IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 6781 of 2010 (W)

PETITIONER(S):

K.T. JOSEPH, MANAGING DIRECTOR,
M/S.INDO SCOTTISH BRAND (PVT.) LTD. DISTILLERY,
KARUVELIPADI, KOCHI-682 005.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.PETER JOSE CHRISTO,
SRI.S.A.ANAND.

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN:695 001.

2. EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
NANDAVANAM, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, PIN:695 033.

3. JOINT EXCISE COMMISSIONER, CENTRAL ZONE,
PALARIVATTOM P.O., KOCHI-682 025.

4. EXCISE INSPECTOR (DISTILLERY OFFICER),
M/S.INDO SCOTTISH BRAND (PVT.) LTD. DISTILLERY
KARUVELIPADI, KOCHI-682 005.

BY GOVT. PLEADER SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 6781 of 2010 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE LICENCE FOR MANUFACTURE SPIRITS IN THE DISTILLERY.
EXT.P2	COPY OF THE LICENCE FOR COMPOUNDING AND IMPORTED FOREIGN LIQUOR FOR THE PURPOSE OF SALE.
EXT.P3	COPY OF THE LICENCE FOR THE BOTTLING OF FOREIGN LIQUOR FOR THE PURPOSE OF THE SALE.
EXT.P4	COPY OF THE LETTER DATED 20/10/2009 SUBMITTED BY THE PETITIONER BEFORE THE EXCISE INSPECTOR.
EXT.P5	COPY OF THE NOTIFICATION DATED 08/02/2010.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6781 of 2010

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Dated this the 31st day of August, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P5 demand notice issued by the fourth respondent directing the petitioner to pay an amount of ₹5,822/- in addition to an amount of ₹2,406/- which, according to the petitioner, has been paid by him, being excise duty on 23 cases of damaged “Absent Brandy”.

2. The petitioner is the managing director of M/s.Indo Scottish Brand (Pvt.) Ltd. Distillery, Karuvelipadi, Cochin-682005. He is in possession of Exts.P1, P2 and P3 licenses under the Kerala Distillery and Warehouse Rules, 1968 to manufacture spirit in the distillery for compounding and blending of Indian Made Foreign Liquor (IMFL) and Imported Foreign Liquor, for the purpose of sale and also for bottling of foreign liquor for the purpose of sale. The licence fee for Exts.P1, P2 and P3 is ₹2 lakhs each w.e.f 1.4.2007.

3. The petitioner alleges that he was running the business for the last several years without violating any provisions of the Abkari Act or the Rules framed thereunder. The petitioner further alleges that the distillery has been functioning under the direct control and supervision of the Excise Department. The liquor manufactured in the distillery is being kept in the bonded warehouse under the joint control of the petitioner and the Distillery Officer. The petitioner points out that he is not bound to pay any excise duty as long as the liquor is kept in the bonded warehouse. He further points out that he is not legally liable to pay excise duty on liquor which is found unfit for human consumption or damaged when it is kept under the joint custody of the petitioner and the excise department.

4. The petitioner alleges that there is no law empowering the State to levy and collect excise duty on intoxicating liquor manufactured in a licensed distillery and kept in the bonded warehouse under the direct control and supervision of Excise

Department before it is released for consumption in the State. Therefore, according to the petitioner, Ext.P5 demand notice issued by the 4th respondent to pay excise duty on 23 cases of liquor found damaged and 1385 cases of liquor found unfit for human consumption due to long storage in the bonded warehouse is illegal and arbitrary. It is with this background, the petitioner has approached this Court.

5. In the counter affidavit filed by the respondents, they contended that the petitioner is bound to sell IMFL manufactured by them to the Kerala State Beverages Corporation Ltd., (KSBC) since it is the only procurer of IMFL in the State. They would further contend that the IMFL manufacturers, including the petitioner, have also the freedom to export IMFL to outside the State in accordance with the existing Rules. It is stated that KSBC is procuring IMFL from the manufacturers after obtaining duty paid transport permits. It is also stated that the contract rate between the KSBC Ltd., and the

IMFL manufacturers, including the petitioner distillery, specifically states that the corporation reserves the right to destroy all IMFL stocks with them, which are unsaleable and that the corporation shall debit all expenses and other statutory levies, including excise duty incurred in this respect on the suppliers and recover the same from the payments due to security deposit etc. According to the respondents, as per Section 18(1) of the Abkari Act, such duty of excise or countervailing duty may be levied and collected in the case of spirit or beer, either on the quantity produced in or passed out of a distillery, brewery, winery, or other manufacturer licensed or established under Section 12 or Section 14.

6. Arguments have been heard.

7. The only question that has to be considered in this case is whether the petitioner is bound to pay excise duty on liquor kept in the bonded warehouse without releasing the same to an outsider.

8. The main argument advanced by the learned Special

Government Pleader was that the petitioner was not having the branded registration and that was the reason why the liquor happened to be unsaleable.

9. As per Sections 17 and 18 of the Abkari Act, excuse duty can be levied and collected on IMFL manufactured in a licensed distillery when it is passed out of a distillery. According to the petitioner, in the instant case, no liquor is passed out of the distillery. Therefore, Ext.P5 demand notice is against the provisions of the Abkari Act.

10. Chapter VIII of the Excise Manual lays down the procedure for levy of excise duty. It is stated that the convention followed with regard to taxation of liquor is that duty follows consumption. As per the excise manual, duty on liquors manufactured in Kerala issued for consumption within the State is collected at the point of release from a distillery. Excise duty is to be collected by the officer in charge of the distillery before releasing the consignment. The duty may be

remitted to the treasury nearest to the distillery on a challan issued by the distillery office. All releases from a distillery for consumption within the State shall be only on collection of excise duty against permit issued by the Excise Inspector of range where the liquor is consigned. The petitioner points out that no permits are being issued by the Assistant Excise Commissioner attached to the office of the KSBC and the excise duty is being paid by the KSBC. Therefore, the demand for payment of excise duty on liquors kept in the bonded warehouse found non-potable and also found damaged is highly irregular; so submitted the learned counsel for the petitioner.

11. It is true that the petitioner is bound to pay excise duty on liquor manufactured, bottled and released from its custody. The petitioner is bound to pay at the rates specified in the G.O(P) No.17/2004/TD dated 10.02.2004 only when that liquor is purchased by the KSBC. In the instant case, no liquor is purchased by the KSBC. The learned Special Government Pleader would submit that

it was on account of absence of registration to store branded items. However, in such circumstances, the petitioner will have to destroy all its items as there is no event which attracts the payment of excise duty by the petitioner. It cannot be said that the demand under Sections 17 and 18 of the Abkari Act can be made against the petitioner under such circumstances.

12. In the present case, the liquor manufactured, bottled and kept in bonded warehouse of the petitioner was not released from the distillery for consumption. Hence, no excise duty is leviable on such liquor. Therefore, Ext.P5 demand notice calls for an interference.

In the result, the writ petition is allowed. Ext.P5 is quashed. The second respondent is directed to refund the amount of ₹2,406/- illegally collected from the petitioner by way of excise duty for 23 cases of damaged absent brandy. This shall be done within a period of three months from the date of receipt of a copy of this judgment failing which, the respondent shall pay interest @ 12% per annum from the date on which the amount has been collected from the petitioner till the date of realisation.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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