



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.337 OF 2021

M/s. Sipping Spirits Pvt. Ltd.,
A Company registered under the
Indian Companies Act, having
its Registered office at 7/4
Crescent Avenue, Kesava
Perumal Puram Chennai,
represented herein by its
Authorised representative
Mr. Premanand Virnodkar,
Senior Accounts Executive, 37
years of age, having office at S-6-
B, Colvale Industrial Estate,
Colvale, Bardez-Goa.

..... Petitioner.

Versus

The Asst. Commissioner of
Commercial Taxes, Commercial
Tax Department, Commercial
Tax Office, Mapusa-Goa.

2. Commercial Tax Officer,
Mapusa Ward, Commercial
Tax Department, Commercial
Tax Office, Mapusa-Goa

.... Respondents.

Mr Ashwin D. Bhobe, Advocate *with* Ms Ramona Prazeres, Advocate *for the Petitioner.*

Mr Deep D. Shirodkar, Additional Government Advocate *for Respondents.*

CORAM: VALMIKI MENEZES, J.

DATED: 21st DECEMBER 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the Petition is heard and disposed of finally at the stage of admission.

2. This Petition under Article 227 of the Constitution of India impugns Judgment and Order dated 30.10.2020 passed by the Administrative Tribunal of Goa (Tribunal) in Entry of Goods Appeal No.6/2019 which confirms order dated 23.12.2015 passed by the Commissioner (First Appellate Authority) under The Goa Value Added Tax Act, 2005. Consequently, by the orders of the Tribunal and of the First Appellate Authority, the Entry Tax Assessment Order TIN 30850302642/17617 dated 28.03.2017 passed by the Commercial Tax Officer, Mapusa Ward, against the Petitioner raising a demand of Entry Tax Assessment of ₹12,19,025/- has been confirmed.

3. The facts as pleaded in the Petition are as under: -

- a) The subject matter of this petition concerns Entry Tax on Goods covered by the Goa Value Added Tax Act, 2005 (the Act) in relation to the Petitioner for the Assessment Year

1-4-2014 to 31-3-2015. By Notice dated 28.03.2017, the Commercial Tax Officer (CTO) assessed the Petitioner under the Act, for Entry Tax on various goods used by the Petitioner in manufacturing and sale of liquor at its unit; the goods on which Entry Tax was levied ranged from labels, corrugated boxes, essence and spirits and on empty bottles. Whilst completing the assessment, the CTO passed three Assessment Orders, all dated 07.01.2019 in which Entry Tax towards empty bottles claimed by the Petitioner to be used for packaging liquor was charged @12.5% under Entry 20 of Schedule I instead of under Clause VI of Entry 38 of the Act which entails Entry Tax @ only 2%.

- b) Against the order of the CTO, the Petitioner preferred 3 Tax Appeals bearing No.39, 40 and 41 of 2018-19, which were filed on 07.01.2019 and were disposed of by the Commissioner of Commercial Taxes (First Appellate Authority) upholding the classification of the goods to be under Entry 20, though whilst doing so, it has concluded that the bottles used for packing liquor manufactured by the Petitioner, were in the form of “packaging material”.
- c) The Petitioner agitated the matter further in an Entry of Goods Appeal bearing No.6/2019 where all three orders of the First Appellate Authority which were challenged together, came to be heard by the Administrative Tribunal for Goa which dismissed the Appeal upholding the classification of goods (empty glass bottles), used by the Petitioner for packing hard

liquor as taxable under Entry 20 and not under Entry 38 as claimed by the Petitioner. Consequently, the rate of Entry Tax levied on the glass bottles used for packing liquor by the Petitioner was charged at 12.5% under Entry 20 instead of at 2% under Entry 38 of Schedule I of the Act.

