

PETITIONER:
MOHAN MEAKIN BREWERIES LTD.

Vs.

RESPONDENT:
COMMISSIONER OF EXCISE, BIHAR & ORS.

DATE OF JUDGMENT:
17/10/1968

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
HIDAYATULLAH, M. (CJ)
SIKRI, S.M.
MITTER, G.K.
HEGDE, K.S.

CITATION:
1970 AIR 1171 1969 SCR (2) 457

ACT:
Bihar & Orissa Excise Act (2 of 1915), ss. 27, 28 and r. 147--Increase in duty on liquor--Increased rate whether leviable on goods imported after payment of duty before date from which increased duty payable--Rule 147, proviso whether justifies realisation of enhanced levy in such case.

HEADNOTE:

The petitioner was a company manufacturing Indian made foreign liquor in Himachal Pradesh and Uttar Pradesh. It had depots for sale of its products at Patna and Ranchi in the State of Bihar. Before October 13, 1967 it imported foreign liquor into the State of Bihar from Himachal Pradesh and Uttar Pradesh for purposes of sale at its Patna and Ranchi depots on payment of duty at the then current rate. Duty on liquor from Himachal Pradesh was paid upon or before importation by making deposits in the State Bank of India at Patna and Ranchi. Duty on liquor from Uttar Pradesh was paid on importation by making deposits with the government of that State. By notification dated October 13, 1967 duty on foreign liquor was enhanced with effect from November 1, 1967. The Superintendent of Excise, Patna directed the company to pay the difference in duty on the opening balance of Indian made foreign liquor in its stock on November 1, 1967. The company challenged the demand in a writ petition under Art. 32 of the Constitution. Apart from ss. 27 and 28 of the Act the respondent State relied on the proviso to r. 147 of the Rules made under s. 90 of the Act.

HELD i (i) The foreign liquor was imported before November 1, 1967 on payment of duty at the current rate in the manner indicated in s. 28(a)(i). Duty on imported foreign liquor was enhanced with effect from November 1, 1967. Sections 27 and 28 did not authorize the levy of the enhanced duty on the liquor imported before November 1, 1967 but lying with the importer on that date.

(ii) A close scrutiny of r. 147 reveals that the main part and the proviso deal with the same subject-matter. The expression "an excisable article" in the proviso means foreign liquor imported under bond and other articles on

which duty is payable. before removal from the excise warehouse or distillery where they are kept. It is for this reason that under the proviso the difference of duty is realised from or credited to the licensee to whom the article has been issued from the excise warehouse or distillery on payment of duty prior to such revision. The proviso does not apply to all imported foreign liquor. It applies only to foreign liquor imported under bond, that is to say, foreign liquor on which duty has been levied under s. 28(a)(ii) by payment upon issue, for sale from an excise warehouse. It does not apply to foreign liquor not imported under bond upon which duty has been levied under s. 28(a)(i). The petitioner's foreign liquor was not imported under bond. The petitioner was therefore not liable to pay under the proviso

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to r. 147 the difference of duty in respect of its stock of foreign liquor on November 1, 1967. The demand for payment of the difference of duty in respect of this stock was not authorized by the Act or the proviso to r. 147. [460 C--F]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition, No. 14 of 1968.

Petition under Art. 32 of the Constitution of India for enforcement of the fundamental rights.

M.C. Chagla, S.K. Mehta, K.L. Mehta and S.K. Khanna, for the petitioners.

C.K. Daphtary, Attorney-General and D.P. Singh, for the respondents.

The Judgment of the Court was delivered by

Bachawat, J. The petitioner company, Mohan Meakin Breweries Ltd., manufactures and sells Indian made foreign liquor. Its distilleries are situated at Solan in Himachal Pradesh and at Lucknow and Mohan Nagar in Uttar Pradesh. It has depots for sale of its products at Patna and Ranchi in the State of Bihar. Before October 13, 1967 it imported foreign liquor into the State of Bihar from Solan, Lucknow and Mohan Nagar for purposes of sale at its Patna and Ranchi depots on payment of duty at the then current rate of Rs. 14.40 L.P. litres. Duty on the liquor from Solan was paid upon or before importation by making deposits in the State Bank of India at Patna and Ranchi. Duty on the liquor from Lucknow and Mohan Nagar was paid upon importation by making deposits with the Uttar Pradesh Government.'

By a notification, dated October 13, 1967 duty on foreign liquor was enhanced from Rs. 14.40 to Rs. 26.20 per L.P. litres with effect from November 1, 1967. By an order, dated January 3, 1968 the Superintendent of Excise, Patna, directed the Company to pay by January 31, 1968 the difference in duty on the opening balance of India made foreign liquor in its stock on November 1, 1967. In this writ petition under Art. 32 of the Constitution the Company challenges the legality of the levy.

