

Vijaya Kumar Vs. Excise Commissioner

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SooperKanoon Citation : sooperkanoon.com/730373

Court : Kerala

Decided On : Dec-11-2003

Reported in : 2004(1)KLT306

Judge : Cyriac Joseph and; K.K. Denesan, JJ.

Acts : Kerala Foreign Liquor (Compounding, Blending and Bottling) Rules, 2000 - Rule 10(7)

Appeal No. : W.A. No. 1703 of 2003

Appellant : Vijaya Kumar

Respondent : Excise Commissioner

Advocate for Def. : P.V. Lonachan, Government Pleader

Advocate for Pet/Ap. : A. Sudhi Vasudevan and; Bindu K. Nair, Advs.

Judgement :

K.K. Denesan, J.

1. Appellant is the petitioner in W.P. (C) No. 24489 of 2003. He is the Proprietor of Elite Distilleries & Beverages Company which is running a compounding, blending and bottling unit on the strength of the licenses issued by the Excise Department.

2. The Kerala Foreign Liquor (Compounding, Blending & Bottling) Rules, 1975 were amended by the Government of Kerala by notification issued as per G.O.(P) No. 45/2000/TD dated 21.3.2000 published in Kerala Gazelle Extra Ordinary dated 21.3.2000. Ext.P2 is the true copy of the said notification. The amended rules, titled as the Kerala Foreign Liquor (Compounding, Blending & Bottling) Rules, 2000 came into force on the 1st day of April, 2000. The change effected in the rules by the amendment, so far as this case is concerned, is that in Rule 10, in Sub-rule (7) for the words, letters, figures and brackets 'Rs. 200/- (Rupees two hundred only)' the words, letters, figures and brackets 'Rs. 10,000/- (Rupees ten thousand only)' have been substituted.

3. The appellant applied on 29.3.2000 for the approval of labels of the seven brands of Indian Made Foreign Liquor for sale in Kerala. According to him, the 1st respondent-Excise Commissioner approved the labels on 30.3.2000. But Ext.P1 proceedings of the Commissionerate of Excise, Thiruvananthapuram, shows that the labels were approved only on 13.4.2000. The case of the appellant is that the amended provisions are not applicable to him for two reasons: (i) the fee for approval of labels shall be at the rates prevalent on the date of application and not the date of approval of the labels and (ii) even if the date of approval of the labels is the relevant date for levying the fee, approval of the labels applied for by him was done by the competent authority before 1.4.2000 and therefore the enhanced rate is not applicable in his case. In the Writ Petition one more contention was taken, viz., that the increase in the rate of fee was not justified for want of quid pro quo.

4. The learned Single Judge rejected the above contentions and dismissed the Writ Petition. Aggrieved the appellant/writ petitioner has preferred this Writ Appeal.

5. The appellant had remitted fee for approval only at the pre-revised rate of Rs. 200/-. Hence Ext.P3 notice was issued by the 4th respondent demanding the balance amount towards fee at the rate of Rs. 10,000/-. As per Ext.P3 notice dated 29.5.2003 the appellant was liable to remit Rs. 2,05,800/- more towards approval fee. The appellant submitted Ext.P4 representation before the 1st respondent stating that fee may be levied with reference to the date of submission of the

application for labels. He also raised the contention that since the fee was remitted before 1.4.2000 and application also was submitted prior to that date, the revised rate may not be applicable to him. But the 1st respondent rejected the representation stating that the application did not merit consideration.

6. The Writ Petition was filed praying for a writ of certiorari quashing Ext.P3 notice and Ext.P5 order of the 1st respondent. He also prayed for a writ of mandamus directing the respondents not to take coercive steps pursuant to Ext.P3. In this context, we feel it appropriate to advert to yet another aspect also. It is seen that the writ petitioner filed I.A. No. 10195 of 2003 in the Writ Petition seeking orders to amend the Writ Petition. One of the amendments sought for was to include a prayer for a declaration that Ext.P2 and the amendment brought to Rule 10(7) of the Kerala Foreign Liquor (Compounding, Blending and Bottling) Rules, 1975 by G.O.(P) No. 45/2000 dated 21.3.2000 enhancing the label approval fee from Rs. 200/- to Rs. 10,000/- was illegal, unreasonable and ultra vires and therefore liable to be struck down'. Though such an application for amendment was filed in the Writ Petition, there is nothing to show that the writ petitioner moved the said application before the learned Single Judge and sought for orders or to show that the learned Single Judge has allowed the application. The learned counsel for the appellant did not invite our attention to the application for amendment filed in the Writ Petition. However, we are referring to the said amendment here, because, the said amendment application forms part of the records produced along with the memorandum of Writ Appeal. A perusal of the Writ Petition would show that the grounds on which reliefs were sought, for in the Writ Petition are those which we have referred to in para 3 above. We notice that the above said contention of the writ petitioner were adverted to by the learned Single Judge but rejected for the reasons stated in the impugned judgment. The appellant has, however, raised additional grounds in the memorandum of Writ Appeal, which grounds do not find a place in the Writ Petition. Be that as it may, we are not concerned with the said additional grounds because the learned counsel for the appellant confined his arguments to those grounds which were urged in the Writ Petition.

