

(2007) 01 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 34408 of 2001

Sree Balaji Enterprises Lessees: Bangalore Grape Winery (P) Ltd. APPELLANT

Vs

Excise Commissioner in Karnataka, The Joint Commissioner of Excise Distilleries and Breweries and The Deputy Superintendent of Excise Attached to Bangalore Grape Winery (P) Ltd. RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Karnataka Excise (Excise Duties and Fees) Rules, 1968 — Rule 2 (1) (b), 2 (2)
Karnataka Excise Act, 1965 — Section 22, 23

Citation : (2007) 117 ECC 31 : (2007) ECR 31 : (2007) 4 KCCR 2181

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Basavaprabhu S. Patil, for Basavaprabhu S. Patil and Associates, M. Vinayakeerthy, M.P. Subbaiah, D.N. Mamatha and D.N. Nanjunda Reddy, for the Appellant; M. Keshava Reddy, AGA, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petitioner is a firm which claims to be a lessee of one M/s. Bangalore Grape Winery [P] Limited and licence holder for manufacture of Indian made liquor in bulk. It appears using the licence, the petitioner manufactures such liquor and marks it under the brand name of products of M/s. Shaw Wallace & Company with whom they have an independent arrangement. The activity of manufacturing such liquor attracts liability for payment of duty under the provisions of the Karnataka Excise Act, 1965 [for short "the Act"] in terms of the provisions of Sections 22 and 23 of the Act. The petitioner is paying such duty on the quantum of liquor so manufactured and issued in the factory premises at No. 13, Green Fields, Bannerghatta Road, Bangalore - 560 029.

2. The present writ petition is regarding the dispute as to whether the petitioner was liable to pay duty in respect of certain quantum of such liquor which had

underwent some process and which according to the respondents had become portable and which had been stored in storage tanks but which were destroyed in fire due to an accident that took place in the factory premises as on 10-6-1997 and if so as to whether the petitioner was still liable to pay the excise duty at the rate applicable to the type of liquor that were stored in such storage tanks at the rate prevailing at the relevant point of time though they had not been issued.

3. It is because of this controversy, the petitioner has approached this Court for relief when the respondent-State sought to enforce the demand based on the liability for payment of duty in respect of the quantity that was stored in the storage tanks but which got destroyed in the fire accident that took place in the factory as on 10-6-1997. Some correspondences/communications emanating from the respondents also indicate that the quantum of such liquor which got destroyed had the details of names and quantity etc., as per the communication of the petitioner addressed to the Joint Commissioner in terms of Annexure-D dated 12-6-1997, details of which read as under:

DETAILS OF BLENDED IML LOSS:

Sl. No.

BRAND

TANK WISE BLEND

Tank No.

Quantity

01.

Haywards Fine Whisky

1

6042 B.L.

02.

Old Tavern Whisky

2

8294 B.L.

03.

V.S.O.P. Exshaw Brandy

3

13610 B.L.

04.

Golconda Brandy

4

5560 B.L.

05.

Gold Medal Whisky

5

12159 B.L.

06.

V.S.O.P. Exshaw Brandy

6

6658 B.L.

07.

-

7

Nil

08.

Golconda Brandy

8

625 B.L.

09.

Haywards Fine Whisky

9

1576 B.L.

10.

-

10

Nil

11.

-

11

Nil

12.

-

12

Nil

TOTAL BLEND

54,524 B.L.

4. So far as quantity of such liquor that got destroyed is concerned, it appears there is not much dispute between the parties, but the dispute relates to the liability for payment of duty on such quantity of liquor destroyed.

5. The respondents having admitted enforcing such liability in terms of the order/demand notice dated 23-9-2000 [copy at Annexure-J to the writ petition] calling upon the petitioner to remit the duty liability of Rs. 24,53,580/- on the premise that the petitioner having not taken proper care of the liquor and the carelessness of the petitioner having resulted in loss of this quantity of liquor in turn resulting in loss of revenue of this amount to the State, the petitioner was liable to pay that amount to the State; that though the total loss to the State in sales tax and excise duty was to the tune of Rs. 63,07,487/-, the liquor having been destroyed before the sale, the liability was only in respect of the manufacture of liquor and therefore the petitioner was being called upon to remit the amount of Rs. 24,53,580/-.

