

(1996) 01 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No"s. 6741 of 1993, 8025 of 1994 and 629 of 1995

United Distillers Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 17, 27, 28, 29, 38
Bihar and Orissa Excise Rules, 1919 — Rule 106A, 11, 11A, 12, 13
Constitution of India, 1950 — Article 14, 143, 19(1), 301

Citation : (1996) 2 PLJR 438

Hon'ble Judges : D.P. Wadhwa, C.J;B.N. Agrawal, J

Bench : Division Bench

Advocate : G.P. Bimal and Gita Verma, for the Appellant; Rameshwar Pd. and S.J. Rahman, for the Respondent

Judgement

D.P. Wadhwa, C.J.—In these three applications parties are same and same law point has been raised. We may, therefore, refer to C.W.J.C. No. 8025 of 1994 for the purpose of decision of these writ applications.

2. The Petitioner, a distillery manufacturing India made foreign liquor and whisky under various licences issued under the Bihar Excise Act (for short "the Act") has filed this writ application seeking a writ/order/direction for quashing the order dated 11.12.1993 passed by the Superintendent of Excise directing payment of Rs. 17,314.65 on account of transit wastage of India made foreign liquor (for short "IMFL") exported during the year 1992-93 and for striking down Rule 33 of the Rules framed by the Board of Revenue u/s 90 of the Act as promulgated by Notification No. 23-137-2 dated 29.4.1919 being ultra vires Articles 14, 19(1)(d) and 301 of the Constitution of India. In Anr. writ application, being C.W.J.C. No. 629 of 1995, the demand is of Rs. 66924.90. Rule 33 of the Rules In relevant part is as under:

33(1) An allowance at a rate not exceeding in any case, the appropriate maximum specified in the following scales, shall be made for the loss in transit

by leakage or evaporation of spirit which is transported or exported under bond by land:

Maximum quantities of allowance For conveyance in metal vessels only

- (a) For a journey of not greater duration than five days. 0.5 percent.
- (b) For a journey of duration exceeding five days but not exceeding ten days. 0.1 percent per day of the journey.
- (c) For a journey of duration exceeding ten days. 1.0 percent

3. Thus Rule 33 provides for allowance at the rate not exceeding appropriate maximum specified in the scales for the loss in transit by leakage or evaporation of spirit which is transported or exported under bond but only when spirit is transported in container made of metal only and not of glass like glass bottles. Under Sub-rule (4) it is provided that when duty is levied on any deficiency occurring in transit, it shall be realised by the Collector of the District in which the distillery or the warehouse from which the spirit was sent, is situated. In the whole body of the application, the Petitioner has not stated to which State it had exported IMFL or the container in which it was sent. We have already upheld the validity of Rule 33 in the decision in the case of S.K.G. Sugar Ltd. Ltd. v. The State of Bihar and Ors. (C.W.J.C. No. 9405 of 1993 decided on December 22, 1995).

4. It is the admitted case that the Petitioner exported IMFL after executing a bond in Form No. 158 as prescribed under the Act by the Board of Revenue in exercise of powers under the Act. The Form No. 158 is as under:

FORM No. 158 General Bond for Import, Export and Transport Excisable Articles without Payment of Duty.

Know ALL MEN BY THESE PRESENTS that I/we of.....am/are held and firmly bound unto the Governor of Bihar are jointly and severally (which expression shall where the context so admits, include his successors in office or assigns) in the sum of rupees to be paid to the said Governor of Bihar for which payment well and truly to be made I/we bind myself/ourself and each we jointly and severally ourselves and each of us binds himself and every one of my/our respective legal representatives.

Dated this.....day of..... Signed.....

Whereas the above bounden has/have been permitted to import/export/transport from time to time an excisable article, to which without previous payment of duty. Now the conditions of this obligation are

1. That or his/her legal representatives shall not at any time or time import/export/transport any quantity or quantities of the aforesaid excisable article the duty or the aggregate duty on which at the rate prescribed therefore from time to time u/s 27 of the Bihar and Orissa Excise Act, 1915, or any other amending

Act for the time being in force shall exceed the sum of rupees.

