(1968) 01 KL CK 0006

In the High Court Of Kerala

Case No : Original Petition No. 718 of 1966

Trinity Pharmaceuticals (India) Pvt. Ltd., Trichur APPELLANT

Vs

Secretary, Board of Revenue (Excise), Trivandrum and Others RESPONDENT

Date of Decision : 09-01-1968

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2

Citation : AIR 1969 Ker 124

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Advocate : K.V. Surianarayana Iyer, V. Bhaskaran Nambiar, C.R. Natarajan and M.K. Ananthakrishnan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

M.U. Isaac, J.—This case arises under the Medicinal and Toilet Preparations (Excise Duties) Act 1955, (hereinafter referred to as the Act). The Act provides for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic. Section 3 of the Act contains the charging provision. It reads:

"3. Duties of Excise to be levied and collected on certain goods.-- (1) There shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable-

(a) Where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded-warehouse for home consumption, whether such State is the State of manufacture or not;

(b) Whether the dutiable goods are not manufactured in bond, in the State in which such goods are manufactured,

(3) Subject to the other provisions contained in this Act, the duties aforesaid

shall be collected in such manner as may be prescribed.

Explanation.-- Dutiable goods are said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods."

The Schedule in the Act has been amended from time to time; and what applies to this case is Item No. 2 in the Schedule substituted by the Finance Act, 5 of 1964. This item reads as follows: (For Item see next page)

2. The petitioner is a manufacturer of an Ayurvedic Preparation called "protovine". Admittedly it contains self-generated alcohol; and alcohol is also added to it as preservative. Protovine is manufactured out of bonds. Where a medicinal preparation is manufactured out of bonds, the rectified spirit required for its manufacture is obtained by the manufacturer in accordance with the Medicinal and Toilet Preparations (Excise Duties) Rules 1956 (hereinafter referred to as the Rules) from the distillery on payment of its price and the duty payable thereon. Thus the duty payable on protovine in respect of the alcohol added to it has been levied and recovered by the State Government in accordance with the Act and the Rules. Subsequently a controversy arose whether the petitioner is liable to pay duty on the said preparation in respect of the self-generated alcohol also.

The Board of Revenue took the view that "protovine" falls under Item No. 2 (iii) in the schedule to the Act, and that the duty payable thereon is on the quantity of alcohol found in the preparation, and not added to the preparation. Accordingly, the Excise Department made an analysis of the preparation, determined the quantity of self-generated alcohol therein, by deducting the added alcohol from the total alcoholic content as found on analysis, and demanded the petitioner to pay duty on the said preparation also in respect of the self-generated alcohol. Ext. P-7 dated 28-1-1966 is a memorandum issued by the Secretary of the Board of Revenue, communicating the above decision of the Board to the petitioner, Thereupon the petitioner filed this Original Petition to quash Ext. P-7; and it has prayed for the issue of a writ of mandamus or prohibition to the respondents forbearing or restraining them from imposing or collecting any duty on "protovine", not only in respect of the quantity of self-generated alcohol therein, but also from collecting any duty thereon.

Item No.

Description of dutiable goods.

Rate of duty.

2.

Medicinal Preparations Medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicine ?

(i) Medicinal preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages.

Nil

(ii) Medicinal preparations containing self-generated alcohol which are capable of being consumed as ordinary alcoholic beverages.

Thirty-eight naye paise per litre of the strength of London proof spirit.

(iii) All others containing alcohol which are prepared by distillation or to which alcohol has been added.

Rupees fifteen and fifty naye paise per litre of the strength of London proof spirit.

(iv) Medicinal preparations not containing alcohol but containing opium, Indian hemp, or other narcotic drug or narcotic. ....

Ten per cent ad valorem.

3. The question raised in this case is one of first impression. Protovine is admittedly "not capable of being consumed as ordinary alcoholic beverage"; and it contains "self-generated alcohol". The petitioner''s learned Counsel, therefore, contended that it falls under Clause (i) of Item 2 of the Schedule in the Act, and that the duty is nil. On the other hand, the learned Government Pleader, appearing for the respondents, contended that medicinal preparations falling under Item 2 are divided into two categories, namely (i) those containing self-generated alcohol and (ii) those which are prepared by distillation and containing alcohol or to which alcohol is added.

Medicinal preparations mentioned in Clauses (i) and (ii) of Item 2 fall under the first category; and all others fall under the second category. According to him, the first category relates to medicinal preparations containing self-generated alcohol only; and a medicinal preparation to which alcohol is added falls under the second category. The learned Government Pleader submitted that protovine, being a preparation "to which alcohol has been added", falls under Clause (iii) of Item 2, and duty is payable thereon at Rs. 15.50 per litre of the strength of London proof spirit.

