

ARISTOCRAT AGENCIES, HYDERABAD ETC.

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v

EXCISE SUPERINTENDENT, HYDERABAD AND ORS. ETC.

DECEMBER 7, 2000

[DR. A.S. ANAND CJ., R.C. LAHOTI AND SHIVARAJ V. PATIL, JJ.]

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Excise Laws :

Countervailing duty—Rate of the duty chargeable—Held, duty is chargeable at the rate prevailing on the date of import and not at the rate on the date of issue of permit—Section 21 of the Andhra Pradesh Excise Act, 1966.

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Appellants, holders of distributor licence under State Rules, were granted import permits for liquor on payment of countervailing duty at the rate prevailing on date of grant of permits. State, by a notification on 8.2.1991 issued under the provisions of the Andhra Pradesh Excise Act, 1966, enhanced the rate of countervailing duty from Rs. 45 to Rs. 70 per litre. The appellants imported liquor after the issue of the notification during the validity of the permits. Excise Superintendent issued notices requiring the appellants to pay differential amount of the countervailing duty. The appellants filed Writ Petitions before High Court questioning the validity of the demand. The High Court dismissed the petitions. Hence these appeals.

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The appellants contended that since the countervailing duty had already been paid at the time of grant of the permits at the rate then in force, enhancement effected subsequently by a later notification could have no application on the imports of liquor made by the appellant.

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Dismissing the appeals, the Court

HELD : 1.1. Sub-section (2) of Section 21 of the Andhra Pradesh Excise Act, 1966 empowers the State Government, by notification, to levy countervailing duty on any excisable article manufactured or produced elsewhere in India and imported into the State at such rate as may be specified in the notification and different rates may be specified for different kinds of excisable articles. Both excise duty and countervailing duty are required to be assessed and collected as soon as the taxable event arises. Excise duty being

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- A** essentially a duty on production or manufacture of excisable goods, the event attracting tax is the manufacture or production of the excisable goods. Countervailing duty, on the other hand, is required to be levied, assessed and collected when excisable articles are imported into the State. The object of levy and collection of countervailing duty is to counter-balance excise duty, which is leviable on similar goods, if manufactured within the State. By its very nature and concept countervailing duty becomes leviable on the date of the import itself and is governed by rate of duty as in force on the date of import. It is irrelevant that at the time of obtaining a permit, the assessee also pays countervailing duty. In case the rate of duty continues to be the same as on the date of import, i.e., entry into the State of excisable goods, no extra
- B** countervailing duty is payable but if the rate of duty is enhanced, it is the enhanced duty which becomes payable. [472-E, F, G, H; 473-A]

1.2. The demand of differential amount of countervailing duty from the appellants was perfectly justified since the demand was made on the basis of the duty as in force on the date of import of the consignment into the State.

- D** The duty was to be assessed and collected as in force at the time of import. [473-G]

S.K. Pattanaik (Dead) through Lrs. v. State of Orissa & Ors., [2000] 1 SCC 413, referred to.

- E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 486 of 1998.

From the Judgment and Order dated 8.11.91 of the Andhra Pradesh High Court in W.P. No. 7917 of 1991.

WITH

- F** Civil Appeal Nos. 482-483 of 1998.

Ms. K. Amreshwari Devi, Sr. Adv., Ashwini Kumar Chopra, B. Kanta Rao, Ms. Sudha Gupta, T. Anil Kumar, G. Prabhakar, K. Ram Kumar, Asha G. Nair and G. Balasubramaniam for the appearing parties.

- G** The Judgment of the Court was delivered

Civil Appeal No. 486 of 1998.

The short question which requires our consideration is whether countervailing duty is chargeable at the rate prevailing on the date of issue of permit or on the date of actual import of liquor into the State?

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Brief facts necessary to answer the question may be noticed:

The appellants are holders of distributor licence in Form F.L. 47 issued under Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 (hereinafter 'the Rules'). They held four permits and acquired them under the Rules on payment of countervailing duty, as was prevailing on the date when the permits were granted. First import permit was granted to the appellant on 31st January, 1991 and 2nd, 3rd and 4th permits were granted on 6th February 1991. However, before consignment of liquor was actually imported on the strength of those permits, notification (G.O.Ms. 96) dated 8th February, 1991 was issued. The notification was published in the Official Gazette on 9th February, 1991. By this notification, issued in exercise of the powers conferred by Section 21 of the Andhra Pradesh Excise Act, 1968 (hereinafter 'the Act'), the Governor of Andhra Pradesh amended an earlier notification dated 30th September, 1968 and enhanced the rate of countervailing duty from Rs. 45 per litre of the strength of proof spirit to Rs. 70 per litre of the strength of proof spirit.

The appellants imported consignments of liquor under the first permit on 27th February, 1991 and on the basis of the second permit on 28th February, 1991. Consignment of liquor was imported on the basis of the 3rd and the 4th permit on 18th February, 1991. All these imports were effected during the validity of the permit, i.e., within 30 days from the date of issue of permit. The Office of the Excise Superintendent, Hyderabad informed the appellant that since there had been enhancement of countervailing duty, by notification dated 8.2.1991 (published on 9.2.1991) from Rs. 45 to Rs. 70, the appellants were required to pay differential of the countervailing duty between the duty already paid by them and the enhanced countervailing duty, within a period of seven days from the date of receipt of the notice. The appellant questioned the validity of the demand by filing a writ petition in the Andhra Pradesh High Court. A Bench of the High Court, by a common judgment and order dated 8th November, 1991 dismissed the batch of cases including the writ petition filed by the appellant. Aggrieved, the appellant is before us.