6. Petitioner disputing such liability had preferred an appeal to the Karnataka Appellate Tribunal, Bangalore, purporting to be an appeal in terms of the provisions of Section 61(3) of the Act. Unfortunately for the petitioner, the Appellate Tribunal being of the view that the appeal itself was not tenable, particularly, as no appeal is provided for u/s 61(3) of the Act in respect of the demand/order raised or passed by the Commissioner and the appeal having been dismissed in limine, the present writ petition mainly for getting over the liability in terms of the demand notice at Annexure-J.

7. Writ petition was admitted and respondents were put on notice as early as on 9-4-2002 and the matter had been heard on several occasions and in fact had been disposed of once and was restored to file and has come up for final hearing now.

8. Respondents are represented by Sri. M. Keshava Reddy, learned Additional Government Advocate. Respondents have also filed statement of objections.

9. Writ petition is opposed. It is essentially contended that manufacturing process of Indian made liquor was over by the time they were stored in the storage tanks and when they were destroyed in the fire accident; that the liability for excise duty is at the manufacturing point and the manufacturing of

Indian made liquor having been complete and the schedule to Rule-2 of the Karnataka Excise [Excise Duties & Fees) Rules, 1968 [for short "the rules") having indicated that such liquor is to be subjected to tax at the rate of Rs. 45/- for bulk litre, it is inevitable that this duty is payable by the petitioner who had manufactured the quantity of liquor which no doubt was destroyed in the fire accident; that it is not necessary that the petitioner should sell for the purpose of attracting the liability towards duty; that the fact that it got destroyed in the accident is also of no consequence for the creation of liability under, the Act; that it is not admitted that it was lost in the process of manufacture, but it got destroyed alter manufacture; that assuming there was such loss, the Government is in no way responsible for such loss in terms of Rule-18 of the Karnataka Excise [Distillery and Warehouse] Rules, 1967; that the rule makes it very clear that the Government will not be responsible for any destruction or loss or damage to any spirit stored in a distillery by fire or theft or for any other reason and when once the Government is not responsible for the accident that occurred due to fire, the petitioner is bound to pay the excise duty in terms of the demand; that the Government having incurred loss of this duty of Rs. 24,53,580/-, due to the fire accident that had occurred at the factory of the petitioner and due to possible negligence as the petitioner had not taken all care and precaution to prevent such accident, the petitioner was bound to make good this loss of revenue to the State; that the petitioner should pay the amount; that it is of no consequence that it had not been sold to a retail vendor or a consumer, that the mere fact that the duty is collected at the issue point cannot make any difference to the liability for payment of duty in terms of the charging section; that the law in this regard is very well settled; that the writ petition is without any merit and is liable to be dismissed.

10. I have heard Sri. Basavaprabhu S. Patil, learned Counsel for the petitioner and Sri. Keshava Reddy, learned Additional Government Advocate appearing for the respondent-State.

11. Though several grounds are urged in the writ petition, what is essentially contended by Sri. Patil, learned Counsel for the petitioner is that there is no liability on the petitioner for payment of any excise duty even in terms of the provisions of the charging section; that the charge is not complete till the goods manufactured are issued and assuming that it had passed the stage of manufacture having got destroyed before it was issued, the charge is not effectuated and therefore no liability arises for payment in terms of the demand notice and it is liable to be quashed.

12. Learned Counsel for the petitioner in this regard has drawn the attention of the court to the charging section - Section 22 of the Act, the manner of collection - Section 23 of the Act and Rule-2 of the rules providing for rate of duty etc.,.

13. Sections 22 and 23 of the Karnataka Excise Act, 1965 read as under

22. Excise duty or countervailing duty on excisable articles -

[1] An excise duty at such rate or rates as the State Government may prescribe, shall be levied on any excisable article manufactured or produced in the State under any licence or permit granted under this Act.

