STATE OF PUNJAB V. DEVANS MODERN BREWERIES LTD

Sameer M. Kagad[*]

INTRODUCTION

The Indian Judiciary acts as a watchdog of other organs of the State. This is a landmark case wherein the SC of India has rendered its judgments on the constitutional validity of state excise laws regulating the manufacture, sale, and distribution of liquor. Such pleadings have thrown important questions regarding the limits of State legislative competence under the Seventh Schedule of the Indian Constitution and the interpretation of individual rights under Articles 14 and 19(1)(g). Does it mean that if tomorrow you want to sell liquor you won't be allowed? Doesn't an individual have the right to sell whatever he/she wishes to?

The constitutional conflict regarding the regulation and taxation of alcohol in India dates back to the colonial era when excise laws were implemented by the British to control liquor production and trade. Historically, the regulation and taxation of alcohol have been contentious because they serve as a significant source of revenue for both the Union and State governments. Under British rule, excise duties were one of the primary revenue sources and post-independence, the Indian Constitution continued this by distributing powers between the Union and the States in the Seventh Schedule. After Independence, the framers of the Constitution of India divided the powers between the Union and States through the Seventh Schedule, which governs legislative powers. The issue lies in the interpretation of the two relevant entries:

1. Entry 84 of the Union List (List I), allows the Union to levy excise duty on certain goods but excludes alcoholic liquors for human consumption.

2. Entry 51 of the State List (List II), gives States the power to impose excise duties on alcoholic liquors for human consumption.

This paper, through the lenses of the case of State of Punjab v. Devans Modern Breweries,[1] outlines the case in full perspective on the most significant legal issues dealt with in the

[*]BBA LLB, FOURTH YEAR, KARNATAKA STATE LAW UNIVERSITY, HUBLI.

[1] *State of Punjab v. Devans Modern Breweries Ltd*., (2004) 11 SCC 26

judgment, particularly concerning the powers of states in regulation and individual rights conferred through the Constitution[2].

FACTS OF THE CASE

The controversy on which this case is based deals with the Punjab Excise Act, which forbids the manufacture, sale, import, and distribution of liquor in the State of Punjab. Devans Modern Breweries Ltd. was a public limited company engaged in the business of liquor and manufactured beer at their breweries in Jammu. The Respondent has been carrying on the business of liquor in the State of Punjab also since 1966 after having obtained an L-1 Licence issued by the State government for doing wholesale business in India Foreign liquor and beer.

The company had a wholesale depot in Ludhiana. The Punjab Excise Act, of 1914 governed the business of import, export, transport, manufacture, sale, and possession of intoxicating liquor and intoxicating drugs in the State of Punjab. The Government had issued the Punjab Excise Fiscal Orders, 1932, to levy taxes, duties, and fees under the Act. Excising the powers vested in sections 31, 32 and 58 of the Act, the Governor changed the Punjab Excise Fiscal Orders, 1932 from time to time by varying the rates of taxes, duties, and fees on excisable articles. Rules were also framed under section 58 of the Act to carry out the provisions of the Act and for the collection of the excise revenue. An import fee was imposed with effect from 1-4-1992 at the rate of 60 paise per bottle of 650 ml. vide a notification dated 31-3-1992 issued by the Department of Excise and Taxation of the Government of Punjab in the exercise of powers conferred by sections 31, 32 and 58 of the Act. The Punjab Excise Fiscal Orders, 1932, were amended and import fees at the above rate were imposed on all imports of beer vide the said notification. The import fee at 60 paise per bottle continued for the two years of 1992-93 and 1993-94. The rate of import fee was enhanced to Rs. 1/- per bottle with effect from 1-4-1994 and was later reduced to 50 paise per bottle from 1-4-1995. However, the fee was drastically enhanced with effect from 1-4-1996 to approximately Rs. 3/- per bottle. This rise was triggered, vide notification dated 27-3-1996 whereby, in exercise of the powers conferred by sections 31, 32 and 58 of the Act, the Governor of Punjab further amended the Punjab Excise Fiscal Orders, 1932, and thereby import fee was raised to Rs.35.88 per box of 12 bottles or, we can say, at the rate Of Rs. 4.60 per bulk litre.

[2] Constitution of India 1950

The company contended that the provisions of the Act were arbitrary and discriminatory and infringed on their right to carry on trade under Article 19(1)(g) of the Constitution. They further alleged that the regulations resulted in discriminatory treatment against manufacturers under Article 14, which embodies the principle of equality. It also argued that these trade restrictions violate free trade and commerce as envisaged under Articles 301 and 304 of the Constitution, which provides the foundation for free trade in India.

