
(2010) 01 P&H CK 0072
In the Punjab And Haryana At Chandigarh

Skol Breweries Ltd.

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Punjab Excise Act, 1914 — Section 31

Citation : (2010) 158 PLR 469 : (2010) 2 RCR(Civil) 412

Hon'ble Judges : Alok Singh, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—By way of present petition petitioner is assailing orders dated 22.01.2009 (Annexure P-4) passed by Excise and Taxation Commissioner, Haryana, respondent No. 2, and 4.8.2009 (Annexure P-7) passed by Financial Commissioner & Secretary (Taxation), Haryana, respondent No. 1.

2. The brief facts of the present case are that in the year 2000-01, Haryana Breweries Ltd. was merged with the present petitioner. The scheme of amalgamation was duly sanctioned by this Court on 19.2.2002. Thereafter, the business of the company is being run under the name & style of "Skol Breweries Ltd.". That is how the present petitioner is filing writ petition, relating to the case of Haryana Breweries Ltd. for the years 1989-90 and 1990-91. It is stated that in the year 1989-90 and 1990-91, the Brewery had paid the excise duty as per the provisions of the Punjab Excise Act read with the Punjab Brewery Rules on the production of beer, effected by it as per the provisions of law. It is further stated that it had actually paid the duty on 8025264.00 bulk ltrs. for the year 1989-90 and on 7341925.00 bulk ltrs. of beer for the year 1990-91 and for the first time, in the year 1991-92, the Excise and Taxation Commissioner, Haryana issued notices to the Brewery asking them as to why there is excess wastage of beer beyond the prescribed percentage of 7%. It is further stated that it appears that the basis of notices itself was wrong as the authorities could not challenge the excess wastage, but could only show cause the Brewery if there is any

clandestine removal of goods on which the duty has been paid and if the Department has accepted that the wastage has taken place, then no duty can be levied upon the same. The notice issued for year 1989-90 dated 21.2.1991 is Annexure P-1 to this petition. Similar notice was received for year 1990-91, which is not available on record with the petitioner company.

3. In reply to the notice, written submissions were made vide letters dated 16.3.1991 and 28.3.1992 vide Annexures P-2 and P-3. It was submitted by the Brewery that as per Section 35 of the Punjab Brewery Rules, 1956 (as applicable to Haryana), the duty can be charged on the total quantity actually brewed as entered in the brewing book by the licencees or as ascertained by the Inspector and entered in his survey book in Form B6 whichever is higher, minus an allowance of 7% as wastage. It was submitted that the section or the rule does not envisage anything about excess wastage nor does it provide for levying any duty on alleged excess wastage. It was also submitted that the rule being a part of subordinate legislation has to give way to Section 31 of the Punjab Excise Act, 1914 under which the duty can only be charged on exciseable article and once it is established that the Brewery has not produced an amount of beer then no duty can be charged on the same.

4. The further case of the petitioner is that vide impugned order dated 22.01.2009 (Annexure P-4), respondent No. 2, without taking into consideration objections raised by the petitioner directed to deposit Rs. 33,63,557.50 for 1989-90 and Rs. 19,75,473.00 for 1990-91 within one month from the date of receipt of a copy of the order. The basis of passing of the impugned order dated 22.01.2009 was to restrict the wastage to 7% only on the total production of beer. Feeling aggrieved from the order passed by respondent No. 2, appeal was filed u/s 15(7) of the Punjab Excise Act, 1914 which was also dismissed by respondent No. 1 vide impugned order dated 4.8.2009 (Annexure P-7).

5. The main grievance of the petitioner is method of applying the percentage of 7% as wastage on total production of beer is against the law and respondents have not shown correct quantity of the beer produced which was fit for the human consumption. Learned Counsel appearing on behalf of the respondents justifying the reasoning given in the impugned orders and submitted that the only correct formula to less maximum wastage allowance to 7% on entire beer brewed. Hence, no legality and jurisdiction error was committed while passing impugned orders.

6. We have heard learned Counsel for the parties and perused the record carefully.

7. The sole question before this Court is what is the manner/procedure in which duty may be levied on the quantity of exciseable article manufactured, in the present case beer. Learned Counsel for the petitioner has argued that formula of deducting maximum 7% wastage is neither legal nor justified. He further submitted that if wastage is more than 7% it has to be taken into consideration

and department has to determine whether wastage claimed by the manufacturer is correct or not.

