(1965) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 348 of 1964

Tikamdas Nathirmal APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 02-03-1965

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 62
Madhya Pradesh Foreign Liquor Rules, 1996 — Rule 2, 4

Citation : AIR 1965 MP 271 : (1967) ILR (MP) 675 : (1967) ILR (MP) 668 : (1965) JLJ 571 : (1965) 10 MPLJ 423 : (1965) MPLJ 423

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : G.M. Chaphekar and P.D. Pathak, for the Appellant; B.J. Bhave, Government Advocate, for the Respondent

Judgement

Dixit, C.J.

The petitioner in this case, who runs a cafe at Indore, was granted under the Excise Act, 1915, and the Foreign Liquor Rules made thereunder (hereinafter referred to as the Act and the Rules), a licence in Form F.L. 3 for sale of foreign liquor for consumption on the premises for a period of one year from 1st April 1963 to 31st March 1964. At the time when the licence was issued on 1st April 1963 the Fee payable under Rule 11(iii) of the Rules was 0.37np. per quart bottle of malt, liquor and cider, and Re. 1.50 np. per quart bottle of foreign liquor other than mall liquor and eider brought on the licensed premises and was payable in advance on the date of the expiry of this licence on 31st March 1964 the petitioner had with him some undisposed of stock of foreign liquor which he had brought to his licensed premises under the licence. He obtained a fresh licence for a further period of one year commencing from 1st April 1964.

On 25th April 1964 a notification was issued by the Government in the exercise of its powers u/s 62(2), Clauses (a), (d), (g) and (h), amending in certain respects the Foreign Liquor Rules. By one of the amendments the scale of fees in respect of a licence in Form F.L. 3 prescribed by Rule 11(iii) was amended, and the fee payable under the amended Rule became Re. 1.10np. per quart bottle of mall liquor and cider, and Rs. 4.50np. per quart bottle of foreign liquor other than malt, liquor and cider, brought on the licensed premises Rule IV of the Rules was also amended by the addition of the following provision al the end of it: --

"The licensee shall be liable to pay the difference of fees per bottle on the balance of stocks of foreign liquor in the event of the enhancement of the scale of fees during the currency or on expiry of the licence."

These amendments were made effective as from 1st April 1964. Even before these amendments were notified, the Circle Inspector, Excise, Indore. addressed a communication to the petitioner on 1st April 1964 calling upon him to pay Rs. 4,324.15 np., said to be the difference of fees paid by him according to the old scale on the undisposed, of stock of foreign liquor on 31st March 1964 and the fee payable by him on that stock under the revised scale. The letter of the Circle Inspector was followed by another letter dated 6th April 1964 of the Excise. Sub-Inspector and a letter dated 18th April 1964 of the District Excise Officer. Indore, both asking the petitioner to deposit the amount of Rs 4,324 15np.

The applicant protested against this demand and ultimately on 1st June 1964 gave a notice of demand for justice to the opponents saying that his licence for the period from 1st April 1963 in 31st March 1964 having already come to an end and the fee in respect of stock brought by him on the licensed premises under that licence having already been paid by him, he was not liable to pay any further amount, whether under the revised scale of fees or otherwise. As the petitioner did not receive any reply to this notice of demand for justice, he filed this application under Articles 226 and 227 of the Constitution for declaration that the demand on him for the payment of Rs. 4,324.15 np was illegal and unauthorized and for the issue of a writ of certiorari for quashing the notices given to him by the Sub-Inspector and Circle Inspector of Excise and the District Excise Officer, Indore.

Shri Chaphekar, learned counsel appearing for the petitioner, contended that according to the Foreign Liquor Rides and the conditions embodied in Form F. L. 3 licence, the fee paid by the petitioner was the consideration for the licence for the year 1963-64; that the fee payable by him according to the old scale on the basis of the quantity of foreign liquor brought on the licensed premises having already been paid by him in advance and the licence having come to an end, a fresh demand for fees in respect of the liquor brought on the premises under the expired licence while it was current could not be made; that the conditions of the licence issued to him for the year 1963-64 did not provide for the payment of enhanced duty during its currency or after its expiry; and that the amendments made in Rules II and IV in April 1064 governed licences issued on and after lst April 1964 and not those which had been issued before that data for the previous years.

In reply, Shri Bhave, learned Government Advocate, submitted that the amendments made in Rules II and IV were retrospective so as to apply even to licences which had been issued for the year 1063-64: and that their operation was not confined to licences issued on or after 1st April 1964. It was said that a licence in Form F. L. 3 was issued to a person not only for stocking foreign liquor but also for selling it; and that as the undisposed of stock of foreign liquor which remained with the petitioner on 31st March 1964 was and would be disposed of under the fresh licence granted to the applicant on 1st April 1964, he was liable to pay the difference of fees paid by him on that stock under 1963-64 licence and that was payable by him according to the revised scale of fees.

