
Excise and Taxation Commissioner Vs Onkar Wine Agency

None

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 27, 2008

Acts Referred:

Punjab Excise Act, 1914 " Section 80(1)

Hon'ble Judges: V.K. Ahuja, J; Deepak Gupta, J

Bench: Division Bench

Judgement

Deepak Gupta, J.

This sales tax reference has been referred to this Court for determination of the following question of law:

1. Whether the composition of offence by the Collector u/s 80(1) of the Punjab Excise Act, 1914 on request of party concerned does not bind him

to pay the sales tax and penalty under HPGST Act also.

2. Briefly stated the facts of the case are that the assessee is a wholesaler, i.e., L-1 licensee of Indian-made foreign spirits (IMFS). The undisputed

facts are that an inspection of the business premises of the assessee was carried out on August 23, 1997. The account books of the assessee were

seized along with the excise record for the years 1996-97 and 1997-98. Physical stock verification was also carried out.

3. All liquor which is imported into the State of Himachal Pradesh from outside is required to be entered at the excise barrier. It is not disputed that

the assessee was importing liquor through Mehatpur where a multi-purpose barrier is situated. On going through the records of the multi-purpose

barrier the assessing officer found that the assessee had been using the same permit for importing liquor many times on the basis of fake

documents. The assessing officer found that on September 20, 1996, October 23, 1996 and October 30, 1996 the assessee had imported large

amounts of liquor by using the permits earlier issued more than one time. These consignments were imported from M/s. Cox Distillery Ltd.

Navgaun, District Chhatarpur, Madhya Pradesh. Similarly the assessee procured permit for import of liquor from M/s. Gwalior Distillery Ltd. The

first consignment crossed the multi-purpose barrier on March 19, 1997. Thereafter, the assessee used the same permit for importing fresh stock of

liquor on March 28, 1997. This consignment was retained at the multi-purpose barrier. Then the assessee gave in writing that the earlier

consignment dated March 10, 1997 had not reached its premises and therefore second consignment was released on March 31, 1997. On perusal

of the entire books it was found that the assessee had defrauded the State exchequer by using the same permit to import various consignments of

liquor. The assessee would pay duty/taxes only on one consignment and not on the others.

4. When the assessing officer confronted the assessee with these facts one of the partners who appeared before the assessing officer stated that the

consignments may have been sent by the liquor manufacturers to some other persons but were not received by the assessee. Then he was

confronted with the specific allegations in respect of the liquor imported from M/s. Gwalior Distillery wherein the assessee itself had claimed that it

had not received the first consignment. To this the assessee had no answer. Therefore, the assessing officer worked out the tax liability of the

assessee firm on the basis of the sale value of liquor imported into Himachal Pradesh through all the four consignments mentioned hereinabove.

Penalty, etc., was also levied. In fact the partner of the assessee appearing before the assessing officer prayed for leniency on the ground that his

partner may have played mischief in connivance with the Distilleries in Madhya Pradesh. Accordingly, tax of Rs. 2,01,000 and penalty of Rs.

55,000, i.e., total liability of Rs. 2,56,000 was fixed on the assessee.

5. The assessee filed an appeal but did not appear before the appellate authority. The appellate authority noted that Sh. Onkar Rana one of the

partners of the assessee had made a statement before the learned Deputy Excise and Taxation Commissioner that some partner may have

mischievously colluded with the distilleries and therefore case has been compounded under the Excise Act. The appellate authority held that this

was an admission of guilt and therefore upheld the levy of tax and liability.

6. The assessee approached the Sales Tax Tribunal. The Sales Tax Tribunal came to the conclusion that the department had built up the tax liability

on unverified and incomplete sales. According to the Tribunal, since sales could not be proved, mere allegations of smuggling would not be

sufficient to hold the assessee responsible. Thereafter, the present reference has been made.

7. With due respect to the learned Tribunal, we are unable to understand the reasoning given by the Tribunal. In this case, it stands proved beyond

reasonable doubt that four consignments were smuggled in by the assessee through the multi-purpose tax barrier at Mehatpur on the basis of

original permits. This was proved from the documents seized from the office of the assessee. Furthermore, one of the partners of the assessee-firm

has virtually admitted this fact and compounded the matter under the Excise Act. When the offence was compounded it clearly meant that the

assessee had admitted that it had smuggled the liquor into Himachal Pradesh through these four consignments. The burden thereafter shifted upon

the assessee to show that the liquor had not been sold or that it was still lying with it. No explanation has been given by the assessee as to where

the liquor smuggled by it into Himachal Pradesh has gone. Therefore, the department was right in holding that the liquor has been sold and the

assessee was liable to pay sales tax on the same.

8. The reasoning of the learned Tribunal is totally baseless. In a case of illegal activity where the liquor has been smuggled the assessee is not going

to keep any records of the same. Therefore, the Tribunal erred in holding that without proving the sales, the sales tax could not have been levied.

No law can be construed or interpreted in a manner which would give a premium or fillip to illegal activities. Once it is proved and accepted that

liquor was smuggled into Himachal Pradesh the burden shifted upon the assessee and the department was absolutely right in observing that the

liquor must have been sold and was therefore entitled to levy sales tax on the same.

The question is answered in favour of the Revenue and against the assessee. The order of the Sales Tax Tribunal is set aside and the orders of the

assessing officer and Commissioner are restored. There shall be no order as to costs.