(1996) 06 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 23807 of 1994

Yaka International APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 05-06-1996

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2 (a), 6, 6 (1)

Citation : (1996) ILR (Kar) 2405 : (1996) 5 KarLJ 469

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Madhusudhan R. Naik, for the Appellant;

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The short question which needs to be considered in this Writ Petition is as to whether the petitioner, who is desirous of setting up an industry to manufacture toiletries, such as after-shave lotion, eudecolon etc., having denatured spirit as one of its inputs (raw material), is required to obtain a licence as per provisions of Section 6 of the Medicinal and Toilet Preparations (Excise Duties) Act 1955 (in short the Central Act) and the rules framed thereunder namely, the Medicinal and Toilet Preparations (Excise Duties) Rules 1956 (in short ''the Central Rules'').

2. Section 2 of the Central Act is the definition clause. Clause(a) of this Section defines the "alcohol" to mean ethyl alcohol of any strength and purity having chemical composition C2H5OH. Clause(c) thereof defines "dutiable goods" to mean the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under the said Act. Clause(k) of the Section defines "toilet preparations" to mean any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes. Toilet preparations containing alcohol or narcotic drug or narcotic" has been included in the schedule of Act as

item No. 4.

3. Therefore on plain reading of the aforesaid definitions read with item No. 4 of the schedule, it has to be held that the toilet preparation containing alcohol squarely falls in the ambit of "dutiable goods" for the purposes of the Central Act.

4. Section 6 of the Central Act provides for obtaining of licence for certain operations envisaged therein. This Section reads thus:

"Section 6(1): the Central Government may, by notification in the official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of specified container of such goods or of labels of such goods containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under Sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed."

5. The Central Government in pursuance to the powers u/s 6 noticed above has issued a notification No. SRO 1295 dated 22.4.1995, which reads as follows:-

"In exercise of the powers conferred by Sub-section (1) of Section 6 of the Medicinal and Toilet Preparations (Excise Duties) Act 1955 (16 of 1955) the Central Government hereby provides that no person shall engage in the production or manufacture of any dutiable goods except under a licence granted under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956.

2. This notification shall come into force with immediate effect in all the States except in the State of Bombay where it shall come into force on the 1st day of June 1957."

6. Rule 2(IV) of the Rules defines "denatured spirit" or "denatured alcohol" to mean alcohol of any strength which has been rendered unfit for human consumption by the addition of substances approved by the Central Government or by the State Government with the approval of the Central Government.

7. Chapter VI of the Rules makes the provisions for licence, Rule 82 provides the procedure for obtaining the licence. Rule 83 prescribes the form of application. Rule 84 speaks of grant of a licence. Similarly in the subsequent rules under the Chapter ancillary provisions in the said regard have been made, which are not very material, for the present purposes.

8. In the Statement of Objections filed on behalf of the respondents it has been specifically averred that denatured spirit is nothing but alcohol, which is denatured by certain process so as to render it unfit for human consumption. It has further been stated that despite the addition of denaturant the chemical

composition of the spirit remains to be C2H20H, thus covered by the definition of "alcohol" as defined in Clause(a) of Section 2 of the Central Act. These basic facts have not been controverted or disputed by the petitioner in its pleadings.

9. Keeping the aforesaid aspects in view, in my opinion, it has to be held that the petitioner cannot undertake the manufacturing activity of the toiletries, as it intends to do, without obtaining the requisite licence u/s 6 of the Central Act. Consequently, it has to be held that the directions issued to the said effect by the respondent Excise Commissioner in his order dated 6.8.1994 (Annexure-D) is in conformity with the statutory requirements and needs no interference.

10. Mr. Naik, by referring an endorsement dated 28.2.1991 issued on behalf of the Excise Commissioner, wherein M/s Rainbow Cosmetics Private Limited, petitioner in the connected Writ Petition No. 22357/94, has sought to invoke the equality clause by alleging that under the said endorsement the said similarly situated manufacturer had been informed that it was not required to obtain any licence under the Central Act, but the petitioner is being sought to be arbitrarily discriminated in this regard. In reply to the said plea, in the statement of objections it has been specifically stated that the said communication was issued under some misconception regarding legal provisions, but subsequently on realization of the mistake, the same has been withdrawn by communication dated 18.7.1994 (Annexure-R1).

11. The last contention raised on behalf of the petitioner, though very feebly, is that the business activities of the petitioner, which it intends to carry on, cannot be held to be covered by the provisions of the Central Act, as also Karnataka Excise (denatured spirit and denatured spirituous preparations) Rules 1967 which have been framed under the provisions of Karnataka Excise Act, 1965. Though a prayer for seeking said declaration has been made in the Writ Petition but nothing substantial could be canvassed by Mr. Naik, in support of seeking such a declaration. It is for obvious reasons. The Central and the State Act have been enacted on two different legislative topics enumerated under the VII Schedule to the Constitution of India, namely entry 84 of the Central List and entry 51 of the State List. The provisions of either of the two Acts have not been challenged on the ground of legislative competence or repugnancy.

12. Accordingly, the Writ Petition is dismissed as devoid of any merits. No order as to costs.