
State Of Jharkhand & Ors Vs M/S Ajanta Bottlers & Blenders Pvt. Ltd

Civil Appeal No. 5138 Of 2019

Court: Supreme Court Of India

Date of Decision: July 2, 2019

Acts Referred:

Constitution Of India, 1950 " Article 14, 19(1)(g), 298, 301#Jharkhand Excise Act, 1915 " Section 27, 24, 59(d), 90, 90(7)

Citation: AIR 2019 SC 5285 : (2019) 6 SLT 564 : (2019) 3 JLJR 321 : (2019) 7 SCC 545 : (2019) 7 JT 121 : (2019) 9 Scale 1 : (2019) 6 SLT 564 : (2019) 3 JLJR 321

Hon'ble Judges: A.M. Khanwilkar, J; Ajay Rastogi, J

Bench: Division Bench

Advocate: Tapesh Kumar Singh, Aditya Pratap Singh, Arun K. Sinha

Final Decision: Allowed

Judgement

the, official, gazette, on, 10th, "November, 2012, issued by the Board of Revenue, Jharkhand in", exercise of powers conferred under Section 90

of the Jharkhand, "Excise Act, 1915 came to be allowed on the ground that the State had no legislative competence to levy tax/fee on the import of",

rectified spirit, as it is a non-potable liquor i.e. alcohol not fit for human consumption. Additionally, the High Court opined that the appellant-State had",

failed to justify the impugned levy on rectified spirit on the basis of services provided by the State in lieu thereof or being in the nature of quid pro quo.,,

The original notification is in Hindi, the same reads thus:",,

Free translation thereof has been filed by the appellant as annexure P-2. However, during the hearing as some doubt was raised about the accuracy of",

annexure P-2, we thought it appropriate to get the document (original in Hindi) translated from the official translator of this Court. That translate",

version, reads thus:",,

13. The State under List-II is empowered to levy fee under Entry 66 in respect of any of the matters in the list but not including fees taken in an,,,

Court. Entry 66 read with entry 8 of List II therefore provides competence to the State to levy fee in respect of intoxicating liquor i.e. alcoholic liquo,,,

fit for human consumption i.e. to say on the production, manufacture, possession, transport, purchase and sale of intoxicating liquor. The present levy",,,

seeks to levy fee on the import of rectified spirit to be utilized for the purpose of, firstly for manufacture of ENA through re-distillation process and",,,

then for manufacture of IMFL. Rectified spirit is not fit for human consumption and it therefore does not come within the meaning of intoxicatin,,,

liquor as contained in Entry 8 of List II. Levy on the import of rectified spirit is not a fee on intoxicating liquor i.e. fit for human consumption. By th,,,

impugned notification, the Board of Revenue in exercise of power conferred under section 90 of the Excise Act, 1915 has chosen to levy fee on the",,,

import of rectified spirit which is used for manufacture of ENA through re-distillation process and then for the purpose of manufacture of IMFL at th,,,

time before bottling @ Rs. 6.00 per LP Litre. Industrial alcohol/non-potable spirit i.e. rectified spirit being not alcoholic liquor fit for huma,,,

consumption, cannot be the subject matter of any regulation or control by the State under Entry 8, 51 and 66 of List II of Seventh Schedule of th",,,

Constitution.,,,

The correctness of the view so taken by the High Court is the subject matter of challenge in this appeal, at the instance of the State. In defending th",,,

notification before the High Court, the appellant-State had asserted that the rule inserted by the subject notification being Rule 106 (Tha), is an impos",,,

and is merely described as an import fee. Because, it is reckoned on the basis of quantity of pure alcohol content of rectified spirit (which is known as",,,

London Proof Liter (LPL), imported for the purposes of manufacture of potable Foreign Liquor after the process of compounding, blending an",,,

reduction of strength of spirit from over proof strength to under proof strength is complete. Further, the unit for charging import fee is London Proof",,,