2. That or his/their legal representatives shall on each occasion of import/export/transport of the said article within the time mentioned in the Pass or Passes authorising such import/export/transport granted under the rules for the time being in force furnish satisfactory proof to the officer granting the pass that the specified quantity of the said excisable article has been, duly delivered, in full to the officer incharge of the bounded warehouse or other authorised place of destination specified in the said pass and deposited therein after the necessary examination, or in default thereof shall on demand pay or cause to be paid to the said Secretary of State for India in Council at the Treasury/Sub-treasury a sum equal to the amount of duty payable on the said specified quantity or such portion thereof as shall not have been duly delivered at the rate prescribed therefore u/s 27 of the Bihari and Orissa Excise Act, 1915 or any other amending Act for the time being in force.

3. That if..... and his/their legal representatives shall well and truly keep and perform all the conditions hereof then this bond shall be void and of no effect, otherwise the same shall remain in full force and virtue.

IN WITNESS whereof I/we have here unto set my/our hand and seal" the day of in the year.

SIGNED, SEALED AND DELIVERED by the abovenamed.

Witness

Witness

Collector on behalf of the Governor of Bihar.

5. It would thus be seen that under this bond the Petitioner has to furnish satisfactory proof that the excisable article has been duly delivered in full to the officer incharge of the bonded warehouse or other authorised place of destination specified in the pass issued u/s 38 of the Act. This Section 38 is as under:

38. Fees for terms, conditions, and form of, and duration of, licenses, permits and passes.-

(1) Every licence, permit or pass granted under this Act-

(a) shall be granted-

(i) on payment of such fees (if any), and

(ii) subject to such restrictions and on such conditions, and

(b) shall be in such form and contain such particulars, as the Board may direct.

(2) Every license, permit or pass under the Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government u/s 89, Clause (e).

Then if there is any default the licensee has to pay a sum equal to amount on that quantity of liquor (IMFL) as has not been duly delivered at its place of destination. The duty shall be payable as per the rate prescribed u/s 27 of the Act. This Section 27, in relevant part, is as under:

27. Power to impose duty on import, export, transport and manufacture.-(1) An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area on-

- (a) any excisable article imported, or
- (b) any excisable article exported, or
- (c) any excisable article transported, or
- (d)
- (e)
- (f)

Admittedly the liquor has been delivered short of what was described in the pass issued for the purpose of export of liquor. The contention of Mr. Bimal, counsel for the Petitioner is that the shortage occurred was within permissible limit of allowance for wastage or evaporation in transit as per the law where delivery of IMFL was effected. We have not been shown any such law applicable in the State. We have also not been shown if the short supply of the importing State was in terms of the allowance for wastage as per the law applicable there. We cannot take note of all these arguments in vacuum without reference to the facts.

Unfortunately particulars are lacking in the petition.

We need not say, therefore, anything on the question of conflict, if any, between the provision of Rule 33 and the law on the permissible allowance on State. We will say that the Petitioner is bound by the undertaking as given in the bond In Form No. 158 and the Petitioner must, pay duty of excise demanded on account of deficient delivery of the liquor In the Importing State as such delivery was not in accordance with the pass issued to him for the purpose of export of liquor from the State of Bihar. We may also refer to Section 28 of the Act under which subject to any rule that might be framed under Clause 12 of Section 90 the duty imposed u/s 27 may be levied on excisable articles Exported by payment in the State or in the State or territory to which the article is sent. Under this Clause 12 the Board of Revenue may make rules for prescribing the time, place and manner of levying duty on intoxicants. The Petitioner must show, therefore, that he paid the duty of excise on the quantity of liquor mentioned in the pass as in the State of Bihar or in the importing State but the Petitioner failed to say with reference to the shortage so claimed that as per the law of the importing State he is deemed to have delivered the whole of the quantity of liquor as per the pass issued to him. u/s 17 of the Act, no liquor can be removed from the

destillery or from the warehouse unless duty, if any, payable under Chapter V (Section 27, 28 and 29) has been paid or bond has been executed for the payment thereof. Thus it is not the case of the Petitioner that the demand which has been raised against him is outside the bond in Form No. 158, executed by him, his only grievance being the allowance permissible under the importing State law which has not been taken note of by the authorities here.

6. We may note some of the decisions referred to at the Bar. In the case of Mohan Meakin Breweries Ltd. Vs. Excise and Taxation Commr., Chandigarh and Others, the Court was considering the question of vires of rules 8 and of the Punjab Bonded Warehouse Rules framed under the Punjab Excise Act which provided for liability to excise duty for wastage of liquor during transit beyond permissible limit. The Court held that such rules were intra-vires the regulating power of the authority under the Act. In the case of S.K.G. Sugar Ltd. v. The State of Bihar (1985 PLJR 454 (DB) there was a challenge to export pass fee levied under Rule 106-A of the Rules which, was repelled. The Court held that the export duty and export pass fee were two different things and export pass fee was neither a tax nor duty. Rule 106-A of the Rules provides that IMFL may be exported to any place outside Bihar, provided that an export pass fee at the settled rate per L.P. Litre (London Proof Litre) has been levied and realised in the State of Bihar.

