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T.J. BABY AND ORS. ETC.
v.
STATE OF KERALA AND ORS.

AUGUST 10, 2000

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[B.N. KIRPAL, S.N. PHUKAN AND RUMA PAL, JJ.]

Excise Laws :

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Kerala Abkari Act—Sections 17(a) to (g) and 18 (1), (2) (3)—Existing F.L.1 and F.L.3 licences of stockists, retailer and owners of bars and restaurants were extended from 1995-96 to 1996-97—Rate of excise duty on Indian made foreign liquor was also increased by amendment in Act—Differential duty claimed from F.L.1 and F.L.3 licences for stocks held on 1.4.96 and not from the manufacturing stockists holding F.L. 9 licence who had already paid duty—Single Judge allowed writ petition challenging differential duty—Reversed by

D

Division Bench—On appeal held, duty of excise is levied on manufacture though its collection may be postponed—Luxury tax may be imposed on manufacture or issuance of liquor only under Section 17 (g) for sale in any part of State—Owners of F.L.1 and F.L.3 licences were under no obligation to pay increased excise duty.

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Section 18(3) (proviso)—Existing stock holders, importers, manufacturers and ware house owners are alone obliged to pay difference of increased excise duty or luxury tax—Realisation of increase in excise duty not permissible from licencees who were under no obligation to pay original excise duty.

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Appellants holding F.L.1 licence under the Kerala Abkari Act are stockists and retailers of Indian made foreign liquor and those holding F.L.3 licence are owners of bars and restaurants. Their licences for the year 1995-96 were extended till 1996-97 but the rate of excise duty on Indian made foreign liquor was increased from Rs. 20 to Rs. 200 per proof litre, by an amendment in the Act. The differential duty was sought to be realised from them in respect of the stock held on 1.4.1996. In spite of the fact that appellants had purchased duty paid liquor from the State owned manufacturing and marketing corporation, holding F.L. 9 licence. Single Judge of the High Court allowed the writ petitions challenging the differential duty. However, the Division Bench held the imposition valid under the proviso to Section 18(3). Hence these appeals.

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Appellants contended that Section 18(3) can have no application to F.L. 1 and F.L.3 licenses who are not liable to pay excise duty under Section 17 of the Act.

Respondents contended that proviso to Section 18(3) clearly indicates that all licensees including F.L. 1 and F.L. 3 would be liable to pay the differential duty and that duty of excise and luxury tax, which could be levied under Section 17 (a) to (g) of the Act.

Allowing the appeals, the Court

HELD : 1. When Section 17 and Section 18 of the Kerala Abkari Act are read together keeping in mind that duty of excise is levied on the manufacture, though its collection may be postponed, it becomes clear that when Section 17 talks of levy of luxury tax it cannot be in relation to Section 18(a) to (f). No luxury tax is contemplated by Section 18(2) to be imposed on manufacture or issuance of liquor referred to in Section 17(d), (e) and (f). Similarly Section 18(2) does not contemplate levy of luxury tax with reference to Section 17(a), (b) and (c) as the method for levying excise duty is provided under Section 18(1). This leaves out section 17(g) referring to sale of intoxicating drugs or liquor in any part of the State, which alone is relatable to the levy of luxury tax. [412-F-H]

2. The proviso to Section 18(3) obliges the existing stock-holders who are licensees to pay the difference of duty of excise or luxury tax in case there is an increase in respect thereof. The importers, manufacturers and warehouse owners would be concerned with the levy of excise duty whereas luxury tax would be payable by the licensees relatable to Section 17(g) like the appellants. The proviso means that those licensees who are liable to pay excise duty can be called upon to pay the increase thereof while those licensees who are liable to pay luxury tax can likewise be required to pay the increase in the luxury tax. Section 17(a) to (f) which deals with the imposition of excise duty refers to licensees under Sections 6, 7, 11, 12 and 14. Appellants are licensees under Section 15 of the Act. It is not in dispute that excise duty is not levied or realised in the first instance from the F.L. 1 or F.L. 3 licensees. Excise duty of liquor which is manufactured within the State or is imported from outside the State, is paid either by the manufacturer or by the F.L. 9 licensees. The proviso to Section 18 (3) would not enable realisation of the increase in excise duty from the licensees who were not under an obligation to pay the original excise duty which has increased.