Liter (for short, LPL) because, it does not change even after the spirit has undergone through the process of compounding, blending &",,,

reduction of strength. Indisputably, nothing can be nor will be charged in advance, so long as the imported rectified spirit is non-potable and till it is in",,,

the form of raw material. In other words, nothing is charged on industrial alcohol. Thus, it is neither a violation of provisions of the Constitution nor is i",,,

an arbitrary use of power under Section 90(7) by the Board of Revenue who was competent to issue the same towards levy of any kind of fee on,,,

potable liquor. In substance, the stand of the appellant-State is that the stated import fee is not on rectified spirit in its raw form as such, but on pure",,,

alcoholic liter LPL in the form of potable liquor. Further, it is a regulatory fee only for supervision and control of production of potable liquor to",,,

protect public health and morality. It was further asserted that no right inheres in any person for doing business in intoxicants. That right exclusively,,,

belongs to the State. Resultantly, it is open to the State to part with those rights for a consideration on conditions as may be deemed appropriate. There",,,

is no need for the State to establish commensurate services rendered by it to apply the doctrine of quid pro quo, in respect of impost of any kind of fee",,,

on potable liquors.,,,

11. Reading the impugned provision as a whole and line by line or word by word in this perspective, it must follow that the substance of the provision is",,,

to levy charges on the product IMFL produced or manufactured by use of imported rectified spirit. In that sense, the levy is not on the input (importe",,,

rectified spirit) of the final product as such but is on the manufactured or produced product being potable alcohol palatable to human consumption. For",,,

the purposes of computing the levy, the yardstick of Rs.6 per LPL on the total quantity of imported rectified spirit utilized for production of IMFL i",,,

reckoned. Thus, the impost is not on the imported rectified spirit as such but only on the produced foreign liquor before it is bottled for sale in the",,,

wholesale or retail market, as the case may be. If so understood, the whole edifice of the argument of respondents regarding the interpretation of the",,,

impugned rule must collapse. For, the challenge to the impugned rule is on the assumption that it permits the competent authority to levy charges on",,,

the imported rectified spirit and not fit for human consumption but which has the potency of being used for producing intoxicants or potable liquor",,,

though exclusively meant for industrial purposes. Once that assumption is discounted or disregarded, nothing more survives for consideration. We say",,,

so because, it is well established that the State may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 and 8 of Lis",,,

It and may also lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol. Had it been the",,,

case of levy on non-potable alcohol (imported rectified spirit) per se, only then the question about the competency of the State Legislature or the",,,

justness of the levy on the doctrine of quid pro quo may become relevant. However, if it is a case of legislation in respect of potable alcohol, as has",,,

been noted by us hitherto, the State would be competent to legislate in that regard and levy charges "be it for regulating the same or impost for",,,

"53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court i",,,

Balsara case 1951 SCR 682 : AIR 1957 SC 414, Cooverjee case 1954 SCR 873 : AIR 1954 SC 318, Kidwai case 1957 SCR 295 : AIR 1957 SC",,,

Nagendra Nath case 1958 SCR 1240 : AIR 1958 SC 398, Amar Chakraborty case (1973) 1 SCR 533 : (1972) 2 SCC 442 and the R.M.D.C. c",,,

1957 SCR 874 : AIR 1957 SC 699, as interpreted in Harinarayan Jaiswal case (1972) 3 SCR 784 : (1972) 2 SCC 36 and Nashirwar case (1975)",,,

SCC 29. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolute",,,

every form of activity in relation to intoxicants "its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights",,,

are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In,,

American Jurisprudence, Vol. 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right,",,

subject to governmental control (p. 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of,,

the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp. 539, 540, 541).",,,

16. The respondent, however, placed heavy reliance on the decision in State of U.P. & Ors. Vs. Vam Organic Chemicals Ltd. and Ors. (2004) 1 SCC",,,

225, to contend that the State is obliged to justify the impost based on quid pro quo. We are afraid, this decision is of no avail to the respondent. In that",,,

case, the Court was dealing with challenge to Rule 3(a) therein on the ground that the State Legislature did not have legislative competence to legislate",,,

on "denatured spirit" which is unfit for human consumption. In that context, this Court relied on the decision in Synthetics and Chemicals Ltd. an",,,

Ors. Vs. State of U.P. and Ors. (1990) 1 SCC 109 and answered the issue. If the case under consideration was to be regarding legislation o,,

imported rectified spirit as such, this decision would have come handy. However, having opined that the purport of the impugned Rule 106(Tha), is to",,,

permit impost on the final processed product being foreign liquor "IMFL", before bottling as fit for human consumption, the State has jurisdiction",,,

to legislate on that subject and need bear no quid pro quo to the services rendered to the licensee of manufacturer of foreign liquor (IMFL).",,,