THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

W.P.NOs. 8806 & 8833 of 2002

COMMON ORDER:
(Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The validity of Rule 67 (3) and Rule 67-A of the A.P. Distillery Rules, 1970 is questioned in this Writ Petition on the ground that it is ultra vires Section 21 of the A.P. Excise Act, 1968.

The Andhra Pradesh Distillery Rules, 1970 were made by the Government of Andhra Pradesh in exercise of the powers conferred under Section 72 of the Andhra Pradesh Excise Act, 1968. Rule 67 (1) (a) of the A.P. Distillery Rules, 1970 stipulates that the transit loss of sprit, transported to the Indian made liquor manufacturing distillery, including losses due to evaporation during transit, shall not exceed 0.5% (half percent) of the quantity transported in each consignment. Rule 67 (3) provides that the licensee shall pay to the Government, excise duty at the then existing rate on deficiencies of spirit in excess of the limit specified in Rules 67 (1) and (2). Rule 67-A stipulates that, in the case of alcohol producing distilleries, the loss of alcohol in storage shall not exceed 0.5% (half percent) for each period of three months; and any deficit in alcohol, over and above 0.5% (half percent), shall be indemnified in full by payment of excise duty at the then existing rate.

Ms. Sravya Desai, learned counsel appearing on behalf of the petitioners, would submit that the afore-said Rules fall foul of Section 21 of the A.P. Excise Act, 1968 read with Section 2 (9) thereof. Section 21 of the A.P. Excise Act relates to excise duty or countervailing duty on excisable articles and, sub-section (1) thereof, enables the Government to levy excise duty, on any excisable article manufactured in the State, at such rates not exceeding the rates mentioned in the Schedule as may be specified in the notification. The power conferred, by Section 21 (1) of the A.P. Excise Act, 1968, on the Government is to levy excise duty on any excisable article manufactured within the State. Section 2 (9) of the A.P. Excise Act, 1968 defines excisable article to mean any alcoholic liquor for human consumption; or any intoxicating drug.

In ***Deccan Sugar & Abkar Co. Ltd. Vs. Commissioner of Excise, A.P.*** [1] the Supreme Court held that, in the light of its earlier decision in ***Synthetics and Chemicals Ltd. Vs. State of U.P.*** [2], the State Legislature lacked jurisdiction to levy excise duty on rectified spirit; the State could levy excise duty only on potable liquor fit for human consumption; and, as rectified spirit did not fall under that category, the State legislature could not impose excise duty.

In the light of the decision of the Supreme Court in ***Deccan Sugar & Abkar Co. Ltd.***, Section 21 read with Section 2 (9) of the A.P. Excise Act, 1968 must be read as enabling the State Government

[1] (2004) 1 Supreme Court Cases 243
[2] (1990) 1 Supreme Court Cases 109

to levy excise duty only on potable liquor, and not on rectified spirit, as the State Legislature lacks legislative competence to make a law for levy of excise duty on rectified spirit. When so read, Rule 67 (1) and 67-A of the A.P. Distillery Rules, 1970, which confers power on the authorities to levy excise duty on rectified spirit, are ultra-vires Section 21 of the A.P. Excise Act and are liable to be struck down. Consequently the impugned demand notice, to the limited extent the petitioner was called upon to pay excise duty on rectified spirit, is liable to be and is, accordingly, set aside.

Ms. Sravya Desai, learned counsel appearing on behalf of the petitioner, would seek a direction from this Court to the respondents to refund the excise duty already paid by the petitioner under the illegal demand notice. In the light of what we have held hereinabove, it is open to the petitioner to approach the respondent-authorities and seek refund of the excise duty, if any, paid by them under the impugned demand notices.

Both the writ petitions are, accordingly, disposed of. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Dt. 7.9.2017
KR/GSN

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