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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 744/2023 & CM APPL. 58915-58917/2023**

PUNJAB EXPO BREWERIES PVT. LTD.

..... Appellant

Through: Ms. Rana Parween Siddiqui,
Advocate

versus

EXCISE COMMISSIONER DELHI & ANR.

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel (Civil), GNCTD
with Mr. Arun Panwar, Mr.
Pradyumn Rao, Mr. Utkarsh Singh,
Mr. Kartik Sharma, Ms. Prashansa
Sharma, Mr. Rishabh Srivastava,
Advocates.

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Date of Decision: 10th November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. Present appeal has been filed challenging the judgment dated 31st August, 2023 passed by learned Single Judge in W.P.(C) 7870/2023, by which the writ petition filed on behalf of the appellant challenging the order dated 26th April, 2022 passed by the learned Financial Commissioner upholding the order dated 08th March, 2019 passed by the Commissioner (Excise), was dismissed.



2. Facts in brief as canvassed before this Court are that the appellant was granted L-1 license by the Government of NCT of Delhi for the year 2013-14 for wholesale vend for sale of brands of liquor, i.e., Courier Napoleon Brandy and Savoy Club Gin and Fresh Lime. The said license was valid till 15th June, 2013.
3. Vide letter dated 12th March, 2013, the appellant applied to the Assistant Commissioner (Excise) for permission to transfer to itself the leftover stock from two erstwhile licensees namely, M/s Tilak Nagar Industries Private Limited, which had license for the year 2010-11 and M/s Patiala Distilleries and Manufacturers Private Limited, which had license for the year 2011-12. By letter dated 26th April, 2013, the Assistant Commissioner (Excise) allowed the request of the appellant partly and granted permission to transfer the leftover stock of only “Courier Napoleon Brandy” lying with M/s Tilak Nagar Industries Private Limited and M/s Patiala Distilleries and Manufacturers Private Limited.
4. However, even after grant of permission as aforesaid, the appellant did not transfer the leftover stock of “Courier Napoleon Brandy” from the aforesaid two companies. Further, the appellant also did not take steps to declare its own leftover stock to the Deputy Commissioner (Excise) on expiry of its license on 15th June, 2013 in terms of Rule 56 of The Delhi Excise Rule, 2010.
5. Subsequently, the appellant again applied on 07th February, 2014 to the Excise Department for permission to transfer to itself the leftover stock of the aforesaid companies, i.e., M/s Tilak Nagar Industries Private Limited and M/s Patiala Distilleries and Manufacturers Private Limited. The second request of the appellant was rejected by the Assistant Commissioner



(Excise) vide communication dated 07th March, 2014 and the appellant was directed to destroy the leftover stock after depositing a sum of Rs. 39,02,845.91/- on account of applicable excise duty on leftover stock.

The said order was challenged in appeal before the Excise Commissioner, which was rejected vide order dated 23rd December, 2014. Challenge to the aforesaid order filed before the learned Financial Commissioner, was also dismissed vide order dated 21st January, 2016.

6. Against the order of the Financial Commissioner, the appellant filed a writ petition before this Court being *W.P.(C) 4666/2016*. Thus, this Court allowed the writ petition filed on behalf of the appellant and remanded the matter back to the learned Financial Commissioner to examine whether any liability could be imposed upon the appellant for payment of excise duty. On remand, the learned Financial Commissioner further sent back the matter to the Excise Commissioner to reconsider the issue whether the liability to pay excise duty should be imposed upon the appellant herein.

7. Vide order dated 08th March, 2019 the Excise Commissioner rejected the appeal of the appellant thereby holding that the appellant is liable to pay excise duty before the leftover stock is destroyed. Appeal before the learned Financial Commissioner filed by the appellant against the order dated 08th March, 2019 passed by the Excise Commissioner, was also dismissed vide order dated 26th April, 2022.

8. Against the said order dated 26th April, 2022 passed by the learned Financial Commissioner, the appellant filed writ petition before this Court being *W.P.(C) 7870/2023*. By the impugned judgment, the writ petition filed on behalf of the appellant was dismissed. Therefore, the present appeal has been filed before this Court.



