
(2009) 05 RAJ CK 0083
In the Rajasthan High Court

Som Distilleries and Breweries Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 4 RLW 3174

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner company has challenged the order dated 21-6-2003, passed by the Board of Revenue ('the Board" for short) whereby the learned Board has rejected the appeal filed by the petitioner u/s 9A of the Excise Act, 1950 ('the Act" for short). The petitioner has also challenged the notice dated 8-2-2002 whereby it was informed that since it has not submitted any certificate indicating non-supply of liquor under five permits of import, therefore it is liable to pay Rs. 20.25 lacs. It was directed to pay the said amount within a period of seven days. The petitioner has also challenged the letter dated 12-4-2002, whereby it was informed that out of his bank guarantee an amount of Rs. 20.25 lacs has been withdrawn. Therefore, it should furnish another bank guarantee of Rs. 20 lacs.

2. The brief facts of the case are that the petitioner company has distilleries and breweries in village Rajran, District Rajsan, Madhya Pradesh. At the relevant time the petitioner company had a bonded warehouse at Jaipur, which was duly licensed u/s 47(1)(a) of the Rajasthan Excise Rules, 1956 ('the Rules" for short). The petitioner company used to import Indian Made Foreign Liquor ('IMFL" for short) for storage in the bonded warehouse, under the permits issued by the Excise Department. It is the case of the petitioner that five permits were issued for import of 5400 liter (under each permit) of IMFL, upon which excise duty of Rs. 40,500/- each was payable. According to the petitioner, none

of these five consignments, which left M. P. for being imported into Rajasthan, ever reached Rajasthan. For, they were intercepted by the Police in M.P. Despite the fact that the said consignments under the five permits never entered Rajasthan, still vide notice dated 8-2-2002, the District Excise Officer directed the petitioner to deposit Rs. 20.25 lacs, being excise duty and other fees relating to the said five permits. Immediately, on 16-4-2002, the petitioner sent a reply to the said notice, wherein the petitioner pleaded that since the consignments under the five permits were seized by various police stations in Madhya Pradesh, therefore the said consignments never reached Rajasthan. Thus, the excise duty on these permits was not payable. Hence, the petitioner requested that the proceedings initiated for recovery of an amount of Rs. 20.25 lacs from the bank guarantee should be stayed. Along with the said reply, the petitioner submitted three original permits and also pointed out that the other two permits were lying in the courts at Madhya Pradesh. It assured that as soon as they are released from the court, the same would be submitted to Excise Department for its scrutiny. The District Excise Officer sought certain clarification from the Officer-in-charge of the distillery at Madhya Pradesh. Vide letter dated 24-4-2002, the Officer-in-charge of the distillery at Madhya Pradesh sent the desired information. He clearly pointed out that the goods under the three permits were released by the Court, but the same are lying in the distillery at Madhya Pradesh, and the goods under permit Nos. 21351 and 21356 have not been released by the Court.

Surprisingly, while the District Excise Officer sought information from the Officer-in-charge of the distillery at Madhya Pradesh, he also sent the letter dated 12-4-2002 directing the petitioner to make payment of security by filing fresh bank guarantee of Rs. 20.25 lacs.

Vide letter dated 15-7-2002, the Officer-in-charge of the exporting distillery at Madhya Pradesh informed the District Excise Officer Jaipur that the goods under permit No. 21351 have been released by the court and are lying in safe custody with the Excise Department at Devas. He further stated that the goods under permit No. 21356 have also been released by Chief Judicial Magistrate, Selana, and the same are lying in safe custody with Excise Department Selana. He further enclosed the necessary documents to prove these facts. Thus, he certified that the goods under the five permits never entered Rajasthan.

3. In the letter dated 12-4-2002, it was clearly mentioned that the said letter is being issued at behest of Excise Commissioner, who vide his letter dated 4-4-2002 had ordered the District Excise Officer to insist that the petitioner shall pay the security by filing fresh bank guarantee, as mentioned above. Taking the letter dated 12-4-2002 to be an order issued by District Excise Officer, at the behest of the Excise Commissioner, the petitioner filed an appeal before the learned Board u/s 9A of the Act.

Meanwhile, the Excise Inspector at Jaipur submitted factual report dated 27-11-2002 to the District Excise Officer. He clearly stated that initially the Audit

had raised objection with regard to nonpayment of Rs. 81 lacs by the petitioner. However, the Excise Officer has received information from Officer-in-charge of the distillery at Madhya Pradesh clearly indicating that the consignments under the five permits are lying either at the Distillery, or are lying with the Excise Department in Madhya Pradesh. Thus, clearly the said consignments have never entered Rajasthan. Therefore, the recovery from bank guarantee of an amount Rs. 20.25 lacs, should not have been done. Hence, the said amount should have been refunded to the petitioner. A similar report was also sent by the District Excise Officer to the Excise Commissioner vide letter dated 8-1-2003. However, so far the Excise Commissioner has maintained a studied silence over the said report.

