

PETITIONER:
MOHAN MEAKINS BREWERIES LTD. DALIGANJLUCKNOW ETC.

Vs.

RESPONDENT:
CONTROLLER OF WEIGHTS AND MEASURES, U.P. LUCKNOW & ORS.

DATE OF JUDGMENT 31/01/1989

BENCH:
SINGH, K.N. (J)
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SINGH, K.N. (J)
KULDIP SINGH (J)

CITATION:
1989 AIR 959 1989 SCR (1) 375
1989 SCC (2) 405 JT 1989 (1) 253
1989 SCALE (1) 201

ACT:
U.P. Weights and Measures (Enforcement) Act, 1959:
Section 2 (jj)--'Use in transaction for trade or
commerce'--Vats used for storing liquor--Notice issued for
getting vats verified, calibrated and stamped--Whether
valid Act--Whether applicable to manufacturer of liquor.

HEADNOTE:

The appellants, were engaged in manufacture and sale of liquor, under licence granted to them under the U.P. Excise Act. They installed vats in their Breweries' premises for the storage of liquor. The liquor stored in vats was bottled and sold under the supervision of officers of the Excise Department. The Inspector of Weights and Measures issued notices to them for getting their vats verified, calibrated and stamped in accordance with the provisions of the U.P. Weights and Measures (Enforcement) Act, 1959. The appellants filed appeals against the notices issued by the Inspector on the ground that the provisions of the Act were not applicable to the appellants' undertaking, manufacturing alcohol. The appeals were dismissed by the Respondent-Controller of Weights and measures. The appellants filed writ petitions before the High Court challenging the orders of the respondents.

The High Court dismissed the petitions holding that the provisions of the Act and the Notifications issued thereunder were applicable to the manufacturers of liquor in the distillery, and the notices issued by the respondents for the calibration of the storage vats were legal and valid.

Aggrieved, the appellants filed appeals by special leave in this Court contending that the High Court committed error in holding that the storage vats were required to be calibrated under the provisions of the Act, that the provisions of the Act would apply if measures were used for transaction in trade and commerce, but keeping alcohol in storage vats did not amount to transactions in trade or commerce, and that unless the storage vats were used in transaction for trade and

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commerce, the provisions of the Act were not attracted.
Dismissing the appeals,

HELD: 1.1 Under the definition clause in s. 2(jj) of the U.P. Weights and Measures (Enforcement) Act, 1959, the legislature has given an artificial extended meaning to the expression "use in transaction for trade or commerce". According to the definition it means use for the purposes of determining or declaring the quantity of anything in terms of measurement of length or capacity or weight in or in connection with the cls. (a) and (b) mentioned therein. Clause (b) refers to any assessment of royalty; toll; duty or other dues. Thus, according to the extended meaning, the provisions of the Act would be attracted if the assessment of royalty; toll; duty or dues is to be determined on the basis of the quantity of anything in terms of measurement of length, area, volume or weight. [379C-E]

1.2 There is no dispute that for the purposes of determining excise duty on the liquor produced by a manufacturer, the assessment is made on the basis of the volume of the liquor produced and sold. Since volume of the liquor produced and stored in vats is connected with the assessment of excise duty, it is covered by the expression "use in transaction for trade or commerce". [379E-F]

1.3 Ordinarily, the storage of alcohol in vats by itself may not amount to transaction for trade or commerce but under the extended meaning of the expression under s. 2(jj), even the storage of liquor in vats would be covered by the expression "use in transaction for trade or commerce" as volume of the liquor is necessary to be determined in connection with the assessment of excise duty. [379F-G]

1.4 The alcohol stored in the storage vats is essentially for the purpose of sale and there is no dispute that the appellants manufacture and store alcohol in storage vats for the purpose of sale, and the officers of the Excise Department measure storage vats as prescribed by Rule 751 of the Excise Manual, Volume 1. Since the volume of the storage vats is measured by the officers of the Excise Department, the provisions of the Act for the purpose of sale would be applicable to the storage vats also. [380F-G]

By Notification dated 19.8.1961 the provisions of the Act were made applicable to an undertaking engaged in the manufacture and sale of alcohol with effect from October 1, 1961. Any doubts about the

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Therefore, having regard to the above facts the High Court was right in holding that the storage vats were covered by the provisions of the Act. [381B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 506 of 1989 Etc.