A The luxury tax on the sale of intoxicating liquor can be imposed only on the persons holding licence for sale simplicitor but not excise duty. [413-A-D]

3. The Government has chosen to levy excise duty in the manner prescribed by Section 17(f) read with Section 18(1), namely, excise duty on liquor is levied only at the time when it is issued from an establishment licensee under Section 12 or Section 14, the licensees under F.L. 1 and F.L. 3 licensees were under no obligation to pay the excise duty. The increase in the excise duty under proviso to Section 18 (3) can only be levied in terms of Section 17(f) read with Section 18(1) which means if the distillery, brewery, winery or other manufactory or warehouse which is licenced or established under Section 12 or Section 14 had with it duty paid stock and there was an increase in the duty from Rs. 20 to Rs. 200 per proof litre, then it is only from those licensees referred to in Section 17(f) from whom the increase could be realised. The Act does not contemplate or permit imposition of excise duty on the stockists, retailers or F.L. 3 licensees. [413-F-G]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6326-6329 of 1999.

From the Judgment and Order dated 30.7.99 of the Kerala High Court in W.A. Nos. 2233/97, 992/98, 471 and 1046 of 1998.

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F C.A. Nos. 6330-6332/1999, C.A. Nos. 6333-6334/99, C.A. Nos. 6335-6343/1999, C.A. Nos. 6344-6348/1999, C.A. Nos. 6349-6357/1999, C.A. Nos. 7113-7125/1999, C.A. Nos. 7428-7458/1999, C.A. Nos. 190-191/2000, C.A. No. 192/2000, C.A. No. 193/2000, C.A. Nos. 1467-1471/2000, C.A. No. 2588/2000, C.A. No. 3485-3486/2000 and C.A. No. 3487/2000.

G F.S. Nariman, Joseph Vellapally, K.N. Bhat, C.S. Vaidyanathan, K. Sukumaran, Romy Chacko, Vinod M.P., Rahul Ravindran, Ms. Vrinda Dhar, G. Prakash, Jyotish A.P., Himinder Lal Rajiv Mehta and C.N. Sree Kumar, George Poonthom, Dillip Pillai, Roy Abraham, C.C. Thomas and C.K. Sasi for the appearing parties.

The Judgment of the Court was delivered by

H KIRPAL, J. The only question which arises for consideration in these appeals is whether the appellants who are F.L. 1 and F.L. 3 licence-holders under the Abkari Act of Kerala can be made liable to pay any difference in

excise duty due to subsequent increase on the unsold stock of liquor which remained with them at the close of the financial year having purchased the same from the state-owned Kerala State Beverages (Manufacturing and Marketing) Corporation Limited on which duty has already been paid by the State Corporation when it was issued out of the bonded warehouse.

Under the provisions of the Abkari Act different types of licences are issued. As far as the appellants are concerned F.L. 1 licence is issued to stockists and retailers and F.L. 3 licences are issued to bars and restaurants. The holders of F.L. 1 licences can purchase liquor for sale from the aforesaid Beverage Corporation to whom F.L. 9 licence is issued. These stockists and retailers then sell liquor to other dealers or to consumers while the holders of F.L. 3 licences sell liquor in the bars and restaurants run by them.

It appears that prior to 1st April, 1996 the duty of excise on Indian-made foreign liquor was Rs. 20 per proof litre. With effect from 1 April, 1996, Section 18 of the said Act was amended and now the maximum rate of excise duty could be Rs. 200 per proof litre.

The respondents herein while invoking the provisions of proviso to Section 18(3) sought to realise the difference in the excise from the F.L. 1 and F.L. 3 licensees in respect of the stocks which were held by them as on 1.4.1996. It is not in dispute that the appellants herein are licence-holders whose licences have been extended for the period from 1.4.1996 to 31.3.1997 and they were existing licence-holders in the previous year as well.

The appellants challenged this imposition by filing writ petitions in the Kerala High Court. Single Judge of the said Court came to the conclusion, while allowing the writ petitions, that such a demand could not be raised under proviso to Section 18(3) from the F.L. 1 and F.L. 3 licensees. The State of Kerala went up in appeal. The Division Bench while reversing the decision of the Single Judge, and thereby dismissing the writ petitions, came to the conclusion that the said proviso to Section 18(3) enabled the State Government to realize from the licensees who hold stocks the additional excise duty which had come into effect from 1 April, 1996.