[2] A countervailing duty at such rate or rates as the State Government may prescribe shall be levied on any excisable article manufactured or produced in India outside the State and imported into the State under a licence or permit granted under this Act.

[3] The rates prescribed under Sub-sections (1) and (2) may be different for different kinds of excisable articles and may also be different when levied in the different ways specified in Section 23.

23. Ways of levying much duties-

Subject to such rules regulating the time, place and manner, as may be prescribed, excise duty and countervailing duty u/s 22 shall be levied in one or more of the following ways as may be prescribed, namely -

[a] rateably on the quantity of any excisable article produced in or manufactured in or issued from a distillery, brewery, manufactory or warehouse, or imported into the State.

[b] by fees on the quantity of excisable article imported by any person or received by any person when issued from a distillery, brewery, manufactory or warehouse, as the case may be.

Explanation: In this clause, "warehouse" includes a place where liquor is kept by a person selling liquor by wholesale]

(b) in the case of spirit or other liquor produced in any distillery established or any distillery, brewery or manufactory licensed under this Act, in accordance with its quality or strength, or in accordance with such scale of 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 may be prescribed;

(c) in the case of toddy, by tax on each tree from which toddy is drawn;

(d) by fees on licences in respect of the manufacture or sale of any excisable article.

14. Rule-2 of the Karnataka Excise [Excise duties and Fees] Rules, 1968 read as under:

Rule 2: Manner of levying Excise Duties-

An Excise duty or litre fee or both shall be levied on the excisable articles specified in Column 2 of the Schedules A and B hereto annexed at the rates specified in the corresponding entries in Column 3 thereof when such excisable articles are -

[a] xxx

[b] issued from any Distillery, Warehouse or other place of storage established or licensed in the State under any of the provisions of the Karnataka Excise Act, 1965;

Provided that no such duty shall be imposed on the excisable articles -

(i) Which have been imported into India and liable for such import duty under the Indian Tariff Act, 1934 [Central Act 32 of 1934] or the Customs Act, 1962 [Central Act 52 of 1962].

Or

(ii) Which have been previously imported, transported or manufactured on payment of [excise duty or litre fee or both] at rates not less than those specified in the schedules A and B.

15. Submission is that the charging provision should be strictly construed and should be given effect to only in the manner indicated therein and in no other manner and in terms of the charging section, the rate is to be provided by the State by prescribing the same and that it has been so prescribed in terms of the rules and Rule-2 in turn effectuates the charge only when the manufactured liquor is issued from any distillery or warehouse or other place of storage established or licenced in the State and it is only then the charge is complete at the rate as mentioned in schedule-A to the rules; that the charge is complete only at the issue point in terms of Section 22 of the Act read with Rule-2 of the rules and this event not having occurred, charge levied is incomplete and therefore there is no liability on the petitioner.

16. In support of such submission, learned Counsel would draw the attention of the court to an unreported Judgment of single Bench of this Court in the case of "United Breweries Ltd. and Anr. v. State of Karnataka and Anr. rendered on 4-2-1992 in W.P. No. 1024/1987 and submits that even in terms of the law laid down by this decision which was a decision rendered in the context of the very provisions of Section 22 of the Act read with Rule 2 of the rules, the court having concluded that there cannot be any liability created otherwise than in accordance with the statutory provisions, the demand notice at Annexure-J being not fully in consonance with the provisions of Section 22 of the Act read with Rule-2 of the rules, a demand of this nature is not enforceable and it should be quashed.

17. Reliance is also placed on the decision of the Supreme Court in the case of State of U.P. and Others Vs. Modi Distillery and Others, which was a decision rendered in the context of the provisions of the Uttar Pradesh Excise Act, 1910 and the rules framed thereunder and opining that even here any levy of duty cannot go beyond the scope of Entry-51 of List-II and if the rule is one which indicates a liability for payment of duty even beyond the scope of Entry-51, such duty cannot be sustained for want of legislative competence.

