

S.K. PATTANAIK (DEAD) THROUGH LRS.

A

v.

STATE OF ORISSA AND ORS.

DECEMBER 14, 1999

[DR. A.S ANAND, C.J., M. JAGANNADHA RAO  
AND V.N. KHARE, JJ.]

B

*Excise Law:*

*Bihar and Orissa Excise Act, 1915:*

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*Ss.27 and 28—Excise duty and countervailing duty—Levy of Indian made foreign liquor—Import of into state of orissa—Stored in licensed bonded warehouse—Stock became sedimented and rendered unfit for human consumption and destroyed—Demand of countervailing duty—Held, was perfectly justified—Since the taxable event for attracting excise duty or countervailing duty is the manufacture or import of excisable goods into the State, charge of incidence of duty stands attracted as soon as the taxable event takes place and the facility or postponement of collection of duty under the Act or the Rules framed thereunder can in no way affect the incidence of duty on the imported goods—The fact that liquor was rendered unfit for human consumption and destroyed after the import which by itself attracted the levy of duty could not wipe of the liability of the appellant for payment of duty on the excisable goods after their import in the bonded Warehouse.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4160 of 1995.

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(From the Judgment and order dated 2.12.1994 of the High Court of orissa at Cuttack in Original Jurisdiction case No. 3977/91)

Jayant Das, A.N. Das, Udai kumar, Rajiv Dutta and Raj Kumar Mehta for appearing parties.

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The following Order of the Court was delivered :

This appeal by special leave is directed against the judgment and order of the Full Bench of the High Court of Orissa dated 2nd of December, 1994.

Brief facts giving rise to the present appeal are as follows.

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A The appellant imported into the State of Orissa Indian made foreign liquor and stored it in a licensed bonded warehouse from where the liquor was to be released for sale. While liquor was so stored in the warehouse, a portion of the imported stock became sedimented and was rendered unfit for human consumption. That stock was therefore, destroyed. A notice was issued to the appellant for payment of countervailing duty on the stock to the tune of Rs. 10.02.182. The validity of the demand of countervailing duty was challenged by the appellant in a writ petition which was heard by a Division of the High Court. It was asserted that since the stock of liquor had been "destroyed" in the warehouse, countervailing duty could not be imposed. Before the Division Bench, reliance was placed on the judgment in the case of *P.D. Jain v. State of Orissa*, O.J.C. No. 2241 of 1999, decided on 11.5.1992, which had been followed in the case of *Mohan Meakins Ltd. v. State of Orissa*, O.J.C. No. 1971 of 1991, decided on 20.9.1993. The Division Bench felt that the two decisions noticed above needed re-consideration. A reference was accordingly made to the full Bench and that is how the matter was decided by the full Bench.

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Heard learned counsel for the parties.

E "Excise duty" and "countervailing duty" are well known concepts and are attracted in different situations. "Excise duty" is essentially a duty on manufacture of goods, and the taxable event is the manufacture of the excisable goods. "Countervailing duty", on the other hand, is imposed when excisable articles are *imported* into the state, in order to counter balance the excise duty, which is leviable on similar goods if manufactured within the State. So far as countervailing duty is concerned, the incidence of the impost is on the import of the excisable article i.e., at the time of entry into the State.

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G Section 27 of the Bihar and Orissa Excise Act, 1915 (hereinafter called 'the Act') deals with the powers of the State to impose duty on import, export, transport and manufacture. This Section is the charging Section both for excise duty as well as countervailing duty. Section 28 of the Act on the other hand provides for the ways for levying the duty which can be imposed under Section 27. Section 28 deals with the manner of levying duty imposable under Section 27 of the Act in different manners. Though countervailing duty or excise duty are required to be assessed and collected as soon as the taxable event arises, a facility for postponement of collection of excise duty is envisaged under Section 28 in case of sale of the excisable article from the bonded warehouse after its import into the State.

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While the expression 'levy' may include both the process of taxation as well as the determination of the amount of tax or duty, the expression 'collection' refers to actual collection of the payable duty or the tax, as the case may be. Since, the taxable event for attracting excise duty or countervailing is the manufacture or import of excisable goods into the State, the charge of incidence of duty stands attracted as soon as the taxable event place and the facility of postponement of collection of duty under the Act or the Rules framed thereunder, can in no way affect the incidence of duty on the imported goods.

In this view of the matter. The demand of countervailing duty from the appellant in the established facts and circumstances of the case was perfectly justified. The fact that the Liquor was rendered unfit for human consumption and destroyed, after its *import*, which by itself attracted the levy of duty could not wipe of the liability of the appellant, for payment of duty on the excisable goods, after their import in the bonded warehouse. The Full Bench of the high Court was, therefore, perfectly justified in finding that the challenge to the demand made by the appellant had no merits. This appeal has no merits. It, accordingly, fails and is dismissed but with no order as to costs.

R.P.

Appeal dismissed.