands of the peretition therefore, is the issue price which he pays and octroi duty is, therefore, payable on this price which is his cost price when the liquor comes to him.

3. We, therefore, see no force in this writ petition and dismiss the same. In view of all the circumstances of the case, however, we direct the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.