The argument raised in the High Court on behalf of the appellant was that since countervailing duty had already been paid at the time of grant of the import permit on the basis of the rate of the duty in force at that time, enhancement effected through notification dated 8.2.1991 could have no application to the imports of liquor made by the appellant within the period of validity of the period of permit [of 30 days], even if imports were made after

A enhanced duty came into effect by virtue of the impugned notification. The argument did not find favour with the High Court and in our opinion, rightly.

Section 21 of the Act is the charging section relating to excise duty or countervailing duty on excisable articles. It provides as under :

B “21. Excise duty or countervailing duty on excisable articles: (1) The Government may, by notification, levy an excise duty on any excisable articles manufactured or produced in the State [.....] at such rates not exceeding the rates mentioned in the Schedule, as may be specified in the notification.

C (2) The Government may, by notification, levy a countervailing duty on any excisable article manufactured or produced elsewhere in India and imported into the State [.....] at such rate as may be specified in the notification, which may not exceed the rates of excise duty on similar excisable articles levied under sub-section (1).

D (3) Different rates may be specified in sub-sections (1) and (2) for different kinds of excisable articles and different modes of levying duties under section 22.”

The Schedule referred to in sub-section (1) of Section 21 of the Act (supra) provides for maximum rates of excise duty on different intoxicants. Sub-section (2) of Section 21 of the Act unmistakably empowers the State Government, by notification, to levy countervailing duty on any excisable article manufacture or produced elsewhere in India and imported into the State *at such rate as may be specified in the notification* and different rates may be specified for different kinds of excisable articles. Both excise duty and countervailing duty are required to be assessed and collected as soon as the taxable event arises. Excise duty being essentially a duty on production or manufacture of excisable goods, the event attracting tax is the manufacture or production of the excisable goods. Countervailing duty, on the other hand, is required to be levied, assessed and collected when excisable articles are imported into the State. The object of levy and collection of countervailing duty is to counter-balance excise duty, which is leviable on similar goods, if manufactured within the State. By its very nature and concept countervailing duty becomes leviable on the date of the import itself and is governed by rate of duty as in force on the date of import. It is irrelevant that at the time of obtaining a permit, the assessee also pays countervailing duty. In case the rate of duty continues to be the same as on the date of import, i.e., entry into

the State of the excisable goods, no extra countervailing duty is payable but if the rate of duty is enhanced, it is the enhanced duty which becomes payable. Of course, under Rule 10 (6) of the Rules, countervailing duty and the import fee once paid 'shall not be refunded in any case'.

In *S.K. Pattanaik (Dead) Through L.Rs. v. State of Orissa and Ors.*, [2000] 1 SCC 413, a three-judge Bench of the Court noticed difference between concept of excise duty and countervailing duty in the following terms :

"Excise duty" and "countervailing duty" are well-known concepts and are attracted in different situations. "Excise duty" is essentially a duty on manufacture of goods, and the taxable event is the manufacture of the excisable goods. "Countervailing duty", on the other hand, is imposed when excisable articles are imported into the State, in order to counterbalance the excise duty, which is leviable on similar goods if manufactured within the State. So far as countervailing duty is concerned, the incidence of the impost is on the import of the excisable articles, i.e., *at the time of entry into the State.*"

The Court, then went on to consider the meaning of the expression "levy" and "collection" and opined:

"While the expression "levy" may include both the process of taxation as well as the determination of the amount of tax or duty, the expression "collection" refers to actual collection of the payable duty or the tax, as the case may be. Since the taxable event for attracting excise duty or countervailing duty is the manufacture or import of excisable goods into the State, *the charge of incidence of duty stands attracted as soon as the taxable event takes place and the facility of postponement of collection of duty under the Act or the rules framed thereunder, can in no way affect the incidence of duty on the imported goods.*"

(Emphasis supplied)

In our opinion, the demand of differential amount of countervailing duty from the appellant, under the circumstances, was perfectly justified since demand was made on the basis of the duty as in force on the date of import of the consignment into the State. The duty was to be assessed and collected as in force at the time of import.

Thus, our answer to the question, posed in earlier part of the judgment,

A is that the countervailing duty is chargeable at the rate prevailing on the date of actual import of the consignment into the State irrespective of the duty as in force at the time of obtaining the permit.

The High Court, under the circumstances, rightly dismissed the writ petition, filed by the appellant.

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We find no merit in this appeal which, accordingly, fails and is dismissed. There will, however, be no order as to costs.

Civil Appeal Nos. 482-483 of 1998.

C Learned counsel for the parties agree that the judgment rendered by us in Civil Appeal No. 486 of 1998, decided above, applies to this case also as these appeals also arise out of common judgment dealt by us in that case.

For the reasons stated in C.A. No. 486 of 1998, these appeals also fail and are dismissed but with no order as to costs.

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Appeals dismissed.