From the Judgment and Order dated 5.12.1986 of the Allahabad High Court in C.M.W.P. No. 207 of 1980.

Dr. L.M. Singhvi and R.B. Mehrotra for the Appellants.

Anil Dev Singh and Mrs. S. Dikshit for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. Special leave granted.

The appellants are engaged in the business of manufacture and sale of Indian made foreign liquor and country

liquor, under licence granted to them under the Provisions of U.P. Excise Act. The appellants have installed vats in their Breweries' premises for the storage of liquor. The liquor stored in vats is bottled and sold under the supervision of officers of the Excise Department. The Inspector of Weights and Measures issued notices to the appellants calling upon them to get their vats verified, calibrated and stamped in accordance with the provisions of the U.P. Weights and Measures (Enforcement) Act, 1959, (hereinafter referred to as the Act). The appellants preferred appeals against the notice issued by the Inspector on the ground that the provision of the Act were not applicable to the appellants' undertaking, manufacturing alcohol but the appeal was dismissed by the Controller of Weights and Measures. The appellants made petitions under Article 226 of the Constitution before the High Court of Allahabad challenging the orders of the respondents. Before the High Court the appellants contended that the provisions of the Act were attracted to the appellants' undertaking only at the stage of sale and anything done in the process of manufacture and storage of liquor could not be

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subjected to the provisions of the Act and the notice issued by the Inspector of Weights and Measures was without any authority of law. It was further urged that the calibration of vats storing liquor was not necessary and the direction issued by the respondents was without any authority of law. Similar petitions were filed by the manufacturers of Synthetic Rubber and Campher. All the three sets of petitions were disposed of by a Division Bench of the High Court by a common judgment and order dated December 5, 1985. The Division Bench allowed the petitions filed by the Manufacturers of Synthetic Rubber and Campher but it dismissed the petitions filed by the manufacturers of liquor on the finding that the provisions of the Act and the Notification issued thereunder are applicable to the manufacturers of liquor in the distillery and the notices issued by the respondents for the calibration of the storage vats were legal and valid. Aggrieved the appellants have preferred the present petitions for special leave to appeal.

Dr. L.M. Singhvi, learned counsel for the appellants urged that the High Court committed error in holding that the storage vats are required to be calibrated under the provisions of the Act. He added that the provisions of the Act would apply if measures are used for transaction in trade and commerce, but keeping alcohol in storage vats does not amount to transactions in trade or commerce. Learned counsel emphasised that unless the storage vats are used in transaction for trade and commerce the provisions of the Act would not be attracted. In order to appreciate the contention, we would briefly refer to the relevant provisions of the Act.

Section 7 of the Act imposes prohibition on use of weights and measures other than standard weights and measures. It provides that no unit of mass or measure, other than the standard weights or measures shall be used in any transaction for trade or commerce or any dealing or contract or for any work to be done or goods to be sold or delivered. Section 10 further imposes prohibition on the sale or use of unstamped commercial or measuring instrument in trade or commerce unless it has been verified or reverified and stamped in the prescribed manner by an Inspector with stamp of verification. These provisions impose legislative prohibition that no weight or measure or weighing or measuring instrument shall be used or be kept for use in any transac-

tion for trade or commerce or for being sold, unless it has been verified by the Inspector of the Department in the prescribed manner. Section 2(jj) defines the expression "use in transaction for trade or commerce " which is as follows:
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"2(jj) use in transaction for trade or commerce--with its grammatical variation and cognate expressions, means use for the purposes of determining or declaring the quantity of anything in terms of measurement of length, area, volume, capacity or weight in or in connection with

(a) any contract, whether by way of sale, purchase, exchange or otherwise, or

(b) any assessment of royalty; toll; duty or other dues' or

(c) the assessment of any work done or services rendered, otherwise than in relation to research or scientific studies or in individual households for house-holds purposes"