However, the State of Punjab contended that the enactments by presenting that it was exclusively vested with the authority to regulate liquor manufacture, sale, and distribution under Entry 8 of List II (State List) of the Seventh Schedule of the Indian Constitution.

The State argued that the liquor trade does not form a part of fundamental rights, and since alcohol has the potential for social harm, it can be strictly regulated for reasons of public health, public safety, and public morality three-judged Bench of the Supreme Court had made a reference to a Constitution Bench for deciding as to whether, having regard to the decisions of the Constitution Benches of the Supreme Court in Chamarbaugwala[3], Har Shankar[4], and Khoday Distilleries[5], the principles laid down in Kalyani Stores[6], wherein Article 301 of the Constitution had been implicitly# held to be applicable to trade in liquor, was correct and whether the restrictions imposed by the Punjab Excise Act were constitutionally valid and if the State had overstepped its regulatory powers with regards to liquor under the Indian Constitution. The matter was referred to a Constitution Bench for disposal. The matter came up for disposal before the present Bench.

LEGAL ISSUES

- Whether the impugned notification issued by the State of Punjab and that of Kerala are illegal, being a fraud on the constitution?
- Whether the import duty be said to have been validly imposed having regard to the doctrine of "exclusive privilege" of the state to deal in obnoxious matters?

[3] State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699
[4] Har Shankar v. Excise & Taxation Commr., (1975) 1 SCC 737
[5] Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574
[6] Kalyani Stores v. State of Orissa,AIR 1966 SC 1686

- Whether dealing in liquor, which is said to be “res extra commercium” would nonetheless attract part XIII of the constitution?

OBSERVATION OF SUPREME COURT

The court observed it is well settled that the liquor trade is not a fundamental right rather It is a privilege of the State, which it parts with for revenue consideration. Moreover, trade in liquor is considered inherently noxious, pernicious and is res extra commercium. Arts. 301 to 304 Trade in liquor, this freedom is not available to trade in liquor because it's a noxious substance injurious to public health, public order and morality, and therefore trade therein is res extra commercium. It was also observed that the Punjab Excise Act, 1914, Or. 1-D(iii) is not ultra vires the said sections of the 1914 Act - Moreover, the impugned fee imposed under Or. 1-D(iii) being nothing but a facet and manifestation of the regulation of the liquor trade by the State, it is valid as a regulatory levy under Art. 304. The conduct of the respondent licensee in attempting to wriggle out of his contractual obligations is contrary to the clear and unequivocal principle laid down in the Har Shankar case.[7]

The Court further held that the State of Punjab had legislative competence in imposing excise duty on the manufacture and sale of beer. The Court observed that under Entry 51 of the State List, the state has the power to levy duties of excise on alcoholic liquors for human consumption. The court held that since beer is liquor containing alcoholic content and is meant for consumption by humans, it plainly falls within the sweep of Entry 51, and the State of Punjab can collect excise duties on the same.

The court noted that there is a clear demarcation between the powers of the Union and the State regarding excise duties on alcoholic liquors intended for human consumption. It was noted that the Union government can levy duties on industrial alcohol, while potable alcohol, which includes beer, falls within the state's jurisdiction. Under Entry 84 of the Union List, the Centre has the power to impose excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption. However, Entry 51 of the State List refers to duties of excise on alcoholic liquors for human consumption, which include beer, clearly exempted from the Union's power by Entry 84.

[7] *Har Shankar v. Excise & Taxation Commr.*, (1975) 1 SCC 737

The Supreme Court emphasized the fact that Entry 51 grants the State power to impose duties upon alcoholic liquors "for human consumption". The expression "for human consumption" formed the mainstay of the Court's reasoning, for beer is within the category of potable alcoholic beverages, and thus it is subject to the taxing power of the State concerning its manufacture and sale. The Court clarified that the term "alcoholic liquors for human consumption" includes all alcoholic drinks, including beer, country liquor, and Indian-made foreign liquors, for which the state has the power to enact legislation and mentioned that India's Constitution builds a federal system in which the powers are placed with the Union and the States. The existing federal balance is maintained through a careful division of legislative authority through the three lists under the Seventh Schedule-Union List, State List, and Concurrent List. It accepted the principle that interpretation of the entries in such lists has to be always done to make sure that the intended division of powers between the Union and the States is respected and preserved. In the present case, the power of the State regarding excise duties on alcoholic liquors under Entry 51 of the State List was clear.

It was observed that excise duty is a tax on the manufacture or production of goods and that in the case of alcoholic liquors for human consumption, the duty becomes payable when goods are manufactured, regardless of whether the goods are subsequently sold. The Court dismissed the argument that it was a tax on the sale of beer, which came within another legislative power. Instead, it established that excise duty is a tax on manufacture and, therefore the State had the power to impose such a duty on beer produced within its territory.