18. Learned Counsel for the petitioner has also placed reliance on yet another decision of the Supreme Court in the case of Deccan Sugar and Abkari Co. Ltd. Vs. Commissioner of Excise, A.P., and contends that unless a particular stage is reached as contemplated in terms of the charging section and the purpose for which the levy can be effectuated in the State laws, charge is not complete or cannot be given effect to; that even on the strength of this decision as charge was not complete before the liquor got destroyed, there is no liability on the part of the petitioner for payment of the duty under the demand etc.,.

19. It is also the submission of Sri. Patil, learned Counsel for the petitioner that the reference and reliance placed by the respondents to provisions of Rule-18 of the Karnataka Excise [Distillery and Warehouse] Rules, 1967 is of no significance particularly for making good the loss of duty suffered by the State on the premise that the liquor destroyed is the property of the State as the rules are not applicable to the present situation; that in the first instance, the liquor destroyed was not the property of the State and the law for payment of duty cannot be one by way of loss of revenue to the State but a demand raised which can be enforced if the liability had arisen and not otherwise; that assuming that it would have been loss to the State as in the event of liquor being not destroyed before being issued, the State would have collected such duty from the petitioner, that the demand in terms of Annexure-J cannot be enforced on that premise unless the liability had crystallised and the amount of duty had become payable.

20. Per Contra, Sri Keshava Reddy, learned Additional Government Advocate appearing for the respondents has very strongly urged that the demand in terms of Annexures-J & L is one which is sustainable; that the amount has been rightly demanded from the petitioner, that when once the manufacturing stage was over and the quantum of liquor manufactured was well known and the rate of duty at Rs. 45 for bulk litre having been indicated in schedule-A to Rule-2 of the rules, automatically the quantum of duty is determined in terms of Sections 22 and 23 of the Act read with Rule-2 and schedule-A to the rules and the duty amount called upon to be paid being such amount, there is no illegality in demanding such payment; that it is an amount which is to be paid by the petitioner and therefore the writ petition is to be dismissed.

21. Substantiating the contention what is urged by learned Government Advocate is that the provisions of Section 22 which is the charging section creates a charge in respect of liquor manufactured or produced; that the liability for payment of duty gets crystallised the moment the manufacturing takes place; that in the instant case, it had already taken place; that the rate of duty is also provided; that the mere fact under Clause (b) of Sub-clause (1) of Rule-2 of the rules, it is indicated that the excise duty shall be levied on excisable articles issued from any distillery cannot in any way detract from the liability once the liquor is manufactured; that it is only a mode of recovery of the duty as is indicated in Clause (b) of Sub-clause (1) of Rule-2 of the rules; that the recovery being at issue point is a question of convenience to the revenue and in terms of

the provisions of Section 23 of the Act, the mode and manner having been so prescribed; that the mere fact that the revenue finds it convenient to collect the duty at issue point does not in any way detract from the creation of the charge at the manufacturing point and therefore the amount demanded is in compliance with the statutory provisions.

22. Learned Additional Government Advocate in this regard submits that the provisions of Sections 22 and 23 of the Act themselves create a charge and it is only the rate of duty that is relegated to the rule by prescription and even without the provision of Clause (b) of Sub-rule (1) of Rule-2, rate being available at Rs. 45/- per bulk litre, the charge is complete with these ingredients being present and therefore the issue point cannot in any way be a factor in so far as creation of liability for payment of duty is concerned and there being no dispute or there cannot be any dispute about the manufacture and the rate of duty, the demand is only to be sustained.

23. It is also submitted in the alternative that in the matter of interpretation of the taxing statute, particularly, having regard to the object of the rule being one of raising revenue to the State, any interpretation should be to further the object of raising revenue and sustaining the revenue and cannot be one for relieving an assessee from the liability towards payment of tax or duty.

24. Learned Additional Government Advocate in this regard places reliance on the following decisions, namely,

[a] R.C. Jall Vs. Union of India (UOI),

[b] RE, Sea Customs Act [1878], Section 20(2) reported in AIR 1963 SC 1760

[c] Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah, .