Learned Government Advocate referred to Rule XXV of Part (C) ''General Licence Conditions'' of the Rules and submitted that under Clause (a) of that Rule a retail vendor obtaining a new licence for the same intoxicant on the expiry of the old licence was allowed to retain his balance of stock for the purposes of the new licence; and that the word "retain" as used in Clause (a) should be construed as implying that the balance of stock was brought again on the licensed premises for the purposes of the new licence. It was also said that when the balance of stock with the petitioner was checked on 31st March 1964 he gave an undertaking to pay the difference the next day and that it was on that undertaking that he was granted a fresh licence in Form F.L. 3 for the year commencing from 1st April 1964.

In our judgment, this application must be granted According to the Foreign Liquor Rules a licence in Form F. L. 3 is no doubt granted for the sale of foreign liquor at the licensed premises; but the fee payable in respect of the licence is not according to the quantity of foreign liquor sold during the currency of the licence but it is on the basis of the quantity of foreign liquor brought on the licensed premises. This is clear from Rule II(iii) and Rule IV which say that the fees payable on a licence in Form F. L. 3 shall be based on the quantify of foreign liquor brought on the licensed premises according to the scale of fees prescribed under that sub-rule; and that the fee shall be payable at the time of applying for a permit in the prescribed form as required by Rule VIII to bring foreign liquor on the licensed premises Form F. L. 3 specifically says in the very beginning that the licence in that form has been granted in consideration of the payment of fees payable by the licensee from time to lime according to the scale in the schedule given in the licence.

It is not disputed that the applicant had paid fully the fee payable by him in respect of foreign liquor brought by him on the licensed premises under the licence for the year 1963-64. The undisposed of stock which was left with him on 31st March 1964 was also brought by him on the licensed premises after paying the requisite duty. The licence in Form F.L. 3, which was issued to the applicant for the year 1963-64, did not contain any condition that if during the currency of the licence or even after its expiry the fees payable by him in respect of foreign liquor brought on the licensed premises under that licence were enhanced, then he would be liable to pay the difference in the fees on the entire stock of foreign liquor brought on the licensed premises during the year 1963-64 or on the undisposed stock left with him on 31st March 1964. That being so, under Rules II and IV as they stood till the expiry of the petitioners licence for the year 1963-64 and under the conditions of that licence, there was no liability whatsoever on the applicant to pay fees at rules other than the original rates on the quantity of foreign liquor brought by him on the licensed premises on that licence, whether that quantity was consumed or remained undisposed of till 31st March 1964.

The demand that is now being made on the petitioner for the payment of Rs. 4,324. 15 np. as the difference-fee in respect of the undisposed of stock is on the basis of amendments effected in Rules II and IV in April 1964. The notification with regard to the amendments was actually issued on 25th April 1964, and the amendments were made effective as from 1st April 1964. It is, however, not clear as to how even before the issue of the notification the excise authorities called upon the petitioner to pay the deficit fee on the undisposed stock. Be that as it may, the amended Rule IV has clearly no applicability to licences issued before 1st April 1964 and which had already expired on 31st March 1964. As the amendment be came operative from 1st April 1964, the plain grammatical construction of the amendment incorporated in Rule IV is that only those licensees to whom licences are issued after 1st April 1964 shall be liable to pay the difference of tees per bottle on the balance of stock of foreign liquor in the event of an enhancement of the scale of fees during the currency or on the expiry of the licences granted on or after 1st April 1964.

In the amendment incorporated in Rule IV no words or expressions are to he found giving the amendment a retrospective effect so as to make applicable the amended provision even to licences in Form F. L. 3 granted before 1st April 1964. It is a settled Rule of construction that retrospective effect to a statutory provision cannot be given unless there is a clear provision to that effect in it or unless the effect is a necessary implication of the provision. This Rule has to be strictly observed while construing fiscal provisions which, as pointed out by a Full Bench in Empress Mills, Nagpur v. Municipal Committee Wardha AIR 1950 Nag 169: ILR (1950) Nag 403 (FB), must be construed strictly. In that case the Rule about strict construction of fiscal statutes has been explained thus;

"This strict construction means only this much that if the words construed reasonably create a liability it is not for the Courts to determine the wisdom of the enactment but if the words do not indicate the liability of the subject, the tax must be disallowed. This does not mean that the words of the Act must be attained one way or the other, either to create a liability or to furnish a chance of escape or the means of evading the tax. All doubts must be resolved in favour of the subject, and in cases of ambiguity of the language a construction which in beneficial to the subject is to be favoured. Before, however, the Courts will hold that a liability to pay the tax exists, the language of the statute must he found to impose clearly and unambiguously the obligation''''.