9. Upon hearing the parties and perusing the record, this Court does not find merit in the appellant's contention that the stock of liquor belonged to two other independent corporate entities. The learned Single Judge has categorically recorded that the Excise Commissioner held that the manufacturer and seller of the liquor in the present case was only one and that the entire attempt on the part of the appellant was only to avoid payment of excise duty by hiding behind the cloak of different entities. Thus, the learned Single Judge has recorded as follows:

“xiii. The Excise Commissioner held that the source of liquor for the Petitioner and the other two licensees, i.e., M/s Tilak Nagar Industries Private Limited and M/s Patiala Distilleries & Manufacturers Private Limited, is the same. It was held that the address of the Petitioner and the M/s Patiala Distilleries & Manufacturers Private Limited is same, which is, 356, Patparganj Industrial Estate, New Delhi -110092. Further, the Directors of the Petitioner and the other licensee, which is, M/s Tilak Nagar Industries Private Limited are common.

xiv. The learned Excise Commissioner, therefore, held that the Petitioner was selling liquor via different companies which have been incorporated by them for the purpose of sale of liquor, which was being manufactured in the distillery of M/s Patiala Distilleries & Manufacturers Private Limited.

xv. The learned Excise Commissioner came to the conclusion that the manufacturer and the seller of the liquor in the present case was only one and the entire attempt on the part of the Petitioner is only to avoid payment of excise duty by hiding behind the cloak of different legal entities. The Excise Commissioner was, therefore, of the opinion that the leftover stock of the companies, i.e., M/s Tilak Nagar Industries Private Limited and M/s Patiala Distilleries & Manufacturers Private Limited belongs to one entity and, therefore, the Petitioner was liable to pay the excise duty.

xvi. The Excise Commissioner held that Rule 56 of the Delhi Excise Rules does not give any right to an erstwhile licensee to demand destruction of the leftover stock and, therefore, the Petitioner is liable to pay excise duty before the leftover stock is destroyed.”

(Emphasis Supplied)



10. In view of the aforesaid finding, this Court finds no infirmity with the finding of the learned Single Judge that liquor has been sold by the appellant by different companies incorporated over the years and that appellant was in possession of the stock as a purchaser and thus, liable to pay the excise duty. Thus, on the aspect of payment of excise duty by the appellant, learned Single Judge has held as follows:

“16. The material on record shows that the M/s Tilak Nagar Industries Private Limited is the parent holding company of the Petitioner. Further, the Petitioner and M/s Patiala Distilleries & Manufacturers Private Limited operates from the same premises. The Director of M/s Tilak Nagar Industries Private Limited and the Petitioner herein are one and the same person. The modus operandi of the Petitioner was to sell liquor belonging to one group under different names and avail benefit of the excise duty under the garb of stock transfer. The approach by the Excise Commissioner and the Financial Commissioner by rejecting the application seeking transfer of leftover stock and the conclusion that the Petitioner and the two licensees were in fact the same and that the Petitioner was in fact only a subsidiary of M/s Tilak Nagar Industries Private Limited does not warrant any interference.

17. Section 22 of the Delhi Excise Act provides that no liquor shall be removed from any manufacturing warehouse or place of storage without any duty fee payable has been paid.

18. The purpose of Rule 56 is removal of unsold stock by erstwhile licensees to persons having valid license on payment of duty. The purpose of destruction of stock is only for ensuring that unsold liquor should not be left in bonded warehouse. The conclusion by the authorities below that the liquor that has been sold by the Petitioner by different companies which have been incorporated over the years and the Petitioner was both the manufacturer and seller cannot be found fault with. The Petitioner is in possession of the stock as a purchaser and, therefore, is liable to pay the excise duty.

19. The entire modus operandi was only to avoid payment of excise duty. The attempt by the Petitioner is only to show that stock belonged to other company and did not belong to the Petitioner and the same cannot be accepted.”



11. The doctrine of lifting of the corporate veil is well recognized and the face of the company can be examined in substance in appropriate matters. Thus, in the case of ***Tata Engineering and Locomotive Co. Ltd. and others Versus State of Bihar and others***¹ Supreme Court has held as follows:

“24. The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. This position has been well established ever since the decision in the case of Salomon v. Salomon and Co. [1897 AC 22 HL] was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.”

12. Likewise, Supreme Court has held that where fraud or improper conduct is intended to be prevented or a taxing statute or a beneficent statute

¹ (1964) 6 SCR 885



is sought to be evaded or where associated companies are inextricably connected as to be in reality part of one concern, corporate veil may be lifted. Thus, in the case of *Life Insurance Corporation of India Versus Escorts Ltd. and Others*² Supreme Court has held as follows:

“90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in Wallersteiner v. Moir [(1974) 3 All ER 217] and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar [AIR 1965 SC 40 : (1964) 6 SCR 885] , CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] and Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] — While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [1897 AC 22] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances Pennington in his Company Law (4th Edn.) states:

“Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to

² (1986) 1 SCC 264



the many standard text hooks on corporation tax, income tax, capital gains tax and capital transfer tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.”

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [AIR 1965 SC 40 : (1964) 6 SCR 885] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”



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13. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed along with pending applications.

THE ACTING CHIEF JUSTICE, J

MINI PUSHKARNA, J

NOVEMBER 10, 2023

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