

WP(C) 3680/2015  
BEFORE  
HON'BLE MR JUSTICE B.K. SHARMA

JUDGMENT & ORDER (CAV)

All the writ petitions raising the same issue have been heard analogously and are being disposed of by this common judgment and order. While the first writ petition being WP(C) No.3447/2015 was filed on 10th June, 2015 and moved on 12th June, 2015, the second writ petition being WP(C) No.3611/2015 was filed on 15th June, 2015. Eventually, the third writ petition being WP(C) No.3680/2015 was filed on 19th June, 2015. It will be pertinent to mention here that the petitioner involved in the first writ petition is a license holder of IMFL OFF shop and the petitioner involved in the second writ petition said to be a consumer. On the other hand, the petitioner involved in the third writ petition is an Association of All Assam Bonders & Manufacturers, represented by its President. In all the writ petitions, the challenge is to the circular letter dated 5th June, 2015 of the Commissioner of Excise, Assam and the letter dated 8th June, 2015 of the said authority to the Controller, Legal Metrology Department. By the first letter dated 5th June, 2015, it has been conveyed as follows:-

1) That new MRP is to be affixed with stickers on old stock alongwith a declaration, to be pasted on each case of liquor with regard to the MRP of the entire content in respect of the case.

2) The format of the declaration in respect of the case wise MRP (enclosed herewith) is to be authenticated by the Officer-in-Charge of the concerned licence.

3) The approved MRP list enclosed herewith is for use of the manufacturing and bonded warehouse licencees in respect of their old stock as mentioned above.

4) The manufacturers are to be submit their labels of their products duly signed by them with new MRP (as per approval list enclosed) printed thereon, to the undersigned, prior to the affixing the same on the product manufactured after the levy enhancement notified as above.

5) You are also directed to ensure that case memo is issued by retailers to customers against purchase of liquor.

[2] By the second letter dated 8th June, 2015, the Commissioner of Excise intimated the Controller, Legal Metrology Department as follows:-

In inviting a reference to above, I have honour to inform you that Govt. of Assam have enhanced the Advalorem levy (Excise Duty) on IMFL/ Beer etc. with effect from 1st June/2015. The MRP of all the liquor brands have accordingly enhanced with effect from the same day. As there is a huge stock lying in the warehouse of the manufacturers and bonded warehouse, the concerned Superintendent of Excise has already been instructed to take the stock position of old stock and issue the same to retailers after realization of the enhanced excise duty, from the bonded warehouses and affixing the enhanced new MRP with the help of stickers. The process of affixing the new MRP will remain in practice only till the old stock, manufactured prior to 01.06.2015.

[3] Prior to the issuance of the said 2(two) letters, the Government of Assam in the Excise Department issued the notification dated 1st June, 2015 and published the same in the Assam Gazette laying down the enhanced excise duty for different categories of liquor. The notification has been issued in supersession of all earlier notifications. None of the petitioners are aggrieved by the said no

tification dated 1st June, 2015, but are aggrieved by the consequential action as reflected in the above mentioned letters dated 5th June, 2015 and 8th June, 2015.

[4] In WP(C) No.3611/2015 and so also in WP(C) No.3680/2015, the petitioners have challenged another circular dated 6th June, 2015 of the Commissioner of Excise, Assam, enclosing therewith the approved and modified list of MRP for immediate necessary action in the interest of Government revenue. In the aforesaid background of issuance of the impugned circular letters, it is the case of the petitioners that the impugned action on the part of the respondents is illegal and violative of the relevant provisions of law. According to them, there is illegal levy of excise duty by the State Excise Department by affixing new MRP stickers on old stocks of IMFL products during the subsistence of old MRP printed on them as per the earlier excise duty levied. As stated in the second writ petition being WP(C) No.3611/2015, the petitioner on visit to the particular wine shop on 13th June, 2015 found new price tags of Rs.110/- per cane pasted over the old printed price of Rs.80/-. He also found, upon verification, similar enhancement by affixing new price tags in respect of McDowell No.1 Whisky.