Seeking to challenge the aforesaid decision, it has been contended by the learned senior counsel for the appellants that Section 18(3) can have no application to F.L. 1 and F.L. 3 licensees who are not liable to pay excise duty under Section 17 of the Act. Mr. Bhat, on the other hand, submits that the plain reading of the said proviso clearly indicates that all licensees including F.L. 1

A and F.L. 3 licence-holders would be liable to pay the difference-in the excise duty in the event of there being an increase of the same.

In order to examine the proviso it is appropriate to refer to the relevant provisions of the Act. Section 17 provides for levy of duty on liquor or intoxicating drugs. The said Section reads as follows:

B *Duty on liquor or intoxicating drugs:-* ¹[A duty of excise or luxury tax or both shall, if the Government so direct, be levied on all liquor and intoxicating drugs]

(a) permitted to be imported under ²[x xx] Section 6; or

C (b) permitted to be exported under [x xx] Section 7; or

(c) permitted under Section 11 to be transported ; or

(d) manufactured under any licence granted under Section 12; or

D (e) manufactured at any ³[distillery, brewery, winery or other manufactory] established under Section 14; or

(f) issued from a ⁴[distillery, brewery, winery or other manufactory or warehouse] licensed or established under Section 12 or Section 14; or

E (g) sold in any part of the ⁵[x xx] State:

⁶[Provided that no duty or gallonage fee or vend fee or other taxes shall be levied under this Act on rectified spirit including absolute alcohol which is not intended to be used for the manufacture of potable liquor meant for human consumption.]

F ⁷[*Expianation:-* For the purpose of this section and Section 18, the expression “duty of excise”, with reference to liquor or intoxicating drugs, include countervailing duty on such goods manufactured or

G 1. Substituted for the opening paragraph “A duty of such amount as the Diwan may prescribe shall if he so direct, be levied on all liquor and intoxicating drugs” by Section 5(1) of President’s Act I of 1964,

2. The words “the proviso to” omitted by Section 18(a) of Act 10 of 1967.

3. Substituted for the word “distillery” by Section 18(h) of Act 10 of 1967.

4. Substituted for the words “Distillery or warehouse” by Section 18(c) *ibid*.

5 The word “Cochin” omitted by Section 18(d) *ibid*.

6. Substituted by Section 7 of Act 4 of 1996.

H 7. Inserted by Section 5(ii) of President’s Act I of 1964

produced elsewhere in India and brought into the State.

Section 18 provides for the manner in which the duty may be imposed and reads as follows:

How duty may be imposed:- ⁸[8(1)] ⁹[Such duty of excise may be levied:]

(a) ¹⁰[xxx] in the case of spirits or beer either on the quantity produced in or passed out of ¹¹[a distillery, brewery or warehouse licensed or established under Section 12 or Section 14] as the case may be or in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash ¹²[or wort or on the value of the liquor] as the case may be, as the Government may prescribe;

(b) in the case of intoxicating drugs ¹³[x x x] on the quantity produced or manufactured ¹⁴[or issued from a warehouse licensed or established under Section 14;]

¹⁵(c). x x x

(d) x x x]

(e) in the case of toddy, or spirits manufactured from toddy, ¹⁶[in the form of a tax on each tree from which toddy is drawn], to be paid in such instalments and for such period as the Government may direct; or

(f) by ¹⁷[import, export or] transport duties assessed in such manner as the Government may direct;

8. Renumerated by Section 6 of President's Act 1 of 1964.

9. Substituted for the words "such duty may be levied in one of more of the following ways" by Section 6(1)(i) *ibid*.

10. The words "by duty of excise to be charged" omitted by Section 6(i)(ii) *ibid*.

11. Substituted for the words "the distillery or brewery" by Section 10(1) of Act V of 1091.

12. Substituted by Section 8 of Act 4 of 1996.

13. The words "by a duty to be rateably charged" omitted by Section 6(1)(iii) of President's Act 1 of 1964.

14. Added by Section 10(ii) of Act V of 1091.

15. Clauses (c) & (d) omitted by Section 6(1)(iv) of President's Act 1 of 1964.

16. Substituted for the words "by a tax on each tree from which toddy is drawn" by Section 6(1)(v) of President's Act 1 of 1964.