25. It is also contended that the language of Rule-2 of the rules cannot be understood in the manner to either destroy the effect of the charging section or in any manner to reduce the rigor of the charging section; that it is only for furthering the object of the charging section and effectuating the charging section and if so by an understanding or by an interpretation of the rule a person cannot be relieved of the liability which has already been created even in terms of the charging section i.e., at the time of manufacture of the liquor and once the liquor had come into existence, the liability for payment of duty has arisen and crystallised and the rule cannot be understood or interpreted so as to relieve a tax payer from such liability.

26. Let me examine the rival pleadings and rival contentions in the light of the submissions made and decisions relied upon. In any taxing statute, the liability is in terms of the charging Section. It is only accordingly the liability can be enforced and in the manner as provided under the statutory provisions. Under the Act, the liability is created u/s 22 of the Act on the manufacture of any excisable article or same being produced in the state. The rates may be as

prescribed and this is done in terms of the Rules. Section 23 provides for the manner of levy. The language of Section 23 i.e. the heading "ways of levying such duties" is rather intriguing, to say the least. The manner of such levy which is made subject to the Rules regulating the time, place and manner, as prescribed under the Rules, yet again is as prescribed under Clause-(a) to Section 23 of the Act, which indicates that it can be ratably on the quantity of any excisable article produced in or manufactured in or issued from a distillery, brewery, manufactory or warehouse, or imported into the State etc., it should also be applied if the fees [called litre fees] on the quantity of excisable article imported, by any person or received by any person when issued from a distillery, manufactory or warehouse, as the case may be or in the Clauses (b), (c) and (d). Clauses-(b), (c) and (d) provide for such manner of levy in respect of different types of liquor having regard to the nature and the source of production. What is rather unintelligible is while the Section itself is made subject to such Rules regulating the time, place and the manner, the Section further provides for prescription of different manners in respect of different types of liquor etc.

27. The Rule which is one purporting to be for effectuating the provision of Sections 22, 23 and 66 of the Act, it should be understood as one both for the purpose of Sections 22 and 23 of the Act. While Section 22 is the charging Section, Section 23 indicates even as per the heading "ways of levying such duties", the Rule, which is noted above, again speaks of levy of duty on the excisable article specified in column (2) of the Schedule-A and B appended to the Rules, that the rates being specified in column (3) of the schedule and is further linked to the event of such excisable articles being issued from any distillery, warehouse and other places of storage in terms of the language of Clause-(b) of Sub-rule (1) o Rule 2 of the Rules. Whether it is for the purpose of Section 22 or 23, as there was no other rule indicating that to be separately for the purpose of each Section, this rule should be taken to be as one providing the manner of levy for the purposes of both Sections 22 and 23 of the Act.

28. Section 22 by itself does not complete the charge, as the rate of duty is not prescribed in the Section, but is as prescribed by the state government. It is for such prescription, the rule is framed and the rule also in turn links the levy to Clause-(b) of Sub-rule (1) of Rule 2 of the Rules i.e. the article manufactured, article issued from any distillery, warehouse or other place of storage established or licenced in the state under any of the provisions of the Act. Of course the rate is provided in the schedule, which is again a schedule to the Rules and not to the Act. In other words, the charging section will be complete only when it is read with Rule-2 and the schedule thereto and not otherwise. One cannot reach the schedule without going through Rule 2 and if Rule 2 is one supplementing the charging section for effectuating the charge, the manner of levy as prescribed under Rule 2 of the Rules cannot be ignored even for such purpose. The condition as stipulated in Clause-(b) of Sub-rule (1) of Rule 2 of the Rules is very much part of Rule 2 and is one which has to be necessarily taken into

consideration for completion of the charge. If one were to read the Section, Rule and the schedule together, the charge is complete only when the manufactured article is issued from any distillery or factory and not otherwise. For reasons best known to the law makers and the rule framers, the charging section is made operative only at the issue point and not at any time earlier, though if the rates should have been provided independent of Rule and with reference to Section 22 of the Act, by a prescription in this regard by the state government, the charging section could have been complete or effective even without the manner of the stage being reached in terms of Rule 2.