Under the aforesaid definition clause the legislature has given an artificial extended meaning to the expression "use in transaction for trade or commerce". According to the definition it means use for the purposes of determining or declaring the quantity of anything in terms of measurement of length or capacity or weight in or in connection with the clauses (a) and (b) mentioned therein. Clause (b) refers to any assessment of royalty; toll; duty or other dues. According to the extended meaning given by the legislature the provisions of the Act would be attracted if the assessment of royalty; toll; duty or dues is to be determined on the basis of the quantity of anything in terms of measurement of length, area, volume or weight. there is no dispute that for the purposes of determining excise duty on the liquor produced by a manufacturer the assessment is made on the basis of the volume of the liquor produced and sold by the appellants. Since volume of the liquor produced and stored in vats is connected with the assessment of excise duty, it is covered by the expression "use in transaction for trade or commerce". Ordinarily, the storage of alcohol in vats by itself may not amount to transaction for trade or commerce but under the extended meaning of the expression under Section 2(jj) even the storage of liquor in vats would be covered by the expression "use in transaction for trade or commerce" as volume of the liquor is necessary to be determined in connection with the assessment of excise duty. We are, therefore, in agreement with the view taken by the High Court.

The learned counsel for the appellants urged that the High Court failed to consider the effect of Notification dated 28.8.1961 which made the provisions of the Act applicable to an undertaking engaged in the manufacture of alcohol at the stage of sale only. The Notification is as under:

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NOTIFICATION

"KHADYA TATHA RASAD VIBHAG NOTIFICATION NO. UPWM-1(3)-28-2401/XXIX-D-524-58 dated August 19, 1961, published in U.P. Gazette, Part I, dated 25th August, 1961, page 1537.

In exercise of the powers conferred by subsection (3) of Section 1 of the Uttar Pradesh Weights and Measures (Enforcement) Act, 1959 (U.P. Act No. V of 1959), the Governor of Uttar Pradesh is pleased to appoint the first

day of October, 1961, as the date on which the provisions of the said Act shall come into force in the whole of Uttar Pradesh in respect of:

(a) Undertaking engaged in the manufacture of alcohol in so far as they undertake the sale of alcohol; and

(b) Departments of Government in so far as they undertake the levy of duties of excise on alcohol."

By the aforesaid Notification the provisions of the Act were made applicable to an undertaking engaged in the manufacture and sale of alcohol with effect from October 1, 1961. Emphasis was laid by the learned counsel for the appellants on the expression "in so far as they undertake the sale of alcohol". He urged that provisions of the Act occurring in the aforesaid Notification have been made applicable to the appellants' undertaking at the point of sale of alcohol. Before the sale of alcohol the provisions of the Act are not attracted and as such the storage vats cannot be required to be calibrated under the law. Having given our anxious consideration to the question, we do not find any merit in the submission. The alcohol stored in the storage vats is essentially for the purpose of sale and there is no dispute that the appellants manufacture and store alcohol in storage vats for the purposes of sale. There is further no dispute that the officers of the Excise Department measure storage vats as prescribed by Rule 75 1 of the Excise Manual, Volume 1. Since the volume of the storage vats is measured by the officers of the Excise Department, the provisions of the Act for the purpose of sale would be applicable to the storage vats also. But if there be any doubt about the applicability of the provisions of the Act the same stood removed by the subsequent Notifications dated May 17, 1962 and July 18, 1967. Under these Notifications the provisions of the Act have been made applicable to all the under-

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takings in so far as they relate to units of capacity in respect of those clauses of undertakings to which the Act has been made applicable. Having regard to these facts the High Court, in our opinion, was right in holding that the storage vats are covered by the provisions of the Act.

Learned counsel for the appellants then urged that excise duty is assessed at the point of sale as held by the High Court of Allahabad in *M/s Mohan Meakins Breweries v. State of U.P.*, [1979] U.P. Tax Cases 1048, therefore, provisions of the Act are applicable to the issue vats only and no calibration is necessary for the storage vats. We find no merit in the submission. In the aforesaid decision the High Court held that under the provisions of the U.P. Excise Act excise duty is a charge essentially on the production or manufacture of an excisable article but for administrative convenience it is imposed at a stage subsequent to the stage of manufacture. This itself would make it clear that produced material is the subject matter of excise duty, even though the assessment of duty is done at the point of sale for convenience sake. The storage of alcohol is required to be measured by the officers of the Excise Department under the provisions of the Excise Manual to ensure that there is no pilferage or unauthorised removal of alcohol as that would adversely affect the assessment of duty. Storage vats are intimately connected with the assessment of excise duty, therefore provisions of the Act are applicable to storage vats also.

We are, therefore, of the opinion that no exception can be taken to the view taken by the High Court. The appeals fail and the same are accordingly dismissed. There will be no order as to costs.

N.P.V.
missed.
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Appeals dis-

JUDIS