8. Section 32 of the Punjab Excise Act, 1914 is being reproduced herein as under:

32. Manner in which duty may be levied:- Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied rateably, on the quantity of exciseable article imported, exported, transported, collected or manufactured in or issued from, a distillery, brewery or warehouse:

Provided that duty may be levied:

(a) on intoxicating drugs, by an average rate levied on the cultivation of the hemp plant or by a rate charged on the quantity collected:

(b) on spirit or beer manufactured in any distillery established or any distillery or brewery licensed, under this Act in accordance with such scale or equivalents calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe;

(c) on tari, by a tax on each tree from which the tari is drawn:

Provided further that where payment is made upon issue of an exciseable article for sale from a warehouse established or licensed under 22(a) it shall be made:

(a) if the State Government by notification so directs, at the rate of duty which was in force at the

date of import of that article; or

(b) in the absence of such direction by the State Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

9. Clause (b) of proviso of Section 32 reveals that duties may be levied on beer manufactured in any distillery established or any distillery or brewery licensed, in accordance with such scale or equivalents calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe.

10. Rule 35 of the Punjab Brewery Rules, 1956, reads as under:

35(1). The duty on beer, at the prescribed rate, shall be charged on the total quantity actually brewed as entered in the brewing book by the licensee or as ascertained by the Inspector and entered in his survey book from B.6, whichever is higher, less an allowance of 7% for wastage.

(2) The duty on beer shall become due immediately the account of brewing has been taken by the Inspector. An account of duty to be realised on collection of daily brews shall be maintained by the Inspector in the registered in Form B.15A.

(3) The Excise Commissioner may, however, cause the charge to be made up at

the close of each quarter in respect of all the brewings within that quarter and may, if the licensee executes a bond in Form B.16 for its payment, defer the payment to a date not later than the fifteenth day of the month succeeding the quarter in respect of which the duty was charged. In Inspector shall at the end of each quarter prepare Beer Duty Voucher in Form B.7 and shall cause a notice in Form B.8 to be served upto the license for the payment of the amount.

(4) At the end of each quarter the Inspector shall prepare an abstract of brewing operations in Form B.11 and a statement showing the quantity of beer issued to troops in Punjab and other States in Form B.14 during the quarter. The abstract and the statement shall be submitted to the Collector concerned who after check will forward them to be Excise Commissioner.

(5) The Inspector shall also maintain a register in Form B.15 showing issue of beer made to other State.

11. Scope of Section 32 and Rule 35 came for interpretation before the Hon''ble Apex Court in the matter of Government of Haryana Vs. Haryana Brewery Ltd. and Another, reads as under:

We agree with the contention of Mr. Divan, and this is also not disputed by Mr. Anand, that the State has jurisdiction to levy excise duty only on beer after it has been brewed and has become fit for human consumption. This is the settled position as laid down by this Court in Mohan Meakin and Modi Distillery cases. The only question which, to our mind, really arises for consideration is how to determine the quantity of beer which is manufactured on which the excise duty is to be levied. Section 32 gives an answer to this question. The first part of the Section states that subject to the rules which may be made by the Financial Commissioner excise duty is to be levied, inter alia, on the exciseable article manufactured in or issued from a distillery, brewery or warehouse. A reading of this Section leaves no manner of doubt that the stage at which excise duty can be levied is only after the process of manufacture has been completed and in fact it is to be levied when it is issued from the distillery, brewery or warehouse.

It appears to us that the proviso to Section 32 read with Rule 35 does nothing more than to give a rough and ready method of calculating the quantum of beer which should have been manufactured in the normal process which is calculated on the basis of the raw material used. The idea, perhaps, is that full quantity of beer which is manufactured is accounted for. It will be seen that registers are maintained by the manufacturer and the figures are taken from there. From the records of the manufacturer, excise authorities will be able to ascertain the quantum of raw material used. It is open to the excise authorities to accept the figure indicated in the records of the manufacturer of the total quantity of beer manufactured. Duty can be levied on this and this would be in consonance with the first part of Section 32. It is, perhaps, only to cross-check whether the figure which is indicated in the books of the manufacturer is correct that a formula can be used for determining the amount of beer which could or should or must have

