A M/S MOHAN MEAKIN LTD.

v.

EXCISE AND TAXATION COMMISSIONER, HIMACHAL PRADESH AND ORS.

NOVEMBER 27, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Punjab Excise Act, 1914 : Sections 3, 23 and 31

C *Punjab Breweries Rules, 1932 : Rule 10 (3.4)*

Excise duty—Beer—Exigibility to excise duty—Relevant stage of—High Court held that it was exigible to duty at the stage when it is in fermentation i.e. wort in terms of Rule 10(3.4)—Appeal against decision of High Court—Held, the range of potable alcohol varies between country spirit to D *whisky and the ethyl alcohol—The alcoholic strength of each excisable article and its percentage varies as per the ISI specifications but intoxicating liquor necessarily means only that liquor which was consumable by human beings as it was—The state of levying excise duty upon alcoholic liquor arises when excisable article is brought to the stage of human consumption with the* E *requisite alcoholic strength thereof—It is only the final product which is relevant—Thus the final product of the beer is relevant excisable article exigible to duty under Section 31 of the Act when it passes through fine ilter press and received in the bottling tank—Section 23 specifically envisages that until the payment of duty is made or bond is executed in that behalf as per the procedure and acceptance by the Financial Commissioner, the finished* F *product, namely the beer in this case, shall not be removed from the place at which finished product was stored either in a warehouse within factory premises or precinct or permitted place of usage—Under these circumstances, the point at which excise duty is exigible to duty is the time when the finished product, i.e. beer was received in bottling tank or the finished product is* G *removed from the place of storage or warehouse etc.*

Synthetics and Chemicals Ltd. **v.** *State of U.P.,* **[1990] 1 SCC 109 and** *State of U.P.* **v.** *Modi Distillery & Ors.,* **[1995] 5 SCC 753, followed.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2457 of H 1980.

From the Judgment and Order dated 2.7.80 of the Himachal Pradesh High Court in W.P. No. 121 of 1979. A

Soli J. Sorabjee, Ravinder Narain, Rajan Narain, Ms. Amrita Mitra, Amit Bansal and Pankaj Kalra for the Appellants.

T. Sridharan and Shiv Pujan Singh for the Respondents. B

The following Order of the Court was delivered :

This appeal by special leave arises from the Judgment of the Division Bench of the Himachal Pradesh High Court, made on July 2, 1980 in Writ Petition No. 121/79. The question is : at what stage the beer is exigible to C duty under the Punjab Excise Act, 1914 (1 of 1914) (for short, the 'Act'). The Division Bench upholding Rule 10(3.4) of the Rules made under Section 58 of the Act read with Section 59 of Punjab Breweries Rules, 1932 (for short, the 'Rules'), came to the conclusion that it is exigible to duty at the stage when it is in fermentation, i.e., wort in terms of Rule 10(3.4). D Calling that decision in question, this appeal came to be filed.

With a view to appreciate correctness of the view taken and having heard the learned counsel for the parties, it is necessary to look into the relevant provisions of the Act and the Rules. Chapter I, Section 3 of the Act defines various words and phrases in the Act. Section 3(1) defines E "Bear" to include ale, porter, stout, and all other fermented liquors made from malt. "Liquor" has been defined under Section 3(14) of the Act to mean "intoxicating liquor and includes all liquid consisting of or containing alcohol; also any substance which the State Government may by notification declare, to be liquor for the purpose of this Act". "Excisable article" F has been defined in Section 3(6) to mean any alcoholic liquor for human consumption; or any intoxicating drug. "Excise duty" and "countervailing duty" as defined in Section 3(6-b) would mean any such excise duty or countervailing duty, as the case may be, as is mentioned in Entry 51 of List-II of the Seventh Schedule to the Constitution. "Intoxicant" under Section 3(12-a) means any liquor or intoxicating drug as has been defined G in Section 3(16) to include every process, whether natural or artificial by which any intoxicant is produced or prepared, and also redistillation, and every process for the rectification, reduction, flavouring, blending or colouring of liquor. "Place" has been defined under Section 3(17) to include a building, shop, tent and closure, booth, vehicle, vessel, boat and raft. H

A "Spirit has been defined in Section 3(19) to mean any liquor containing alcohol obtained by distillation, whether denatured or not. Section 31 of the Act is the charging provision which envisages that an excise duty, or a countervailing duty, as the case may be, at such rate or rates as the State government shall direct, may be imposed, either generally or for any specified local area, on any excisable article. Section 23 of the Act B prescribes removal of the excisable article from the distillery, brewery etc. and provides that no intoxicant shall be removed from any distillery, brewery, warehouse, or other place of storage established, or licensed under the Act, unless the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof. Chapter V deals C with the levy of the duties and fees; the details of which are not material for the purpose of this case. As stated earlier, in this case the levy of excise duty was sought to be made at the stage when the manufacturing of the beer was at wort stage. The question is: whether the levy of excise duty, on beer when it was in the presence of manufacture is correct? The levy of D excise duty is on alcoholic liquor for human consumption, manufacture or production. At what stage beer is exigible to duty is the question. The process of manufacture of beer is described as under :