The mere use of the expression "on the balance of stocks of foreign liquor" in the amended Rule IV does not at all carry the implication that the amendment applies also to the balance of stocks held under licences which expired before 1st April 1964. The balance of stock referred to in the amended Rule meant the balance of stock obtained by a person under a licence issued to him on or after 1st April 1964, as existing on the date of the enhancement of the scale of fees, whether during the currency or after the expiry of the licence. As the revised scale of fees notified on 26th April 1964 came into force from 1st April 1964 and the amendment made in Rule IV also became operative from that date, there would, of course, be no question of a person to whom a licence is issued on or after 1st April 1964 being called upon to pay the "difference of fees" on any balance of stocks. This is because such a licensee is liable to pay fees at the revised scale on all foreign liquor brought by him on his licensed premises.

But from the fact that in the case of persons to whom licences are issued on or after 1st April 1964 the occasion for requiring them to pay any "difference of fees" on the balance of stock so long as the revised scale of fees which came into force from 1st April 1964 stands can never arise, it does not follow that the expression '''"balance of stocks" used in Rule IV refers to the balance of stock which the licensees for the period to 1st April 1964 held on 31st March 1964. As the amendments in Rule II with regard to enhancement of scale of fees and in Rule IV both came into force from 1st April 1964, it is obvious that the "enhancement" spoken of in the amended Rule IV means the enhancement of fees subsequent to 1st April 1964. It does not include the enhancement made on 1st April 1964 itself: and on that construction it is clear enough they the amended Rule IV has no applicability whatsoever to licensees who had any balance of stock of foreign liquor on 31st March 1964 out of the stock obtained by them under licences issued to them before 1st April 1964.

The argument at the learned Government Advocate resting on Clause (a) at Rule XXV of Part (c) "General Licence Conditions" of the Rules is untenable. That clause says that

"If the retail vendor has obtained a new licence for the same intoxicant which is to come into force immediately on the expiry of the old licence and is granted for the same premises, he may retain his balance of stock for the purposes of the new licence".

The purpose of this clause clearly is to permit the balance of stock held by a retail vendor to be sold by him under the authority of the new licence issued to him. That clause does not say anything it about the payment of a further fee on any balance of stock; and as fees under Rule II(iii) of the Foreign Liquor Rules are levied on the basis of the quantity of foreign liquor brought on the licensed premises and not on the basis of the quantity of foreign liquor sold under the authority of a licence, the sale of the balance of stock under the authority of a new licence cannot give any right to the Government to demand further fees from the licenses in respect of the balance of stock he held on the date of the expiry of his old licence.

The plain connotation of the word "retain" is to keep something which one already has. If under a licence a licensee has brought Io his licensed premises a certain quantity of foreign liquor and if on the expiry of that licence he is granted a new licence and is allowed to keep with him the balance of undisposed of stock as existing on the date of the expiry of the old licence, then there is no fresh "bringing of the undisposed of stock on the licensed premises'''' under the new licence. The argument of the learned Government Advocate that the word "retain" as used in Clause (a) should be construed as meaning that the balance of stock is brought again on the licensed premises under the new licence is really an attempt to stretch and strain the language of Clause (a) of Rule XXV and the meaning of the word "retain" upon a procrustean bed in order to make the amended Rule IV of the Foreign Liquor Rules apply to the balance of stocks held by persons to whom licences had been issued before 1st April 1964 when on no possible construction that Rule can he applied to them.

The further argument of the learned Government Advocate that on 31st March 1964 when the balance of stock held by the petitioner under the licence which expired on that date was checked, he gave an undertaking that he would pay the next day the extra fee which he may be required to pay on the balance of stock according to the revised scale of fees and that it was on this undertaking that a fresh licence was issued to him on 1st April 1964 can afford no justification to the opponents to make a demand on the applicant to pay an amount of Rs. 4,324.15np. If any such undertaking was given by the applicant, if was on the presupposition that the Government would obtain statutory sanction for making it obligatory for all licensees whose licences expired an 31st March 1964 and who held some undisposed stork, to pay on that stock the difference between the fees already paid by them according to the scale of fees as existing till 31st March 1964 and the fees payable on that stock under the revised scale which came into force an 1st April 1964. As we have already endeavoured to point out, that sanction has not been given to the opponents by the amended Rule IV. In the absence of such a legal sanction, a bare undertaking given by the petitioner to pay the "difference" can be of no avail.

For all these reasons, our conclusion is that the amended Rule IV has no applicability whatsoever to the balance of stocks held by licensees whose licences bad expired on 31st March 1964; and consequently the demand made on the petitioner for the payment of Rs. 4324.15np on the undisposed stock held by him on 31st March 1964 is altogether unwarranted. The notices issued to him by the Sub-Inspector. Excise, Circle-Inspector, Excise, and the District Excise Officer for the payment of this amount are, therefore, quashed. The petitioner shall have costs of this application. Counsel''s fee is fixed at Rs. 150/-. The outstanding amount of the security deposit shall be refunded to the petitioner.