7. Rules have also been framed by the Board of Revenue for export of foreign liquor to other States in India. These are rules 11, 11A and 12 to 15 of the Rules. The export of foreign, liquor was considered in the case of S.K.G. Sugar Ltd. v. The State of Bihar (1974 BLJR 322). The Court held that the State Government could not impose an extra excise duty on the export of IMFL which was subject to excise duty payable at the rate in which it was exported. The Court said that no excise duty over and above the excise duty which was payable in the State, where excisable article is exported was permissible on the harmonious construction of the provision of Sections 27 and 28 of the Act and rules, when a person desires to export IMFL to any other State in the country, he is to execute a bond in Form No. 158 which we have set out in extenso above. He is also to pay export pass fee and obtain a pass. Under rule 11-A of the Rules, when a person holding licence for the sale of foreign liquor to the trade wants to export it to any other State in India, he can do so on pre-payment of duty at the rate in force in the State where it is desired to be exported, subject to the following conditions:

(1) The exporter shall obtain from the importer a permit authorising the import granted by the Chief Revenue authority of the State of import or by an officer duly authorised by him in this behalf.

(2) The permit shall specify

(a) the name and address of the person/authorised to import;

(b) the name and address of the exporter;

- (c) the description and quantity of foreign liquor;
- (d) the rate of duty leviable in the State of import:

Provided that in the case of troops and military bodies of the Defence services, the duty may be adjusted by book transfer.

Rule 13 of the Rules provides for particulars which the pass, should contain when IMFL is exported under Rule 11 or Rule 11-A. The pass is to be executed in triplicate and shall indicate the following:

- (a) the name and address of the consignor;
- (b) the name and address of the consignee;
- (c) the description and exact quantity of foreign liquor despatched;
- (d) the rate of duty and total amount of duty paid; and
- (e) the route by which the foreign liquor is despatched.

8. The judgment of this Court in *S.K.G. Sugar Ltd. v. The State of Bihar* (1974 BLJR 322) settled the law on the question of imposition of extra excise duty on export of IMFL but the question which has been raised before us is; if allowance permissible by importing State can be taken into account by the State of Bihar. How are we to read the bond in Form No. 158? Could not it be said that when the importing State permits allowance for wastage, it would be substantial compliance of the bond? Take for example that 500 L.R litres IMFL is exported from Patna to Chandigarh. The goods carrier would pass through the State of U.P. Haryana, Punjab and then reach the Union territory of Chandigarh. The quantity reached at Chandigarh is 499 L.P. litre. As per the excise law as applicable in Chandigarh whole quantity of 500 L.P. litres has been delivered. We do not think in that case the State of Bihar would be justified in claiming excise duty on one L.P. litre on the ground that Rule 33 does not provide for any wastage in the circumstances mentioned in that rule. However, if the quantity delivered at Chandigarh is 490 L.P. litres, the State of Bihar would certainly be entitled to enforce bond subject, of course, to permissible wastage as per the law in force in Chandigarh on 490 L.P. litres of IMFL. In our country which is Union of States there has to be respect and mutual recognition for law as in force in the other State/s. This is based on the principle of comity of States. This is based somewhat on the same principle as the comity of nations in the International Law. There though our Legislatures have plenary powers, they function within their limits prescribed by the material and relevant provisions of the Constitution. (See: In the matter of: Under Article 143 of the Constitution of India,). If the State of Bihar claims excise duty on permissible wastage in the importing State, it would be making the law of the importing State inoperative or applicable, only to movement of IMFL in that State. That interpretation cannot be given and it must be held that the State of Bihar cannot claim excise duty on short delivery in the importing State on account of permissible wastage, if however, the law in the

importing State permits that. But as noted above, we have not been told to which State the liquor was exported, what was the quantity in the pass issued to him; what was the container in which it was sent; and what quantity he delivered at the destination. In this view of the matter, we will send all these matters back to the authorities to decide the matter afresh in view of the observations made by us in the judgment and after hearing the Petitioner. The impugned demands are thus quashed. In the circumstances, there shall be no order as to costs.