29. While the submission of the learned Counsel for the petitioner is on such lines and the decisions relied upon particularly the decision of this Court in the case of United Breweries Ltd. [supra] to some extent support this contention and interpretation of Rule (2) in the sense the charge can be complete only in terms of the language of Rule (2), the decision in fact only was on facts regarding the quantification of the article i.e. volume of liquor produced which was one determined in terms of the government notification, without any supporting provision under the Rule and such quantification of the quantity of liquor was found to be not sustainable. In the present case, while there is no dispute regarding the quantity, the dispute is with regard to the effectuation of the charge. Such dispute has not arisen in the case of United Breweries Ltd. [supra] and it is to be resolved on the question of the language of Section 22 read with Rule 2 to the extent that any action taken should be fully in compliance with the statutory provisions i.e. even Rule (2), the decision can be said to be valid and not beyond. The reliance placed by the learned Counsel for the petitioner on the decision of the Supreme Court in the case of Modi Distillery and Ors. [supra] while may not advance the case of the petitioner for the present purpose, as there is no dispute on the aspect of the competency of the legislature or point of levy if whether can be one which can have a bearing on the levy being on the manufacture of article at the stage when it has become potable or identified for other industrial use.

30. Even the decision of the Supreme Court in the case of Deccan Sugar & Abkari Co., Ltd. [supra] may not be of much assistance to the petitioner in the present case, as the question involved in the present case is not one regarding the competence of the legislature to levy excise duty, as it is not in dispute that the article which is sought to be subjected to duty is potable alcohol.

31. While there is force in the submission made by the learned Counsel for the petitioner that the levy in terms of Section 22 and with Rule 2(1)(b) of the Rules is not effectuated and therefore the demand in terms of Annexure-J is without legal support, let me examine the manner in which it is countered on behalf of the respondents by the learned Government Advocate.

32. Submission that in taxing statute, any understanding and interpretation of the provisions should be in the light of the object of the Act i.e. the revenue to the state and should be one for effectuating or achieving the object of raising

revenue and not for curtailing this object. While this is the general principle, it should be borne in mind that in interpreting any statute in the sense the provisions, should be understood in consonance with the object of the legislature and for the purpose for which the law is made. In so far as the creation of the liability under any taxing statute is concerned, it is squarely in terms of the charging section. Submission that the charging section should be so interpreted or understood as to give effect to the creation of the liability either on any principles of interpretation or for only raising revenue as it is a taxing provision cannot be per se accepted unless the charging section has achieved the object by itself. Further such a principle in so far as the charging section is concerned, it should be construed strictly and to the letter. There is no scope of any intendment in understanding this provision. There is no scope for any expansion or widening of the liability by implication or with a corollary nor any scope for relieving the burden or the extent of liability on equitable grounds or on ground of hardship etc., the understanding should be strictly in terms of the language of the section and if there is scope for interpretation, then it is one of creating strict liability and not beyond.

33. It is in this regard the decisions of the Supreme Court relied upon by the learned AGA in the case of R.C. Jall Parsi [supra] and in RE, Sea Customs Act [1878], Section 20(2) [supra] that throws some light. While it is a fact and the law that if a charge has already been created in terms of the charging section by the statutory provision, and the liability has arisen, subsequent development in any way cannot detract for absolving the person of such liability and is the principle declared in the case of R.C. Jall Parsi [supra] and by applying the principle of this decision, if the charge should have been complete on the manufacture of potable liquor, it could have been certainly relied upon even assuming that the recovery point had been postponed or deferred to a later stage and the demand in terms of Annexure-J could have been sustained. Unfortunately, I find that the charging section remained incomplete without the aid of Rule 2 and the schedule appended to the Rules. Section 22 remained incomplete without the rate being prescribed and the prescription of the rate again being linked to Rule (2) of the Rules i.e. the schedule itself being in the context of Rule (2), there is no escape from the language of Rule (2). Though the learned AGA would vehemently urge that the understanding of the Rule should not be to detract from the effect of the charging section in creating the liability, such argument could have been accepted if the charging section could have been effectuated independent of the Rules. Unfortunately, it is not so possibly for the purpose of Section 22 and there is no escape from the link into the provisions of Rule 2 for completing the charge. It is here that the rule of interpretation may come in if there was such a scope of eschewing any part and independently if Section 22 could have brought about the completion of the charge. Learned AGA would submit that that can be achieved by not taking into consideration the stipulation under Clause-(b) of Sub-rule (1) of Rule 2 of the Rules; that it is only the manner of levy and not the very levy itself and though the word "levy" is