7. Having heard the arguments of Shri. Sudhi Vasudevan, learned counsel for the appellant and the learned Government Pleader, for the respondents and having

considered the materials placed on record, we are of the view that the impugned judgment does not call for any interference.

8. The contention that the relevant date shall be the date of application for approval of labels or the date of remittance of fee by the concerned applicant has no statutory basis. The appellant submitted the application and remitted the fee thereof according to his convenience and as decided by him but not on the basis of any notification calling for such applications for prescribing a date for the remittance of fees. The appellant gets the right to use the labels only after the approval is granted by the competent authority. Hence the date of approval is the relevant factor. It is incumbent on the authority competent to approve the labels to see whether the applicant has complied with all statutory requirements on the said date. Since the enhanced rate of fee came into force with effect from 1.4.2000, the 1st respondent was within his powers to demand fee at the enhanced rate for approving the labels on and from that date. Merely for the reason that the applicant had remitted the fees a few days in advance, it will not create any vested right in him to get approval of the labels. Remittance of fee at the pre-revised rate will not suffice unless the approval was granted before 1.4.2000. There is no allegation that the 1st respondent delayed orders on the application submitted by the appellant for approval of labels. On the other hand it is clear that the application was processed with utmost expedition and orders were passed within the shortest possible time. We agree with the view taken by the learned Single Judge that the relevant date is the date of approval of labels and not the date of application or the date of remittance of fee by the applicant. Learned counsel for the appellant cited the decision of this Court in *Mahamood v. Tahsildar* (2000 (2) KLT 820) and contended for the position that the relevant date is the date of the application. That was a case in which the assessment under the Kerala Building Tax Act was delayed for no fault of the assessee and in the meantime the rate of tax was changed. Having regard to the scheme of the said Act this Court upheld the contention of the assessee that the taxable event shall be the date of completion of the building, which fact was not disputed by the parties. The above decision which is based on the provisions contained in the Building Tax Act, 1975 has no application to the facts of this case. .

9. The contention that approval of labels, though appears to have been done only on 13.4.2000 as evidenced by Ext.P1, was in fact done prior to 1.4.2000, does not appeal to us. It is true that the appellant submitted the application for approval of labels on 29.3.2000 after remitting fee at the rate of Rs. 200/- in the Government Treasury as per challan dated 29.3.2000. It may also probably be true that the 2nd respondent-Duty Commissioner of Excise, Central Zone, Kochi, got the application from the Assistant Excise Commissioner, Thrissur on the very same day and prepared his report on 30.3.2000 and forwarded the same on that day itself to the 1st respondent-Commissioner at Thiruvananthapuram, all within 24 hours from the date of application and remittance of fee. It may also be true that the appellant with the help of the officers of the Excise Department took speedy action to see that the approval was granted by the Excise Commissioner at Thiruvananthapuram, before 1.4.2000. The anxiety on the part of the appellant to get approval before the dawn of 1 st April, 2000 is understandable because he would be saving a sum of Rs. 2,05,800/- or losing so much of amount by the stroke of the mid-night bell at 12 O'clock on 31 st March, 2000. It is relevant to note that the notification enhancing the rate of fee from Rs. 200/- to Rs. 10,000/- with effect from 1.4.2000 had been issued on 21.3.2000 and published in the Gazette dated . 21.3.2000. Therefore it is only reasonable to infer that the appellant on seeing the notification or coming to know of the notification made frantic efforts, with the active co-operation of the officers willing to help him, to despatch the application with the report of the Deputy Commissioner so as to reach at Thiruvananthapuram before 1.4.2000. But as rightly found by the learned Single Judge, even assuming that the application did reach the Commissionerate at Thiruvananthapuram from Kochi on or before 31.3.2000, orders approving the labels cannot be issued before 1.4.2000, because approval of labels is not a simple routine or clerical work to be done at the lower level but something which requires proper application of mind and issuance of appropriate proceedings by the competent authority. The very fact that Ext.P1 which is the proceedings of the Commissionerate of Excise, Thiruvananthapuram, by which labels applied for by the appellant were approved bears the date 13.4.2000, makes it clear that approval was not given before 1.4.2000. Though the appellant came forward with the contention that orders approving the labels applied for by the appellant were made before 1.4.2000, the fact that such a

contention was raised in the Writ Petition as a result of an after thought and not in good faith, is clear from Ext.P4 letter dated 11.6.2003 submitted by the appellant before the 1st respondent. The said letter inter alia states:

'We had remitted the prescribed fee of Rs. 4,200/-, at Rs. 600/- per label vide challan dated 28.3.2000 and 29.3.2000 and made our application also on same date. By way of additional grounds, we state that the report from Deputy Commissioner, Kochi on our application is dated 30.3.2000 (CZ3-988/99 dated 30.3.2000). We also understand that the application had reached the office of the approving authority before 1.4.2000.'