17. Inserted by Section 10(iii) of Act V of 1091.

A ¹⁸[xxx]

¹⁹(2) The luxury tax on liquor or intoxicating drugs shall be levied:-

²⁰[(i) in the case of any liquor in the form of a fee for licence for the sale of the liquor and in the form of a gallonage fee or vending fee, or in any one of such forms; and;]

B [(ii) in the case of an intoxicating drug, in the form a fee for licence for the sale of the intoxicating drug.]

C ²¹[(3) The duty of excise under sub-section (1) and the luxury tax under sub-section (2) shall be levied at such rates as may be fixed by the Government, from time to time, by notification in the Gazette, not exceeding the rates specified below:-

(1) *Duty of Excise*

Maximum rates

D (i) Duty of excise on liquors (Indian made) ²²[Rs.200 per proof litre or an amount equal to 200 per cent of the value of the liquor.

E (ii) Duty of excise on intoxicating drugs. Rs. 1 per gram or Rs. 933.10 per seer.

(iii) Duty of excise in the form of tax on trees tapped for toddy. Rs. ²³[50] per tree per half-year or part thereof.

F (2) *Luxury tax:*

(a) when levied in the form of a fee for licence for sale of foreign liquor-

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18. The proviso omitted by Section 6(1)(vi) of President's Act 1 of 1964.

19. Inserted by Section 6(2) of President's Act of 1964.

20. Substituted by Act 16 of 1969 with effect from 26.1.1.950.

21. Inserted by Section 6(2) *ibid*.

22. Substituted by Section 8(2)(a) of Act 4 of 1996.

H 23. Substituted by Act 16 of 1969.

(i) for licence for sale of foreign liquor in whole-sale	Rs. [15000] for a year or part thereof.	A
(ii) for licence for sale of foreign liquor in hotels or restaurants	Rs. [12000] for a year or part thereof.	B
(iii) for licence for sale of medicated wines	Rs. 1,000 for a year or part thereof.	
(iv) for licence for sale of foreign liquor in non-proprietary clubs to members	Rs. [1500] for a year or part thereof.	C
²⁴ [(v) xxx]		
(b) when levied in the form of gallonage fee	Rs. 10 per bulk litre or	D
(c) ²⁵ [(c)xxx]	Rs- 45.46 per bulk gallon.	

Provided that where there is a difference of duty of excise or luxury tax as between two licence periods, such difference may be collected in respect of all stocks of ²⁶[Indian made foreign liquor] or intoxicating drugs held by licensees at the close of the former period.] E

²⁷[*Explanation*:- Where any liquor is chargeable with duty at a rate depending on the value of the liquor, such value shall be the value at which the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited purchases such liquor from the supplies and in case any such liquor is not purchased by Kerala State Beverages (Manufacturing and Marketing) Corporation Limited such value shall be the value fixed by the Commissioner.] F

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24. Item "(v) for special licence for sale of foreign liquor Rs. 500 for a year or part thereof" omitted by Section 8(b)(l) of Act 4 of 1996.
25. Subclause "(c) when levied in the form of vending fee on denatured spirit including methylated spirit Rs. 1 per bulk litre or Rs. 4.54 per bulk gallon" omitted by Section 8(3)(ii) of Act 4 of 1996.
26. Substituted for the words "country liquor" by Section 8(c) of Act 4 of 1996.
27. Explanation added by Section 8(d) of Act 4 of 1996. G

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A Reading of Section 17 shows that the said Section deals with two types
of imports - one is the duty of excise and the other is the luxury tax.
Both the duty of excise and the luxury tax can be levied on liquor and
intoxicating drugs. As we read the said Section it clearly indicates that
B Section 17 spells out the taxable events. Under Clause (a) the taxable
event is the import under Section 6, export is the taxable event under
Clause (b) and transportation permitted under Section 11 is another
taxable event. Manufacture under licence granted under Section 12
or by an entity mentioned therein established under Section 14 are the
other taxable events. Clause (f) postulates the taxable event when there
C is an issuance from the distillery, brewery, winery or other manufactory
or warehouse licenced are established under Section 12 or Section 14,
while under Clause (g) liquor or intoxicating drug sold in any part of
the State is a taxable event. It will be seen that the Section does not
by itself indicate as with regard to which clause there is a reference to
the levy of excise duty and with reference to which other Clauses there
D is reference to the luxury tax. The contention of Shri Bhat is that duty
of excise and the luxury tax can be levied in cases of Clauses (a) to
(g).

