(1967) 09 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 960 of 1966

Sita Ram and Sons APPELLANT

Vs

Nagar Mahapalika, Varanasi and another RESPONDENT

Date of Decision : 22-09-1967

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 3

Citation : (1968) 38 AWR 77

Hon'ble Judges : S.D. Khare, J

Bench : Single Bench

Advocate : S.R. Misra, for the Appellant;

Final Decision : Allowed

Judgement

S.D. Khare, J.—By means of this writ petition filed Under Article 226 of the Constitution of India, the Petitioner has prayed that a writ in the nature of mandamus be issued to the Nagar Mahapalika, Varanasi (Opposite Party No. 1) not to charge any octroi duty from the Petitioner on Indian made liquor. It has also been prayed that the order made by opposite party No. 1 to realise octroi duty on liquor purchased by the Petitioner and brought within the Nagar Mahapalika limits of Varanasi be quashed by means of writ in the nature of certiorari.

2. The Petitioner firm has not given the details regarding the order which it seeks to get quashed nor has it filed a copy of that order. The only point which arises in this petition, therefore, is whether a writ in the nature of mandamus as prayed by the Petitioner can be issued.

3. The undisputed facts leading to this petition are that the Petitioner-firm is a retail dealer of liquor and has been doing this business for the last 20 years. It purchases Indian made liquors from Dyer Meakin Breweries and other whole-sale dealers and brings them within the limits of the Nagar Mahapalika, Varanasi for storage and sale. By means of Notification No. 4650-B/XI-C-7-MT-64 dated

8-11-1965 published in the Uttar Pradesh Gazette Extraordinary of the same date the UP Government sanctioned octroi duty on wines, liquors and alcohal (vide item No. 23 of class I of the Schedule), making it clear at the end of the Schedule that 31 articles shall be exempt from octroi-"Opium, Bhang, Ganja, Charas and wine manufactured in India", are mentioned at item No. 26 of the exempted list. The Petitioner could not take delivery of a consignment of liquor because opposite party No. 1 demanded the payment of octroi duty on it and the contention of the Petitioner was that it was exempt from octroi duty.

4. Relying on the aforesaid Notification dated 8-11-1965 the Petitioner has contended that liquor made in India is exempt from octroi duty. On the other hand, the contention of opposite party No. 1 is that only country-made wine is exempt from payment of octroi duty.

5. There can be no doubt that the interpretations placed by both the parties on the UP Government Notification dated 8-11-1965 referred to above are incorrect.

6. The term "liquor" has been defined in Sub-section (11) of Section 3 of the UP Excise Act, 1910 (Act IV of 1910) as follows:

(11)--"liquor" means intoxicating liquor and includes spirits of wine, spirit, wine, Tari, Pachwai, beer and all liquid consisting of or containing alcohal, also any substance which the State Government may by notification declare to be liquor for the purposes of this Act.

The term "Wine" has not been defined in Section 3 of Act IV of 1910. From a perusal of that definition of the term "liquor" it is clear that it includes the following kinds of intoxicating liquor:

(a) spirits of wine, (b) spirit, (c) wine, (d) Tari, (e) Pachwai, (f) beer, (g) all liquid consisting of or containing alcohal, (h) any substance which the State Government may by notification declare to be liquor for the purposes of this Act.

7. Wine is only one of the species of liquor. The State Government has sanctioned the imposition of octroi duty on "Wines, liquors and alcohal" (item No. 23 of class I of the Schedule) but has exempted only "wine manufactured in India" out of that item. The expression "wine manufactured in India" should include both "country-made wine" and the "wine prepared by distilleries". It is, therefore, clear that any wine manufactured in India, be it country-made wine or not, will be exempt from payment of octroi duty to the Nagar Mahapalika, Varanasi (Opposite Party No. 1).

8. Inasmuch as opposite party No. 1 has insisted that only country-made wine is included in the expression "wine manufactured in India", its stand is incorrect and is likely to cause substantial harm to the Petitioner.

9. In the result, the writ petition is partly allowed and it is directed that a writ in the nature of mandamus be issued requiring opposite party No. 1 not to charge any octroi duty from the Petitioner on "wine manufactured in India", whether it

be country made wine or wine made in distilleries. In the circumstances of the case, I order the parties to bear their own costs.