been manufactured. This is by taking into account the quantity of raw material used, the quantity which is in the process and as entered in the brewing book and from there giving an allowance of 7 per cent for wastage. It appears to us that the allowance of 7 per cent has to be in arriving at the figure of the manufactured beer as loss of quantity during the process of manufacture. It cannot be that on the figure of manufactured beer, arrived at on the basis of the books of the respondent, an allowance of 7 per cent has then to be given. If the figure taken for the purpose of calculating the excise duty is only of the end-product viz., the beer produced, and not the quantity of raw material used in the manufacture of beer during which loss of some quantity as wastage would have occurred, there cannot be a deduction of any sum or proportion as wastage from the quantity of end-product in order to arrive at that quantity. The exciseable product is the quantity of beer produced and not the quantity produced, and thus exciseable, minus 7 per cent.

The allowance is contained in the proviso to Section 32 read with Rule 35. If the entries in the brewing book of the licensee or in the survey book B-6 of the Inspector are not to be taken into consideration, then the question of giving an allowance of 7 per cent contemplated by Rule 35 would also not arise.

It appears to us that resorting to Rule 35 and calculating the quantity of beer which is manufactured and is fit for human consumption cannot be said to be invalid or impermissible. As we have already indicated the said Rule only helps in determining what should be the quantity of beer actually manufactured, after all the processes have been undertaken.

In the instant case, it is contended by the learned Counsel for the respondent that the figures which are given and entered in the brewing book pertain to the worts which means the liquor obtained by the exhaustion of malt or grain but to which no yeast had been added and, therefore, had not become alcoholic liquor fit for human consumption. This figure, it was submitted, should not have been taken into account. If this be so, then the excise authorities had to calculate and determine the exact quantity of beer manufactured by the respondent and then levy excise duty thereon. On the figures so determined, Rule 35 being inapplicable as contended by the respondent, the question of giving any allowance of 7 per cent for wastage would not arise. What follows from the above is that the excise authorities can levy excise duty only on the beer after it has been manufactured the levy has to be on the quantity manufactured. Now this quantity is to be arrived at has to be determined according to Section 32 read with Rule 35.

We may, however, note that before the Excise Commissioner no dispute appears to have been raised with regard to the figures and the contention was that the percentage of wastage should have been more than 7 or 10 per cent. Mr. Divan, however, submits that this contention which was upheld by the High Court was raised subsequently. While in the body of the writ petition, it is stated that Rule 35 is violative of the Act, no specific prayer was made in the writ petition, but in

the manner in which we have interpreted Rule 35 it appears to us that it is only an enabling provision which will help the excise authorities in calculating what would be the quantity of beer manufactured and fit for human consumption on which excise duty could be imposed. The said Rule is neither invalid nor does it require to be read down.

12. From the perusal of judgment of Hon"ble Apex Court in the case of Haryana Brewery Limited (supra) following proposition can be held:

1. That proviso to Section 32 read with Rule 35 is one of the method to find out the quantum of beer which should have been manufactured in the normal process which is calculated on the basis of raw material used.

2. Formula/method as per proviso to Section 32 read with Rule 35 can be used only to cross check whether the figure which is indicated in the books of the manufacturer is correct.

3. While applying formula of proviso of Section 32 read with Rule 35 authorities would also see/examine as to whether wastage claimed by manufacturer more than 7% is justified or not.

4. Excise duty can be levied only on the exact quantity produced which is fit for human consumption, after all the manufacturing processes have been undertaken. In fact it is to levied when it is issued from the distillery, brewery or warehouse.

5. 7% wastage allowance shall not be applicable on the total quantity produced by the manufacturer which is fit for human consumption.

13. In the case in hand it appears from the impugned order that duty is levied on the alleged excess wastage of more than 7%, without recording any finding about the correctness of the entries made in the relevant registers maintained by the manufacturer as well as excise officials. Impugned order further reveals that no objections whatever were raised regarding the actual production shown by the petitioner in its returns filed with the Excise Department as well as in financial statements. Finding that beer manufactured was illegally removed was also not recorded. We are of the firm opinion that impugned order does not stand in the eye of law. Finding of the respondent No. 1 that wastage more than 7% cannot be claimed is not justified and legal. 14. In view of the above, we have no other option except to set aside the impugned orders. The writ petition is allowed. Impugned orders are set aside. Case is remanded back to respondent No. 2 with the direction to decide the case afresh in the light of observations made herein above.

Sd/-

Adarsh Kumar Goel, J.