used in the Rule, it is not levy under the Rule but the levy is really under the Section and therefore this part of the Rule can be kept apart and the Section effectuated by only reading that part of Clause-(b) of Sub-rule (1) of Rule 2 of the Rules with the schedule and once rate is known the charging Section 22 can be complete, the demand which is in consonance should be sustained.

34. I am afraid I cannot accept this argument for the reason that this will be clearly contrary to the very ruling of the Supreme Court, which in fact has been relied upon by the learned Government Advocate in the case of Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah, . If the submission of the learned Government Advocate is accepted, it is virtually rendering Clause-(b) of Sub-rule (1) of Rule 2 of the Rules otiose, which cannot be done. It is the settled principle of interpretation that the legislature cannot be presumed or to have used any unnecessary words or surplusage of words nor any provision was placed only to be taken to be as otiose.

35. If it is the language of Rule (2) of the Rules for supplementing the Section 22 of the Act in such a manner as to effectuating the charge only at the issue stage and not earlier. Just because in the given case it happened that the liability is not effectuated, the completion of the charge cannot be advanced contrary to the language of the statutory provisions to sustain the revenue to the state. A liability for taxing can be strictly in consonance with the charging Section and not in any manner and if the charging section fails to achieve the object by itself, the liability fails is the well settled principle of interpretation and understanding of a charging section in taxing statutes. In fact it is not as though the charging section fails in a situation in the present language of the Section 22 of the Act read with Rule 2 of the Rules, when a situation where it has not reached the stage of issue, the charge is not effectuated. It so happened in the present case i.e. even before this situation as even before the issue of manufactured liquor, it destroyed. If such is the language of the Section, the only inference that can be is such is the intendment and the legislature did not intend to effectuate the charging section even before.

36. It is for the legislature to choose its language and give effect to the same for the purpose of an enactment. It is not for the courts to rewrite or exclude any part of the statute only for the purpose of achieving the object of the Act. In fact the only situation where by a process of interpretation, a provision can be excluded, is if by such exclusion, the statute can be saved from the vice of any unconstitutionality. Such is not the situation in the present case and therefore the submission that the Clause-(b) of Sub-rule (1) of Rule 2 of the Rules should be excluded by a process of interpretation cannot be accepted.

37. Though the learned AGA had vehemently urged that Rule (2) of the Rules is only a procedural provision and for the purpose of the provision of Section 23 of the Act, as noticed earlier, there is no other rule which supplement Section 22 of the Act - the charging section - and for effectuating the charge. In fact it is only under this rule the rate of duty also being prescribed, it can be taken to be

forming part of the statutory scheme and cannot be merely characterized as a procedural provision. It is in fact more a substantial provision than a procedural provision, both for effectuating the charge as well as for determining the rate of duty.

38. If such is the significance of Rule (2) of the Rules, then the language of Rule (2) cannot be ignored, the charge is effectuated only in terms of the language of Rule 2 and if so, the charge is not complete till the article is issued and the levy in terms of the demand under Annexure-J being at a stage when the charge had not been effectuated cannot be sustained. It is for this reason that the demand in terms of Annexure-J is quashed by issuing a writ of certiorari.

39. Writ petition is accordingly allowed. Rule made absolute.

40. If any amount has already been recovered from the petitioner, pursuant to the demand under Annexure-J, the same to be refunded to the petitioner unless this amount can be adjusted against any other outstanding liability of the petitioner. The respondents are directed to intimate the petitioner the action taken in this regard to the petitioner within ten weeks from the date of receipt of a copy of this order.