Duty on foreign liquor imported into the State of "Bihar is chargeable under s. 27(1)(a) of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act H of 1915). Subject to any rules made under s. 90 clause (12), the duty may be levied under s. 28 (a) in two ways. The first method as indicated in s. 28 (a) (i) is by payment upon or before importation either in the State of Bihar or in the State or territory from which the article is brought. This method is followed when the liquor is not imported under bond. The

second method as indicated in s. 28 (a)(ii) is by payment upon issue for sale from a warehouse established, authorized or continued under the Act. In view of the first proviso

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visu to s. 28 the payment is made at the rate of duty in force on the date of issue of the article from the warehouse. This method is followed when the liquor is imported under bond. The form the bond at page 215 of the Bihar and Orissa Excise Manual, Vol. II, Part I, issued in 1957 shows that foreign liquor imported under bond is kept without payment of duty in a warehouse established with the approval of the Excise Commissioner under s. 15. In view of s. 17 no article can be removed from the warehouse unless duty has been paid or a bond has been executed for the payment thereof.

In the present case, the foreign liquor was imported before November 1, 1967 on payment of duty at the current rate in the manner indicated ins. 28(a)(i). Duty on imported foreign liquor was enhanced with effect from November 1, 1967. Sections 27 and 28 do not authorize the levy of the enhanced duty on the liquor imported before November 1, 1967 but lying with the importer on that date.

Section 28, however, is subject to any rules that may be made by the Board of Revenue, Bihar, under s. 90 clause (12). The State of Bihar seeks to justify the levy of the enhanced duty on the stock of imported foreign liquor lying with the petitioner on November 1, 1967 under the proviso to Rule 147, framed by the Board of Revenue. That Rule is as follows :--

"147. The duty imposed on

- (i) foreign liquor and country spirit--
 - (a) imported under bond, or
 - (b) manufactured in a distillery, and stored in a distillery or excise warehouse;
- (ii) Ganja and Bhang--
 - (a) imported under bond, or
 - (b) stored in 'an excise warehouse,

shall be paid before removal from the distillery or excise warehouse unless a bond has been executed for such payment.

Provided that in case of any revision in the rate of duty on an excisable article, the difference of duty shall be realised from or credited to the licensee, to whom such article has been issued on payment of duty prior to such revision, according as the revised rate of duty is higher or lower than the old rate and the 'calculation of the difference of duty shall be made on the quantity of such article that may remain in possession of such licensee when the revised rate of duty comes into force."

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The main part of Rule 147 applies to foreign liquor imported under bond which, as already stated, is kept in an excise warehouse established under the Act. It provides that 'duty imposed on foreign liquor imported under bond shall be paid before removal from the excise warehouse unless a bond has been executed for such payment. Under the proviso to Rule 147 in case of any revision of the rate, of duty on an excisable article, the licensee to whom the article has been issued on payment of duty prior to such revision is liable to pay the difference of duty on the quantity of such article that may remain in his possession when the revised rate of duty comes into force. The proviso must be construed with reference to the main part of the Rule. A close scrutiny of the Rule reveals that the main part and the proviso deal with the same subject-matter. The

expression "an excisable article" in the proviso means foreign liquor imported under bond and other articles on which duty is payable before removal from the excise warehouse or distillery where they are kept. It is for this reason that under the proviso the difference of duty is realised from or credited to the licensee to whom the article has been issued from the excise warehouse or distillery on payment of duty prior to such revision. The proviso does not apply to all imported foreign liquor. It applies only to foreign liquor imported under bond, that is to say, foreign liquor on which duty has been levied under s. 28(a)(ii) by payment upon issue for sale from an excise warehouse. It does not apply to foreign liquor not imported under bond upon which duty has been levied under s. 28 (a) (i). The petitioner's foreign liquor was not imported under bond. The petitioner is not, therefore, liable to pay under the proviso to Rule 147 the difference of duty in respect of its stock of foreign liquor on November 1, 1947. The demand for payment of the difference of duty in respect of this stock is not authorised by the Act or the proviso to Rule 147.

The petitioner also challenged the constitutionality of s. 27 and the rites of the proviso to Rule 147. In view of our conclusions aforesaid, it is not necessary to decide these questions.

In the result, there will be an order in terms of (a) (iii) and (b) of the petition. The order of the Superintendent of Excise, Bihar, dated January 3, 1968, copy whereof is Annexure B, to the petition is quashed and set aside and the respondents are prohibited from enforcing the aforesaid order. The respondents shall pay to the petitioner the costs of the petition.

G.C.

Petition allowed.

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