> "The first stage brewing process is the feeding of Malt and adjuncts into a vessel known as Mash Tun. There it is mixed with hot water E and maintained at certain temperature. The objective of this process is to convert the straches of the malt into fermentable sugar.
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> The extract is drawn from the Mash Tun and boiled with the F addition of hops for one to two hours after which it is contrifuged, cooled and received in the receiving wats. At this stage, it is called "Wort" and contains only fermentable sugars and no alcohol. After this it is transferred to the fermentation tanks where Yeast is added and primary fermentation is carried out at controlled temperature. After attenuation (Diminution of density of "Wort" resulting from G its fermentation) is reached for fermented wort is centrifuged and transferred to the storage vats for secondary fermentation. After secondary fermentation is over in the storage vats, it is filtered twice-first through the rough filter press and then through the fine filter press and received in the bottling tanks. It is in bottling tanks H that the loss of the Carbon Dioxide Gas is made up and bulk beer

is drawn for bottling. It is filed into the bottles and then last process of pasteurisation is carried out to make it ready for packing and marketing. Till the liquor is removed from the vats and undergoes the fermentation process as mentioned above the presence of alcohol is nil."

Excisable article would mean any alcoholic liquor for human consumption or any intoxicating drug. The levy or impost of excise duty would be only on alcoholic liquor for human consumption or for being produced in the brewery. Beer would mean fermented liquor from malt, when it is potable or in consumable condition as breverage. It is seen that the levy is in terms of entry 51 of List II of the Seventh Schedule which envisages that duties of excise on the goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.

As to when liquor becomes exigible to duty was considered by this Court in *Synthetics and Chemicals Ltd.* v. *State of U.P.,* [1990] 1 SCC 109. Therein, this Court had considered the question, by a Bench of seven Judges, at various stages thus :

"We have no doubt that the framers of the Constitution when they used the expression 'alcoholic liquor for human consumption' they meant at that time and still the expression means that liquor which as it is consumable in the sense capable of being taken by human beings as such as beverage or drink. Hence, the expression under Entry 84, List I must be understood in that light. We were taken through various dictionary and other meanings and also invited to the process of manufacture of alcohol in order to induce us to accept the position that denatured spirit, can also be by appropriate cultivation or application or admixture with water or with others, be transformed into 'alcoholic liquor for human consumption' and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we were told. We are, however, unable to enter into this examination. Constitutional provisions specially dealing with the delimitation of powers in a federal plity must be understood in a broad common sense point of view as understood by common people for whom the Constitu-

A tion is made. In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant time of its interpretation, it is not possible to proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are, not what these are capable of or able to become. It is also not possible to accept the submission that vend fee in U.P. is a pre- Constitution imposition and would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.

C On behalf of the State of Maharashtra Mr. Dholakia submitted that the first issue is whether Entry 8 in List II of the Seventh Schedule of the Constitution, covers alcohol unfit for human consumption. The second issue, according to him is whether assuming that the entry does not include alcohol unfit for human consumption, its scope in that respect is curtailed because of item 26 of the D Schedule to IDR Act, 1951. The third issue, according to him, is whether having regard to Entry 51 in List II, the State can (a) impose regulations by creating economic disincentives for consumption of drinkable alcohol, and (b) prevention of misuse of non-drinkable alcohol for consumption.

E

Only in two cases, the question of industrial alcohol had come up for consideration before this Court. One is the present decision which is under challenge and the other is the decision in Indian Mica and Micanite Industries Ltd. case. In the latter case, in spite F of the earlier judgments including Barucha case, denatured spirit required for the manufacture of micanite was not regarded as being within the exclusive privilege of the State. It appears that in that decision at p. 321 of the report (SCC p. 238), it was specifically held that the power of taxation with regard to alcoholic liquor not fit for human consumption, was within the legislative competence G of central legislature. The impost by the State was held to be justifiable only if it was a fee thereby impliedly and clearly denying any consideration or price for any privilege. For the first time, in the *Synthetics & Chemical Ltd. case* the concept of exclusive privilege was introduced into the area of industrial alcohol not fit H for human consumption.

Having regard to the principles of interpretation and the constitutional provisions, in the light of the language used and having considered the impost and the composition of industrial alcohol, and the legislative practice of this country, we are of the opinion that the impost in question cannot be justified as State imposts as these have been done. We have examined the different provisions. These seek to levy imposition in their pith and substance not as incidental or as merely disincentaxing provision permitting these in the lists in the field of industrial alcohol for the State to legislate.

