2025:UHC:10896

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition No. 653 of 2022 (MS)

Hem Chandra Joshi --Petitioner

Versus

State of Uttarakhand and others -Respondents

With

Writ Petition No. 1560/2023(MS)
Writ Petition No. 677/2022(MS)
Writ Petition No. 987/2022(MS)
Writ Petition No. 418/2023(MS)
Writ Petition No. 431/2023(MS)
Writ Petition No. 54/2024(MS)
Writ Petition No. 59/2024(MS)
Writ Petition No. 63/2024(MS)

Advocates: Mr. Yogesh Pacholia, Advocate for the petitioners
Mr. Pankaj Tiwari, Advocate for petitioners in WPMS Nos. 54/2024, 59/2024 and 63/2024 through video conferencing.
Mr. Rajeev Singh Bisht, Additional Chief Standing Counsel with Mr. Tarun Lakhera, Brief Holder for the State.

JUDGMENT

1. Since common questions of law and fact are involved in these petitions, therefore they are heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition No. 653 of 2022 (MS) alone are being discussed and considered.

2. Petitioner was granted license for retail sale of country liquor for Financial Year 2017-2018. In Writ Petition No. 653 of 2022 (MS), petitioner is aggrieved by order dated 07.12.2021, passed by Assistant Commissioner, State Tax, Bageshwar, whereby cess amounting to Rs. 90,000/- was imposed upon him on the sale of country liquor made by him. The cess was imposed under Uttarakhand Cess Act, 2015.

3. The reliefs sought in Writ Petition No. 653 of 2022 (MS) are as follow:

> "(1) Issue a writ, rule, order or direction in the nature of Certiorari calling for record and to quash the order dated 7.12.2021 passed by Assistant Commissioner, State Tax. Bageshwar whereby he has imposed a CESS of Rs. 90000/- for the financial year of 2017-18, on the sale of country made liquor under the provisions of Uttarakhand Cess Act 2015,
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> (ii) Issue a writ, rule, order or direction in the nature of Certiorarı calling for record and to quash the demand notice dated 7.12.2021 passed by respondent no. 5 le Assistant Commissioner, State Tax, Bageshwar, as the petitioner had already paid the 2% cess to Uttarakhand Excise Department
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> (iii) Issue a writ, rule, order or direction in the nature of Mandamus commanding and directing the respondents no 3 & 4. either to return the amount deducted by them from the petitioner in the head of 2% Uttarakhand cess, so that petitioner may deposit the same in the appropriate head of State Tax department or transfer the amount of cess, deducted from petitioner, at source, at the time of purchase of liquor stock, in the accounts of State Tax Department.

4. Learned counsel for the petitioner submits that since petitioner has deposited *ad valorem* cess at the rate of 2 percent as per excise policy of 2017-2018, therefore petitioner is not liable to pay any extra amount as cess.

5. Learned State Counsel, however, submits that the cess imposed upon petitioner is as per Section 3(1)(b) of Uttarakhand Cess Act, 2015, which provides levy of cess for the purpose of State Disease Fund. Section 3 (1) (b) and Schedule II of Uttarakhand Cess Act, 2015 are extracted below for ready reference.

> "3 (1) There shall be levied a cess under this Act;
> (b) for the purpose of State Disease Fund (Rajya Vyadhi Nidhi) on the sale or purchase of such goods, within the State, as specified in Schedule II of this Act, with effect from such date and at such point and at such rate, as the State Government may, by notification in the Official Gazette, specify:
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> Provided that such rate shall not exceed ten percent of the sale or purchase price of such goods, subject to the conditions, if any, as specified in the Schedule II."

Schedule II

Cess on Sale or Purchase of Goods

[under sub-section (1) (b) of section 3 of the Uttrakhand Cess Act, 2015]

Sl.No.	Description of Goods	Description of Goods	Rate of cess
1	All kinds of Liquor	At the point of sale to consumer	two percent of the value of the goods
2	Khaini, Tobacco, Cigarette, Gutkha	At the point of manufacture or at the point of first sale of goods in the State, after their import from outside the State	two percent of the value of the goods

6. Since impugned order is passed under Section 5 of Uttarakhand Cess Act, 2015, read with Section 25 (7) and Section 31 of Uttarakhand VAT Act, 2005, therefore the same is appealable under Section 5 of Uttarakhand Cess Act, 2015 read with Section 51 of Uttarakhand VAT Act, 2005.

7. Leaned counsel for the petitioner contends that as per Article 270 of Constitution of India, cess can only be imposed by law made by Parliament.

8. State Counsel is right in submitting that validity of Uttarakhand Cess Act, 2015 has not been challenged in the writ petition and petitioner has simply challenged the assessment order, which is appealable.

9. Learned counsel for the petitioner submits that validity of Uttarakhand Cess Act, 2015 is challenged in a petition which is pending before Division Bench. Pendency of that petition will not help the petitioner in these cases and Division Bench will decide the case on its own merits.

10. Writ petition fails and is dismissed.

MANOJ KUMAR TIWARI, J.

Dt: 09.12.2025
Mahinder

MAHINDER SINGH