4. Clause (iii) of Item 2 in the schedule of the Act relates to:--

"All others containing alcohol which are prepared by distillation or to which alcohol has been added."

It is common case that "all others" means medicinal preparations which do not fall under Clause (i) or Clause (ii) of Item 2. Shri K. V. Suryanarayana Iyer, the learned Counsel for the petitioner, submitted that protovine, being a medicinal preparation containing self-generated alcohol and to which alcohol has been added, cannot fall under Clause (iii) of Item 2. In other words, the argument is this: Protovine, without alcohol being added to it, is admittedly a medicinal preparation falling under Clause (i) of Item 2. Clause (iii) of Item 2 deals with "all others", namely all other medicinal preparations not dealt with in Clauses (i) and (ii), and which satisfy the further requirements of Clause (iii).

As protovine falls under Clause (i), it cannot fall under Clause (iii), by alcohol being added to it. According to the learned Counsel, it would still fall under Clause (i); or it would not fall under any item in the schedule; and in other case, it is not liable to duty. This contention has considerable force on a plain reading of Clauses (i) to (iii) of Item 2 in the schedule; and it is quite a plausible construction. But such a construction would not be consistent with the legislature intent of the Act, and would lead to an absurd result. If Shri Suryanarayana Iyer''s contention is accepted, it would follow that a medicinal preparation containing self-generated alcohol and falling under Clause (i) of Item 2 would not be liable to duty, and that such preparation falling under Clause (ii) of Item 2 would be liable only to a very small rate of duty, whatever may be the quantity of added alcohol in it; whereas, if it does not contain self-generated alcohol, it would fall under Item 2 (iii) and be liable to the high rate of duty chargeable thereunder on the basis of the quantity of alcohol added to it

That means that the presence of self-generated alcohol, however small it may be, would create all the difference. I, can find no sense in such a classification; and I have no doubt that it was not the legislative intent. On the other hand, the object of the Act was to levy a duty on medicinal preparations containing alcohol. It is also clear from the rate of duty fixed in the schedule that the Legislature fixed a very high rate of duty on medicinal preparations containing alcohol, which are prepared by distillation as well as medicinal preparations to which alcohol has been added. I am, therefore, constrained to Interpret the expression "all others" in Clause (iii) of Item No. 2 as meaning "all medicinal preparations". I do not read Clause (iii) as a residuary clause, in the sense a medicinal preparation which falls under Clause (i) or Clause (ii) would not fall under Clause (iii). Such a construction would not be one consistent with the legislative intent.

This leads me to the conclusion that "protovine" falls under Clause (iii) of Item 2 in the schedule, and it is liable to duty at Rs. 15.50 per litre of the strength of London proof spirit, though without alcohol being added to it, it would have fallen under Clause (i), and the duty would have been nil.

5. The controversy, whether in respect of a medicinal preparation, to which alcohol has been added and which consequently falls under Clause (iii) of Item 2 in the schedule to the Act, is liable to duty only on the alcohol added to it or on the alcohol found in the preparation, now remains for consideration. It appears to me on a reading of the above Clause that the duty payable on a preparation made by distillation and containing alcohol is on the quantity of alcohol contained therein, whereas the duty payable on a preparation to which alcohol has been added is on the quantity of alcohol added thereto.

Similarly, the duty payable under Clause (ii) of Item 2 will be on the quantity of self-generated alcohol contained in the preparation. It, therefore, follows that protovine is liable to duty only on the quantity of alcohol added to it, and not on the Quantity of alcohol found therein. Nothing has been pointed out to me either from the language of the Act or the Rules to justify the contention of the respondents that duty payable on a medicinal preparation to which alcohol has been added is on its total alcoholic content, and not on the quantity of alcohol added to it.

The result of giving effect to such a contention would be to levy a high rate of duty fixed under Clause (iii) of Item 2 on a medicinal preparation containing self-generated alcohol as well as added alcohol, on the basis of the total quantity of alcohol therein, however small may be the quantity of the added alcohol, even though the said preparation without this small quantity of alcohol added to it, would fall under Clause (i) of Item 2, and would be completely exempt from duty in respect of the self-generated alcohol. There is no justification for construing Clause (iii) in Item 2 in such a way; and it can hardly be the legislative intention.

6. In the result, I quash Ext. P-7, and prohibit the respondents from levying or collecting any duty on protovine except in respect of the alcohol added to it. In other words, the respondent will not be entitled to levy a duty also on the basis of the self-generated alcohol contained in the said preparation. The parties will bear their own costs.