Section 18, however, gives an answer to the problem in hand. Sub-
section (1) of Section 18 provides as to how duty of excise can be imposed.
E The said sub-section does not deal with the levy of luxury tax. As made clear
by sub-section (3) of Section 18, luxury tax is dealt with in sub-section (2) of
Section 18. The said sub-section provides that luxury tax on liquor or intoxi-
cating drug will be in the form of a fee for licences for the sale of liquor or
intoxicating drug. When we read Section 17 along with Section 18 and keep
F in mind that duty of excise is levied on the manufacture, though its collection
may be postponed, it is clear that when Section 17 talks of levy of luxury tax
it cannot be in relation to clauses (a) to (f) to the said Section. No luxury
tax is contemplated by Section 18(2) to be imposed on manufacture or
issuance of liquor referred to in Clauses (d), (e) and (f) of Section 17.
Similarly, Section 18(2) does not contemplate levy of luxury tax with
G reference to clauses (a), (b) and (c) of Section 17. What is relevant with regard
to these clauses is the levy of excise duty. The method in which excise duty
is levied is provided under Section 18(1). This leaves out clause (g) of Section
17. Luxury tax referred to in Section 17 is with reference to the sale of
intoxicating drugs or liquor in any part of the State. Clause (g) of Section 17
H is relatable to the levy of luxury tax.

The proviso to Section 18(3) obliges the existing stock-holders who are licensees to pay the difference of duty of excise or luxury tax in case there is an increase in respect thereof. The importers, exporters, manufacturers and warehouse owners would be concerned with the levy of excise duty whereas luxury tax would be payable by the licensees relating to Section 17(g) which would be like the appellants in the present case. What the proviso means is that those licensees who are liable to pay excise duty can be called upon to pay the increase thereof while those licensees who are liable to pay luxury tax can likewise be required to pay the increase in the luxury tax. Section 17 (a) to (f) which deals with the imposition of excise duty refers to licensees under Section 6, Section 7, Section 11, Section 12 and Section 14. The appellants are licensees under Section 15 of the Act. It is not in dispute that excise duty is not levied or realised in the first instance from the F.L. 1 or F.L. 3 licensees. Excise duty of liquor which is manufactured within the State or is imported from outside the State, is paid either by the manufacturer or by the F.L. 9 licensee, namely, the aforesaid Corporation. The proviso to Section 18(3) would not enable the respondents to realise the increase in excise duty from the licensee who was not under an obligation to pay the original excise duty which has increased. The luxury tax on the sale of intoxicating liquor can be imposed only on the persons holding licence for sale simpliciter but not excise duty.

The undisputed fact being, as noticed both by the Single Judge and the Division Bench, that the Government has chosen to levy the excise duty in the manner, prescribed by Section 17 (f) read with Section 18(1), namely, excise duty on liquor is levied only at the time when it is issued from an establishment licensee under Section 12 or Section 14, the licensees under F.L1 and F.L 3 were under no obligation to pay the excise duty. No excise duty could be levied on the F.L. 1 and F.L. 3 licensees. If this be so, then, under proviso to Section 18(3) the increase in the excise duty can only be levied in terms of Section 17(f) read with Section 18(1) which means if the distillery, brewery, winery or other manufactory or warehouse which is licenced or established under Section 12 or Section 14 had with it duty paid stock and there was an increase in the duty from Rs.20 to Rs.200 per proof litre, then it is only from those licensees referred to in Section 17 (f) from whom the increase could be realised. The Act does not contemplate or permit imposition of excise duty on the stockists, retailers or F.L.3 licensees.

In our opinion, the learned Single Judge was right in coming to the

A conclusion that proviso to Section 18(3) did not enable the Government to realise the increase in excise duty from the appellants who are F.L. 1 and F.L. 3 licencees.

B For the aforesaid reasons, we allow these appeals, set aside the decision of the Division Bench and restore the judgment of the Single Judge who had allowed the writ petitions. In the circumstances of the case parties to bear their own costs.

A.Q.

Appeals allowed.