

(1990) 05 CAL CK 0027
In the Calcutta High Court
Case No : C.R. No. 11578 (W) of 1980

Trade Links Pvt. Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 30-05-1990

Acts Referred:

West Bengal Excise (Foreign Liquor Licence Fee) Rules, 1941 — Rule 147, 225, 28, 3, 3A

Citation : (1993) 65 ELT 484

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : D.K. Dhar, for the Appellant; B.S. Bagchi and Prasanta K. Banerjee, for the Respondent

Judgement

Susanta Chatterjee, J.—The present Rule was issued on 18-11-1980 at the instance of the writ petitioner Trade Links Private Limited, a Company registered under the Companies Act, 1956 and the petitioner No. 2 as the Depot Manager of the petitioner praying inter alia, for an appropriate writ of mandamus commanding the respondents to withdraw, cancel and/or set aside the purported explanation to the notification dated March 20, 1980, the notices dated April 9, 1980, April 29, 1980, May 28, 1980 and October 28, 1980 and for declaration that no duty is payable in respect of the stock of I.M.F.L. and Beer lying with the petitioner as on April 1, 1980 and other consequential reliefs by way of restraining the respondents from levying and/or collecting any duty under the Bengal Excise Act, 1909 on the stock of I.M.F.L. and Beer. It is stated in detail that the petitioner No. 1 company received a purported notice from the Collector of Excise, Calcutta, whereby the petitioner company was directed to pay a sum of Rs. 1,69,335.47 p., being the difference of the duty alleged to be payable on the penal stock of I.M.F.L. as on April 1, 1980. It is alleged that the said notice further demanded duty on any left out quantity of I.M.F.L. on which difference of duty is payable and has not been included in the original claim. The petitioner No. 1 is alleged to have received a further notice dated April 29, 1980 by which

the respondent No. 1 asked the petitioner No. 1 to appear before him in his office and in reply thereto the petitioner No. 1 has informed that the demand raised in the aforesaid Memo is hit by the ruling of the Supreme Court of India in the case of Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise, Bihar and Others, Thereafter, another letter dated May 28, 1980 has been received by the petitioner No. 1 informing it, inter alia, that the said demand was in accordance with law and the petitioner was asked to pay the dues within three days from the date of receipt of the notice. Consequently, the petitioners being aggrieved thereby have come to this Court to seek the reliefs as indicated above on the ground that the explanation in the said purported notification and the purported notices seeking to recover higher rate of duty on the stock of I.M.F.L. and Beer from the petitioners is without jurisdiction and/or is in excess of jurisdiction and/or authority of law.

2. Mr. Dhar, learned Advocate for the writ petitioners has submitted that the Act authorises the State Government to impose duty at such rate or rates on any excisable article imported or exported or transported and/or manufactured and a licensee is required to pay appropriate duty on excisable articles on the date of manufacture or import or export or transport thereof. The purported Explanation seeking to recover higher rate of duty on the stock of I.M.F.L. and Beer which have been removed after payment of proper duty thereon is illegal and without authority of law.

3. In support of the contention of the petitioners, learned Advocate for the petitioners has drawn the attention of the Court to the decision (supra). He has in particular drawn the Court's attention to paragraph 5 of the said decision. Paragraph 5 is quoted hereinbelow :

"Section 28, however, is subject to any rules that may be made by the Board of Revenue, Bihar, u/s 90, Clause (12). The State of Bihar seeks to justify the levy of the enhanced duty on the stock of imported foreign liquor lying with the petitioner on November 1, 1967 under the proviso to Rule 147 framed by the Board of Revenue. That Rule is as follows :

147. The duty imposed on :

(i) Foreign liquor and country spirit

(a) imported under bond, or

(b) manufactured in a distillery, and stored in a distillery or excise warehouse.

(ii) Ganja and Bhang :

(a) imported under bond, or

(b) stored in an excise warehouse,

shall be paid before removal from the distillery or excise warehouse unless a bond has been executed for such payment :

Provided that in case of any revision in the rate of duty on an excisable article, the difference of duty shall be realised from or credited to the licensee, to whom such article has been issued on payment of duty prior to such revision, according as the revised rate of duty is higher or lower than the old rate and the calculation of the difference of duty shall be made on the quantity of such article that may remain in possession of such licensee when the revised rate of duty comes into force."