4. During the course of hearing of the matter, the Petitioner has placed an affidavit dated 15.12.2023 on record placing before this Court the extract of the Register of Bonded Warehouse under the Excise Act for the relevant period and has stated that the Petitioner was manufacturing Vodka, Brandy, Rum and Tequila with alcohol content between 37.5% v/v to 42.8% v/v as evidenced by the label registration of the Indian Made Foreign Liquor (IMFL) product. It has also placed on record the details of payment of undisputed Entry Tax of Rs.6,86,851/- deposited by it with the Department under its letter dated 10.02.2021, and the disputed dues payable in respect of Entry Tax on bottles which is the subject matter of this Petition is Rs.5,32,174/-.

5. The main contention of the Petitioner, as argued by learned Shri Ashwin Bhoje, learned Counsel for the Petitioner is that it admittedly manufactures liquor products with alcohol content of 37.5% v/v to 42.8% v/v and does not manufacture beer. According to the Petitioner, Entry 20 of Schedule I of the Act deals with the commodity of “Empty glass bottles used for beer or other like products” and does not deal with packaging material. It is Entry 38 of the Schedule that deals with various packaging materials which include glass bottles under clause (vi) of that Entry that would be applicable to the present case since the liquor products which are

quite unlike beer, with high alcohol content are packaged in such bottles and would attract the lower entry tax of 2%

Opposing this contention, Shri Deep Shirodkar, learned Additional Government Advocate for the Respondents supports the Orders passed by the Authorities; he contends that the empty glass bottles referred to in Entry 20 may be used for packaging beer or other like products which contain alcohol. He produced on record file notings of the Finance Department which record the Note of the Office of the Commercial Taxes to clarify that the levy of tax on Entry of Goods in respect of empty glass bottles used for beer or other like products should cover empty glass bottles used for beer and alcoholic drinks, carbonated drinks or drinks having strength below 10% v/v. He contends that the findings of the Administrative Tribunal on classification of the product within Entry 20 are correctly arrived at and are based upon the reasoning that Entry under Serial No.20 does not specify the alcohol content or type of liquor products, and as such all liquor products bottled in such empty glass bottles would attract Entry Tax @ 12.5% under Entry 20.

6. The question for determination in this Petition is whether empty glass bottles used by the Petitioner to package IMFL should be classified under Entry 20 or under Entry 38 of Schedule I of the Goa Value Added Tax Act, 2005.

7. From the facts on record, there is no dispute that the Petitioner manufactures liquor products such as Vodka, Brandy, Rum and Tequila with alcohol content of 37.5% v/v to 42.8% v/v and does not manufacture beer, whose alcohol content is 10% or less. This fact is also borne from the

facts stated in additional grounds of appeal at paragraph 1, 5 and 8 of the grounds pleaded on 28.08.2018 before the Appellate Authority. It is also not in dispute that whilst disposing of the appeals, the Appellate Authority has specifically considered the issue as to whether the empty bottles used by the Petitioner in packing its liquor products fell under Entry 20 or Entry 38 and in that process it has addressed itself to the fact that Entry 20 in the Schedule is an Entry independent of its description and specification and cannot be listed under “packing material”, for which the Government has provided a separate Entry under No.38 of the Schedule. Thus, the Appellate Authority was mindful of the fact that empty bottles used were used as packaging material.

8. If one peruses Schedule I to the Act, Entry 20 imposes 12.5% tax on empty glass bottles used for beer or like products. This is not an entry classifying these bottles as a packaging material but classifies it as a stand-alone commodity. The entry tax is levied on the empty glass bottle as a commodity, the glass bottle being one used for beer or other like products. Admittedly, the Petitioner does not manufacture beer or package the same. Certainly, IMFL manufactured by the Petitioner having high content of alcohol of over 37% cannot be equated to beer which contains less than 10% alcohol v/v. In any event, the tax is on the commodity and is unconnected with the product that may be placed in such glass bottles.