[5] In the third writ petition, the plea of the petitioner is that the members of the petitioner's Association have established bonded warehouses under the provisions of Section 16 of the Assam Excise Act. They procure/purchase stocks of liquors from the distilleries/breweries and also import such items by paying the cost of the products and other duties and levies as required under the relevant law. When they apprehended hike in levy of liquor by the State Government, they submitted a memorandum on 16th March, 2015 to the Chief Minister urging for protection of the interest of the business of liquor in the State. However, without considering their said memorandum, the authority issued the impugned letters. Referring to the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011, it is the case of the petitioners that the impugned action on the part of the respondents to affix new MRP stickers on old stocks by enhancing the MRP to realize the excise duty retrospectively, is without any jurisdiction and thus illegal, arbitrary and grossly violative of the law governing the field. According to the petitioners, the excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. To buttress the said argument, the petitioner involved in the third writ petition being WP(C) No.3680/2015 have stated thus in paragraph 13 and 14 of the writ petition:-

13. That the petitioner begs to state that it is a settled position of law that excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or the producer passes on to the ultimate customer i.e. its ultimate incidence will always be on the customer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, i.e. it is a duty on the manufacture or production, is not lost. In case of excise duty the taxable event occurs during the manufacture or production and as such, the MRPs of commodities where excise duty is leviable, are fixed at the manufacturing stage itself and the same cannot be altered in subsequent time. There cannot be two taxable events in case of excise duties. Thus, the action of the respondent authorities in directing for affixing new enhanced MRPs on old stock, in which excise duty has already levied at the pre-enhanced rate, is not sustainable in the eye of law in view of the aforesaid legal position laid down by the Hon'ble Apex Court.

14. That the respondent authorities by the impugned action are illegally levying excise duty on IMFL beverages from the consumers, manufacturers/ produced prior to 01.06.15, which is not permissible in view of the provisions of the provisions prescribed in the Legal Metrology Act and Rules. The State Government would be entitled to levy the excise duty at the enhanced rate on

the new manufactures or productions of IMFL products made on 01.06.15 and onwards and not on the old stocks manufactures prior to 01.06.15 and in such an event same would be in total contravention of the express provisions of the prevalent rules in the field. By the aforesaid impugned action, there has been undue enrichment to the Government revenue by levying tax illegally which is not permissible in the eye of law and as such is liable to be interfered with. Further, there is every possibility of huge evasion of revenue by the black-marketers/infiltrators by selling or pilfering the market with alcoholic beverages procured from the neighboring states where the prices are much lower than our state which would severely affect the state exchequer.

[6] The official respondents have filed their counter affidavit in WP(C) No. 3447/2015. Counter affidavit has also been filed by the newly impleaded respondents (respondent Nos.6 and 7). The said 2(two) respondents are the All Assam IMFL Retailers Association, represented by its General Secretary, i.e. the respondent No.7. In the counter affidavit filed by the official respondents, referring to the provisions of the Assam Excise Act, 1910, it has been stated that the Government of Assam in the Excise Department amended the Rules and enhanced ad-valor em excise levy at different rates for Beer, Indian made spirit and Wine and such amendment has been notified in the Assam Gazette. Consequent upon issuance of the said notification, the Commissioner of Excise, Assam, issued the impugned letters dated 5th June, 2015; 6th June, 2015 and 8th June, 2015. According to the official respondents, the ad-valorem levy on liquor is paid by the retail licensees at the time of importing liquor from the bonded warehouses, as the bonded warehouses stored only non duty paid liquors. Thus, according to the respondents, any quantity of liquor that comes out from the bonded warehouses on or after 1st June, 2015 is liable for levies as per the revised rate. Referring to the provisions of the Assam Excise Rules, 1945 and the Assam Bonded Warehouse Rules, 1965, the respondents have contended that duty levied is payable at the rate imposed under Section 21 of the Assam Excise Act and is to be paid before it removed from the warehouse.

[7] The respondents have further contended that there are hundreds of varieties of liquor brands, some of which are fast moving in the market and some are very slow moving, depending on the customer preference. Therefore, if the Government is to wait for all previously stored stocks to get liquidated before enforcing the amendment, it will take at least 5 to 7 years. In such a situation, the amendments would be inoperative/ ineffective for several years. The respondents in their counter affidavit have referred to the minutes of the meeting dated 2nd June, 2015 and the instruction dated 30th March, 2015 of the Commissioner of Excise, Assam. By the said instruction, anticipating likelihood of enhancement in rates of ad-valorem levy, instructions were issued to all concerned for affixing of new MRP through re-labeling or affixing stickers. None had raised any objection to the same.