Under these circumstances, therefore, it is clear that the State legislature had no authority to levy duty or tax on alcohol which is not for human consumption as that could only be levied by the Centre.

This Court further considered this question by a Bench of three Judges in *State of U.P.* v. *Modi Distillery & Ors.*, [1995] 5 SCC 753. The facts therein are in paragraphs 6 and this Court has held in paragraphs 9, 10 and 11 thus :

"It is convenient now to note the judgment of a Bench of seven learned Judges of this Court in *Synthetics and Chemicals Ltd.*v.*State of U.P.* [1990] 1 SCC 109. This Court stated that it had no doubt that the framers of the Constitution, when they used the expression "alcoholic liquors for human consumption", meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink. Alcoholic or intoxicating liquors had to be understood as they were, not what they were capable of or able to become. Entry 51 of List II was the counterpart of Entry 84 of List I. It authorised the State to impose duties of excise on alcoholic liquors for human consumption manufactured or produced in the State. It was clear that all duties of excise save and except the items specifically excepted in Entry 84 of List I were generally within the taxing power of the Central Legislature. The State Legislature had limited power to impose excise duties. That power was circumscribed under Entry 51 of List II. It had to be borne in mind that, by common standards ethyl alcohol (with 95 percent strength) was an industrial alcohol and was not fit for human consumption.

A The ISI specifications had divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial purposes was defined as spirit purified by distillation having a strength not less than 95 per cent by volume of ethyl alcohol. Dictionaries and technical books showed that rectified B spirit (95 per cent) was an industrial alcohol and not potable as such. It appeared, therefore, that industrial alcohol, which was ethyl alcohol (95 per cent), by itself was not only non-potable but was highly toxic. The range of potable alcohol varied from country spirit to whisky and the ethyl alcohol content thereof varied be- C tween 19 to about 43 per cent, according to the ISI specifications. In other words, ethyl alcohol (95 per cent) was not an alcoholic liquor for human consumption but could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor, etc. In the light of experience and development, it was necessary to state that "intoxicating liquor" D meant only that liquor which was consumable by human being as it was.

What the State seeks to levy excise duty upon the Group 'B' cases is the wastage of liquor after distillation, but different dilution; and, E in the Group 'D' cases, the pipeline loss of liquor during the process of manufacture, before dilution. it is clear, therefore, that what the State seeks to levy excise duty upon is not alcoholic liquor for human consumption by human beings. The State is not empowered to levy excise duty on the raw material or input that is in the process of being made into alcoholic liquor for human con- F sumption.

That the measure of excise duty upon alcoholic liquor for human consumption is the alcoholic strength thereof does not make any difference in this behalf. It is only the alcoholic strength of the G final product which is relevant."

It is, thus, clear that range of potable alcohol varies between country spirit to whisky and the ethyl alcohol. The alcoholic strength of each excisable article and its percentage varies as per the ISI specifications but H intoxicating liquor necessarily means only that liquor which was con-

sumable by human beings as it was. The state of levying excise duty upon alcoholic liquor arises when excisable article is brought to the stage of human consumption with the requisite alcoholic strength thereof. It is only the final product which is relevant. A

Thus, the final product of the beer is relevant excisable article exigible to duty under Section 31 of the Act when it passes through fine ilter press and received in the bottling tank. The question is : at what stage the duty is liable to be paid? Section 23 specifically envisages that until the payment of duty is made or bond is executed in that behalf as per the procedure and acceptance by the Financial Commissioner, the finished product, namely, the beer in this case, shall not be removed from the place at which finished product was stored either in a warehouse within factory premises or precinct or permitted place of usage. Under these circumstances, the point at which excise duty is exigible to duty is the time when the finished product, i.e., bear was received in bottling tank or the finished product is removed from the place of storage or warehouse etc. B C D

The appeal is, therefore, allowed and respondents are entitled to collect the excise duty as per the rates specified by the Government in exercise of the power of Chapter V of the Act from the appellant when the appellant removed beer from the place of storage/warehouse etc. In other words, it is the place of storage, with reference to which duty is liable to be paid, as envisaged under Section 23 of the Act read with the Rules made by the Government. If there is any ambiguity in the Rules made by the Government, it may be open to them to regulate the process of manufacture and check the percentage of the quantity obtained in the process of manufacture but that does not make them exigible to duty while beer is in the process of manufacture. However, as stated earlier, it is exigible to duty only when it becomes finished product and is sought to be removed from the place of storage. E F

The appeal is accordingly allowed. No costs.

T.N.A. Appeal allowed. G