4. The main part of Rule 147 applies to foreign liquor imported under bond which, as already stated, is kept in an excise warehouse established under the Act. It provides that the duties imposed on foreign liquor imported under bond shall be paid before removal from the excise warehouse unless a bond has been executed for such payment. Under the proviso to Rule 147 in case of any revision of the rate of duty on an excisable article, the licensee to whom the article has been issued on payment of duty prior to such revision is liable to pay the difference of duty on the quantity of such article that may remain in his possession when the revised rate of duty comes into force. The proviso must be construed with reference to the main part of the Rule. A close scrutiny of the Rule reveals that the main part and the proviso deal with the same subject matter. The expression "an excisable article" in the proviso means foreign liquor imported under bond and other articles on which duty is payable before removal from the excise warehouse or distillery where they are kept. It is for this reason that under the proviso the difference of duty is realised from or credited to the licensee to whom the article has been issued from the excise warehouse or distillery on payment of duty prior to such revision. The proviso does not apply to all imported foreign liquor. It applies only to foreign liquor imported under bond, that is to say, foreign liquor on which duty has been levied u/s 28(a)(ii) by payment upon issue for sale from an excise warehouse. It does not apply for foreign liquor not imported under bond upon which duty has been levied u/s 28. The petitioner's foreign liquor was not imported under bond. The petitioner is not, therefore, liable to pay under the proviso to Rule 147 the difference of duty in respect of its stock of foreign liquor on November 1, 1967. The demand for payment of the difference of duty in respect of this stock is not authorised by the Act or the proviso to Rule 147.

5. Learned Advocate for the petitioners has further drawn the Court's attention to another decision of the Supreme Court in the case of *Bimal Chandra Banerjee v. State of Madhya Pradesh* reported in AIR 1971 S.C.P. 517.

6. The Rule is opposed by the contesting State respondents and Mr. Bagchi, learned Advocate appearing on their behalf has submitted, inter alia, that the petitioners cannot maintain the present writ petition and the same is thoroughly misconceived inasmuch as there is no fundamental right to run the liquor business. At best it is a licensee and against the State actions, the petitioners cannot have any grievance, far from seeking remedies in the Writ Court.

7. Having heard the learned Advocates for both the sides, at length, this Court

has to decide as to whether impugned Explanation is justified or not in law or whether the same is contrary to and/or inconsistent with the provisions of law. The State is expected to exercise the acts not capriciously and whimsically. The State actions must be lawful and justified. It is to be seen that any person affected or hit by any unlawful act is certainly entitled to come to the Writ Court to seek remedies. In the present case, looking at the Explanation, this Court finds there is observation that notwithstanding anything contained in Rule 225 of the Rules published Notification No. 61 S.R. dated the 30th March, 1915 as amended, the holder of any licence mentioned in Rules 3, 3A, 4, 4A and 6A of the Excise (Foreign Liquor Licence Fee) Rules, 1941, as amended shall pay duty on the stock of foreign liquor as may be held by him as opening stock on 1-4-1980 at the rates mentioned hereinabove less duty already charged on the said stock of foreign liquor.

8. The grievance is against the aforesaid Explanation. Looking to the case of Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise, Bihar and Others, it appears that Section 28, however, is subject to any rules that may be made by the Board of Revenue, Bihar u/s 29, Clause (12). The State of Bihar seeks to justify the levy of the enhanced duty on the stock of imported foreign liquor lying with the petitioner on November 1, 1967 under the proviso to Rule 147 framed by the Board of Revenue. The Supreme Court found that even under the scope of the Rules, the steps taken by the State of Bihar on January 3, 1968 must be quashed. By looking further to the decision reported in 1971 S.C. 517 (supra) it has been found that no tax can be imposed by any Bye-law or Rule or Regulation unless the Statute under which the subordinate legislation is made specially to authorise the imposition even if it is assumed that the power to tax can be deleted in the executive. The basis of the statutory power conferred by the Statute cannot be transgressed by the rule making authority. The rule making authority has no plenary power. It has to act within the limits of the power granted to it.

9. With great anxieties, this Court has considered the submissions made by the learned Advocate for the writ petitioners and the Explanation given by the learned Advocate for the respondents State.

10. Considering the materials on record and looking to the principle of law, this Court is of the clear view that when there is no rule any executive action, taken beyond the scope of the rule is bad in law. There, the Court would be justified in striking out the steps taken by the authorities as done in the case of Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise, Bihar and Others, It is also clear that where there is no Rule at all, the State Authority cannot act in a manner which is otherwise unwarranted in law. In the instant case, there is already a Rule and by the Explanation it was made clear that there can be imposition on the stock of I.M.E.L. and Beer on the relevant date as on 1st April, 1980. Such Explanation and/or the acts done and/or caused to have been done do not appear to be contrary to and/or inconsistent with the provisions of the

main Act and the existing Rules. The Explanation is well within the scope of the Act and Rule and thus the Explanation cannot be treated as an act beyond the law and the petitioner can ask for striking it down. Thus finding no merit in the writ petition, this Court is not inclined to interfere in the matter. For the foregoing reasons, the Rule is discharged, all interim orders if any, are vacated. There will be no order as to costs.

11. There will be stay of operation of this order for a period of a fortnight from date. [C.R. No. 10344(W) of 1980, 8542(W) of 1980, 8543(W) of 1980 and 8388(W) of 1980.]

12. As the ratio of the above decision is applicable to the present cases, which were heard analogously with the consent of the parties, and for the same reasons as stated above, the present Rules are also discharged, interim orders, if any, are vacated. There will be no order for costs.

13. There will be stay of operation of the orders for a period of fortnight from date.