In the meantime, since the letter dated 4-4-2002 issued by Excise Commissioner, could not be produced before the learned Board, vide order dated 26-3-2003, the learned Board dismissed the appeal filed by the petitioner. Subsequently, the petitioner applied for a copy of the direction issued by Excise Commissioner vide letter dated 4-4-2002. However, vide letter dated 4-9-2003, the Excise Commissioner informed the petitioner that the letter dated 4-4-2002 is not an order and is merely an internal correspondence between the Excise Commissioner and the office of District Excise Officer. Therefore, the copy of the said letter cannot be issued to the petitioner. The Excise Commissioner has also pointed out that the demand notice has been issued by the District Excise Officer. Thus, the said demand notice should be treated as an order. It is in these circumstances, that present writ petition has been filed before this Court.

4. Mr. R.B. Mathur, the learned Counsel for the Revenue, has raised preliminary objections that the writ petition is not maintainable as the petitioner has alternative remedy u/s 9A of the Act. According to him, the petitioner could have filed the appeal before the Excise Commissioner against the order passed by District Excise Officer. Therefore, the petitioner should, in fact, avail the alternative remedy.

5. On the other hand, Mr. Kamalakar Sharma, the learned Counsel for the petitioner, has contended that the order dated 12-4-2002, sent by District Excise Officer was, in fact, was based on the letter dated 4-4-2002, issued by Excise Commissioner. Therefore, in case the petitioner is compelled to challenge the order dated 12-4-2002 before the Excise Commissioner, he would be travelling back to the Authority, on whose directions the order dated 12-4-2002 was passed. In such a scenario, the petitioner could not hope for any justice. Therefore, the petitioner was justified in approaching the learned Board. Since, the learned Board has dismissed the appeal, the petitioner is entitled to invoke the writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

6. The issue before this Court is whether the petitioner was justified in approaching the Board instead of the Excise Commissioner or not? In order to deal with this issue, there are two principles of law that one needs to keep in

mind; firstly one of the principles of natural justice is *Nemo Judex In Causa Sua* (no person can be a Judge of his own cause); secondly, the justice should not only be done, but should appear to be done.

7. It is true that the Excise Commissioner is the authorised officer to hear an appeal against the order of District Excise Officer. But it cannot be ignored that the District Excise Officer passed the impugned order dated 12-4-2002 pursuant to the letter dated 4-4-2002 sent by Excise Commissioner himself. Since the Excise Commissioner directed the District Excise Officer to pass the impugned order, a very reasonable likelihood exists that the petitioner would not get any justice at the hands of the Excise Commissioner. In such a scenario, justice would certainly not appear to have been done.

8. In *State of U.P. v. Mohammad Nooh* AIR 1958 SC 86, the Hon'ble Apex Court observed that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold scales of justice even. Therefore, in the present case, the Excise Commissioner would combine the role of a judge and a witness. Hence, it cannot be expected that Excise Commissioner would do complete and substantial justice to the petitioner.

9. Administrators, such as the Excise Commissioner and the District Excise Officer, being part of the Executive, are a facet of the State. A sacred relationship exists between the State and the people. It is the constitutional duty of the State to protect and promote the interest and rights of the people. It is the constitutional duty of the State to be fair, just and reasonable in its actions. In case, a person is convinced that for certain reasons there is unlikelihood of receiving justice at the hands of a particular public officer-in this case the Excise Commissioner-he would be justified in approaching an authority higher to the appropriate authority. Merely because the Excise Commissioner is authorised by the Act to hear an application against the order of District Excise Officer, in certain exceptional cases where the authorised officer himself is involved, the person would be justified in approaching an officer higher in rank-in the present case, the Board. After all, the laws are meant to facilitate, to ameliorate the life of people. Moreover, the laws are meant for doing justice to the people. A rigid insistence that the petitioner should approach the Excise Commissioner, would defeat the very purpose of justice. If, the authorised officer is himself/ herself involved in any action, justice would not be done to the aggrieved person. Thus, the insistence that the petitioner should have approached the Excise Commissioner and not the Board, is unsustainable. The the preliminary objections raised by Mr. R.B. Mathur are, therefore, rejected.