What is significant is that even on 11.6.2003 the appellant had no case that the approval was granted before 1.4.2000, but his claim on that day was that 'the application had reached the office of the approving authority before 1.4.2000.' Hence, while rejecting the claim of the appellant that the labels were approved before 1.4.2000, we agree with the learned Single Judge that there was no possibility at all for the approving authority at Thiruvananthapuram, to pass orders on the application for approval before 1.4.2000.

10. The third contention of the appellant is that the levy of fee as per the amended rules for approval of labels is illegal for want of quid pro quo. In this context, it will be useful to have a look at the relevant provision, namely, Rule 10 of the Foreign Liquor (Compounding, Blending & Bottling) Rules which is extracted below for easy reference:

'10. Bottling.-

(1) Bottling of spirits shall be carried out in the bottling warehouse.

(2) In bottling, the use of bottles of such capacity as are fixed by the Commissioner shall be allowed.

(3) When bottling from a vat is commenced, the operation shall be completed without delay and the whole of spirit shall be bottled at one time,

(4) The officer in charge shall be present during the whole operation of bottling.

(5) An allowance of not more than one per cent shall be allowed for loss in bottling. Wastage shall be calculated on the quantity, and not on any loss of strength that may occur. Any deficiency in excess of one per cent shall be charged with duty at the rate applicable to Indian made Foreign Spirits.

(6) After the bottles are filled with liquor they shall immediately be corked and sealed or fitted with filter proof caps and affixed with a label which shall contain the following particulars namely:-

(i) brand or description of the liquor with quantity and strength;

(ii) country of origin of the principal constituent of such liquor;

(iii) name of bottler and name of the place where it is bottled;

(iv) fact that compounding or blending, if any, was done in India;

(v) details of essences used for compounding spirits manufactured in India; and

(vi) batch number.

(viii) the warning, in English and Malayalam, 'ALCOHOL CONSUMPTION IS INJURIOUS TO HEALTH-

'is to be printed in contrasting colours clearly visible and each letter having a dimension of not less than 0.3 centimetres for 750 ml. bottles and above, and 0.2 centimetres for 180 ml. bottles and above.

Note: Stickers with the above warning shall be allowed to be affixed on each bottle containing foreign liquor for a period of five (5) months from the 6th of February, 1995 pending incorporation of the warning in the labels to be printed.

(7) Labels to be used on the bottles shall be approved by the Commissioner. A fee of Rs. 10,000/- (Rupees ten thousand only) shall be levied for approval of each kind of label.

(8) Bottles packed in each case shall be of uniform size so as to facilitate counter check of the Indian made Foreign Liquor manufactured.

(9) A record of operations in the bottling warehouse shall be maintained in Form 8.

(10) The bottles or cases packed with bottles shall be removed to the room provided for storage of finished products.'

It cannot be disputed that use of labels approved by the Excise authorities will help the licensees under the Abkari Act since it has the effect of preventing or curbing the marketing the sale of liquor blended or bottled by other agencies using unauthorised or spurious liquor. The process of approving labels can be done only by the machinery set up for that purpose by the Government. Hence it cannot be said that the levy of fee for approval of labels does not involve any element of quid pro quo. We agree with the conclusion and the reasons given in the impugned judgment by the learned Single Judge.

11. It was contended on behalf of the appellant that the enhancement of the rate for approval of labels from Rs. 200/- to Rs. 10,000/- is too exorbitant that it cannot stand the test of law. This argument is based on the fact that the rate as on 31.3.2000 was only Rs. 200/- but as on 1.4.2000 there was a steep increase in the rate which is not justified. At first blush, the argument may appear to be attractive. But on further scrutiny it can be seen that the contention based on a comparison between the rate prevailed upto 31.3.2000 and the enhanced rate with effect from 1.4.2000, is devoid of merit. Government fixed the rate at Rs. 200/- with effect from 27.3.1995, and the same remained in force till 31.3.2000. It is therefore evident that the fee for label approval has been revised after the lapse of more than five years and viewed in that background, it is neither a sudden hike nor a steep increase. The percentage of increase has to be appreciated taking into account the time taken for such increase. Hence the contention of the appellant on that score also fails.

12. For the reasons stated above Writ Appeal is liable to be dismissed. We do so. No costs.