In this case, the Court applied the doctrine of pith and substance[8]. This doctrine is applied in determining the real nature and character of legislation when there exists a conflict between entries in different lists. The High Court held that, in pith and substance, the impugned tax was an excise duty on the manufacture of beer which fell within the domain of the State List (Entry 51), and not a tax on the sale of beer, which would have fallen under other entries.

While the Court held that the legislation under which the excise duty was imposed was the Punjab Excise Act, of 1914, it found that this was a valid enactment of the State Legislature. The Act being within the competence of the State Legislature, the imposition of excise duty under the Act was constitutionally valid. It was observed that the State had not transgressed its

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[8] *Synthetics and Chemicals Ltd. v. State of U.P.*, (1990) 1 SCC 109

jurisdiction and had acted within its jurisdictional constitutional limits in imposing the excise duty on beer under the provisions of this Act.

The Supreme Court therefore overruled the decision of the Punjab & Haryana High Court and clarified that in fact, the High Court itself has wrongly interpreted Entry 84 and Entry 51. The Supreme Court again reiterated that Entry 84 clearly excludes alcoholic liquors for human consumption from the Union's domain, putting it under the State's authority through Entry 51.

DECISION

The Supreme Court held that the State of Punjab was well competent by virtue of Entry 51 in the Seventh Schedule of the Indian Constitution, in imposing excise duty on beer. This entry declares the authority of states to levy excise duties on alcoholic liquors for human consumption, including beer.

Potable alcohol, the Court clarified, would include beer within the scope of Entry 51 and not under Entry 84 of the Union List which relates to excise duties on certain goods but excludes alcoholic liquors for human consumption.

The verdict overruled the Punjab & Haryana High Court judgment that had initially been held in favour of the breweries and the State was barred from levying the duty.

Once again the Supreme Court reiterated that as it was constitutionally valid, the Punjab Excise Act 1914 fell very much within the powers of the State Legislature.

In this case, the appeal of the State of Punjab was upheld, the and excise duty levied on beer was held absolutely valid and legal.

ANALYSIS

This judgment reinforced the federal structure of the Indian Constitution as enshrined within it that the powers of the Union and State governments must be clearly distinguished from each other. In holding that States are competent to levy excise duties on potable alcohol, the court ensured that the fiscal autonomy of States regarding alcoholic liquors for human consumption remained undiluted.

The decision clarifies the scope of excise duties, which lays down an important distinction between their application to alcoholic beverages and excise duties on the manufacture of goods generally including beer but distinguishing them from taxes on the sale of goods. This comports with the distinction that is necessary for appreciating the limits of State and Union taxing powers.

This decision would create a significant and questionable rule regarding cases involving the taxation of potable alcohol, taking the position that States have an exclusive right to tax alcohol for human consumption. These are implications where the legislative competence of States to impose taxes on alcoholic beverages is disputed in similar disputes.

The judgment further reinforces the importance of Entry 51 in the State List. It makes clear that every kind of alcoholic liquor meant for human consumption falls within the State's competence, thereby further reinforcing the State's potential to realize revenues in the alcohol business.

The judgment by the Supreme Court in State of Punjab v. Devans Modern Breweries Ltd[9] is a landmark judgment on the question of balance of power between the Union and States in India, so far as the taxation of alcoholic beverages is concerned. Clarifying what falls within Entry 51 of the State List, the Court threw light on the scope of State powers and respected the federal scheme of the Constitution. This judgment also clarifies the difference between potable and industrial alcohol and will be helpful for setting precedents in future judgments in similar matters.

CONCLUSION

An analysis of the case in all its enclosures has brought us to the following learnings and understandings – The case distinctly upholds the principle of federalism concerning the distribution of power between the Union and States. It brings out the fact that potable alcohol, in this case beer, is within the domain of the States whereas industrial alcohol falls under the control of the Union. The case reflects the reality that excise duty is a form of tax on the manufacture of goods and not on the sale of them. The court further developed this distinction with the doctrine of oppositeness, which allowed States to implement duties based on the manufacture of alcoholic beverages without such action conflicting with the Union powers. In the case at hand, the doctrine could be employed to reaffirm that the crux of the State tax lay in beer manufacturing proper subject of the State powers. The judgments uphold the financial

[9] *State of Punjab v. Devans Modern Breweries Ltd.*, (2004) 11 SCC 26

autonomy of the States and clarify excise taxation of alcohol within the Indian constitutional plan.