9. In contrast, Entry 38 deals with all packaging materials as a class by itself and a separate commodity which includes material for packaging such as fibre board boxes, containers such as cans and tins, wooden boxes, crates, gunny bags, glass bottles, glass jars and laminated packing material. Clause (i) to (vi) of Entry 38 cover various kinds of packing materials which

are to be used to package finished products, glass bottles being one such packing material, which the Petitioner claims are used for packing its IMFL. In my considered opinion, the empty glass bottles used by the Petitioner are admittedly used for packing liquor with alcohol content of over 37% and not used for packing beer or any other similar product. In any event, the bottles used are used exclusively for packing and are not brought into the State as a commodity by itself but are brought into the State as a packaging material, i.e. raw material for packing the Petitioner's product.

Perusal of the subsequent amendment and clarifications issued by the Government of Goa, which are borne out from the notings produced by the Respondents, it becomes even more clear that the levy of Entry Tax on empty glass bottles used for beer or other like products shall cover empty glass bottles used for beer and alcoholic carbonated drinks having strength below 10% v/v. This clarification sets at rest the entire controversy, and clearly differentiates between bottles referred to in Entry 20 as a stand-alone commodity and empty bottles used as a packaging material under Entry 38, such as in the case of the claim of the Petitioner.

10. Whilst passing the Assessment Order the Commercial Tax Officer has totally failed to apply his mind as to which Entry the empty glass bottles as a packaging material should be classified under, in terms of the Schedule. The CTO has straightaway charged Entry Tax @12.5%, as if the tax were a glass bottle under Entry 20. The Appellate Authority has addressed this very ground, as to classification, raised by the Petitioner in the Memo of Appeal and the fact that the Petitioner manufactures hard liquor such as Vodka, Tequila and Brandy and uses the empty bottles which are subject matter of tax for packaging. The Appellate Authority

has accepted the position that the empty glass bottles are of the description of “packaging material”, but however, after accepting this position dismisses the three appeals upholding the rate of 12% Entry Tax to be applied. This is clearly an error committed by the Appellate Authority in not applying the correct classification to the goods concerned, after having correctly concluded the nature of the goods.

11. In the further appeal, the Administrative Tribunal, whilst recording the submission on the question of correct classification under Entry 38 proceeds on a completely erroneous principle that Entry 38 requires to be harmoniously read with Entry 20 of Schedule I, and further erroneously concludes that since that Act contemplates the word “beer or other like products” in Entry 20, this would also include other alcohol-based preparations manufactured by the Petitioner. The only erroneous classification, proceeded on the basis that Entry 20 does not specify the alcohol content or type of liquor product in the bottle.

Schedule I classifies “empty glass bottles used for beer or other like products” under Entry 20 while it classifies various “packaging materials” under clauses (i) to (vii) of Entry 38. The Tribunal ought to have first proceeded to classify the commodity, and instead it has proceeded on the erroneous assumption that the classification is based upon the content of alcohol or similarity of the packaged product to beer. Clearly therefore, the Tribunal and the Authorities below have arrived at a wrong classification of the commodity in question, which clearly is a packaging material, specifically falling under clause (vi) of Entry 38, being glass bottles, used as a packing material, other than glass bottles covered elsewhere in the Schedule.

12. In this light of the matter, the impugned Orders dated 30.10.2020 passed by the Administrative Tribunal of Goa in Entry of Goods Appeal No.6 of 2019, Order dated 23.12.2015 passed by the Commissioner (First Appellate Authority) and the Entry Tax Assessment Order TIN 30850302642/17617 dated 28.03.2017 passed by the Commercial Tax Officer, Mapusa Ward, passed under The Goa Value Added Tax Act, 2005 against the Petitioner raising a demand of Entry Tax Assessment of ₹12,19,025/- are hereby quashed and set aside; Rule is made absolute in terms of prayer clause (A) of the Petition. Since the Petitioner has deposited the entire Tax due under the Demand Notice, other than the Entry Tax on empty glass bottles, wrongly charged at 12.5% under Entry 20, the Petitioner shall deposit, if not already deposited, the Entry Tax on the commodity/empty glass bottles at the rate of 2% under Entry 38 of Schedule-I of The Goa Value Added Tax Act, 2005. No costs.

VALMIKI MENEZES, J.