10. Mr. Sharma has contended that the letters issued by the Officer-in-charge of the exporting distillery at Madhya Pradesh, the report of Excise Inspector dated 27-11-2002, and the report of District Excise Officer dated 8-1-2003, clearly prove that the consignments under the five permits never left Madhya Pradesh and never entered Rajasthan. Yet the petitioner has been forced to pay excise

duty. Such a demand is absolutely arbitrary, unfair and unreasonable. Secondly, since Rs. 20.25 lacs have been recovered from the bank guarantee of the petitioner, the same should be refunded to the petitioner. In order to buttress this contention, the learned Counsel has relied on the case of State of Rajasthan v. Divisional Commissioner Jaipur 2001 1 W.L.C. 609.

11. On the other hand, Mr. R.B. Mathur, the learned Counsel for the Revenue, has strenuously argued that entire fault lies with the petitioner and not with the department. For, the petitioner did not produce the relevant documents prior to audit objection. Therefore, the department had no other option, but to raise the demand for recovery of Rs. 20.25 lacs. Secondly, that even during the proceedings, the petitioner was not in a position to submit the relevant documents. Thus, the department was clearly justified in invoking the bank guarantee. Thirdly, since the petitioner could not produce a copy of the letter dated 4-4-2002 before the Board, the learned Board was justified in dismissing the petitioner's appeal.

12. In rejoinder, Mr. Sharma has submitted that according to the Excise Commissioner, himself, the letter dated 4-4-2002 was a internal departmental correspondence, copy of which could not be given to the petitioner. Thus, the petitioner was not in a position to produce the same before the learned Board. Secondly, since the report of Excise Inspector and the District Excise Officer are clearly in favour of the petitioner, there is nothing in law that prevents the Excise Commissioner from reviewing his earlier order directing the District Excise Officer to refund the bank guarantee. In fact, and in the light of contention of both the parties, the department should have refunded the excise duty collected by invoking the bank guarantee. Lastly, the learned Counsel for the petitioner has prayed that since all relevant documents are now available with the department, the case can be remanded to Excise Commissioner for his decision.

13. Heard learned Counsel for the parties and perused the material available on record.

14. Relationship between the Excise department and the assessee is that of trust. Both the parties have to be equally fair to each other. While the department has the right and power to levy and collect excise duty, the assessee is equally duty bound to pay the excise duty. However, the power to levy and collect the excise duty must be exercised in a reasonable, just and fair manner. The power to levy a duty is not an unbridled power. Thus, the department cannot be permitted to act as an unruly horse. Considering the fact that the Officer-in-charge of the exporting distillery at Madhya Pradesh had sent all the relevant documents proving that five consignments under the five permits never left the State of Madhya Pradesh, considering the fact that the report prepared by the Excise Inspector, and the report of District Excise Officer are also in favour of the petitioner, the Excise Commissioner should have re-considered the entire matter. Since the goods of five consignments never entered the state of Rajasthan. Obviously, the department has collected the excise duty, while the department is

not entitled to collect such duty. Since the import duty has been charged without any import, clearly the charging and collection of duty is ultra vires the powers of Excise Commissioner.

15. In the case of the Divisional Commissioner Jaipur (supra), this Court was seized of a similar issue. In that case the respondent company obtained 52 import permits for importing IMFL from distilleries at Bihar, Goa, Hyderabad and Maharashtra. However, the goods could not be imported against those permits. Meanwhile the excise duty was charged. The Excise Officer of the said distilleries issued non-supply certificates. Therefore, the respondent company requested that the amount of duty be refunded. However, the Excise Commissioner refused to refund the amount. The respondent company therefore, preferred an appeal challenging the order of Excise Commissioner before the Divisional Commissioner. The Divisional Commissioner allowed the appeal and directed the State to adjust the amount against the future permits. Against the order of Divisional Commissioner, the State of Rajasthan filed writ petition before this Court. The writ petition was dismissed by the learned Single Judge vide order dated 18-9-2000. Therefore, a Special Appeal was filed before a Division Bench of this Court. The learned Division Bench of this Court observed as under:

Charging of import duty by the State of Rajasthan, without there being any import would be ultra vires to the powers of State of Rajasthan and without authority of law.

It further observed that:

Under Rule 24(2) of the Rajasthan Excise Rules, 1956, the Excise Commissioner is legally under obligation to refund the import duty.

16. Keeping in view the principles annunciated in the case of Divisional Commissioner Jaipur (supra), this Court has no hesitation in quashing and setting aside the impugned order dated 8-2-2002 and the order dated 12-4-2002. The respondents are directed to refund the amount Rs. 20.25 lacs to the petitioner along with interest at rate of 6% per annum from the date of filing the writ petition i.e. 20- 1-2004.

17. In the result, the writ petition is, hereby, allowed. There shall be no order as to costs.