[8] On perusal of the minutes of the meeting dated 2nd June, 2015, it appears that the said meeting convened by the Commissioner of Excise, Assam was attended to by the members of the Bottling Plants/Breweries/Bonded Warehouses/Liquor Companies /All Assam Retailers Association etc. It is in reference to the said meeting, the respondents have contended that in view of the consensus arrived at in the said meeting and the petitioners having not raised any objection by participating in the said meeting are precluded from agitating the kind of grievance raised in the writ petitions.

[9] In the counter affidavit filed by the respondent Nos.6 and 7, they have contended that the decision impugned in the writ petitions is agreed decision of the above referred meeting held on 2nd June, 2015. Referring to the impugned letters, they have contended that the retailers of the Association have been importing/lifting the liquors from the bonded warehouses by making payment of ad-valorem duty to the Government through treasury challan as per the notification dat

ed 1st June, 2015 and already above 80% stocks of the retailers have been filled with new stocks against which the retailers have paid excise duty at the rate prescribed under the said notification. Referring to the probable affect in the event of any adverse order is passed in this proceeding, the respondent Association has pleaded thus:-

i. The present stable business position of the retailers will be jeopardized.

ii. The retailers, who have already filled majority of their respective stock by making payment of revised ad-valorem excise duty, will suffer huge loss in their business.

iiii. There is every chance of chaotic situation in the market and in that event the sale of liquor will be dropped or may be nil.

iv. This will affect the livelihood of the families of the members of the deponent Association, as they are solely dependant upon the income of the present business.

[10] In WP(C) No.3680/2015, an application being I.A. No.714/2015 has been filed by the 2(two) executive members of All Assam Bonders & Manufacturers Association. They have also referred to the aforesaid meeting dated 2nd June, 2015 with the Government officials regarding reaffixing of MRP and the consensus arrived at. According to them, the President of the Association has filed the writ petition without the knowledge of the executive members of the Association. It has also been contended that no resolution was adopted in the executive committee's meeting of the Association authorizing the President to file the writ petition. According to the applicants, they have invested huge amount of money towards re-labeling/reaffixing new MRP in the old stocks lying in their warehouses. They have further contended that the enhancements of the excise duty in no way affect the business of the members of the petitioner Association. It will be pertinent to mention here that in the meeting held on 2nd June, 2015, the General Secretary of the Association had also participated.

[11] I have heard Mr. D. Saikia, learned senior counsel assisted by Mr. K.P. Pathak and Mr. A. Deka, learned counsel representing all the petitioners. I have also heard Mr. P.N. Gowami, learned standing counsel, Excise Department and so Also Mr. T.J. Mahanta, learned senior counsel and Mr. R. Dubey, learned counsel representing the other respondents. I have also considered the entire materials on record.

[12] Mr. Saikia, learned senior counsel for the petitioners placing reliance on the following decisions strenuously argued that the excise duty and countervailing duty being primarily leviable upon a manufacturer or producer of excisable commodities manufactured or produced cannot be enhanced at a stage subsequent thereto. He placed reliance on the decisions in M/s McDowell & Co. Limited -Vs- Commercial Tax Officer VII Circle, Hyderabad reported in (1977) 1 SCC 441; Union of India -Vs- Bombay Types International Limited reported in (1984) 1 SCC 467; Wallace Flour Mills Limited -Vs- Collector of Central Excise, Bombay reported in (1989) 4 SCC 592; Collector of Central Excise, Madras -Vs- M/s Newman Press & Ors. reported in (1990) (Supp.) SCC 112; State of UP & Ors. -Vs- Delhi Cloth Mills & Anr. reported in (1991) 1 SCC 454; S.K. Patnaik -Vs- State of Orissa & Ors. reported in (2000) 1 SCC 413; Collector of Central Excise, Bombay -Vs- Polyset Corporation & Anr. reported in (2000) 10 SCC 241; Medley Pharmaceuticals Limited -Vs- Commissioner of Central Excise & Customs, Daman reported in (2011) 2 SCC 60 and in Union of India -Vs- H.M.M. Limited reported in (2011) 15 SCC 197.

[13] Referring to the provisions of the Assam Excise Act and the Rules framed thereunder, he submitted that in the guise of the amendment, the respondents ca

not permitted to affix new MRP even in the products of pre 1st June, 2015. Referring to the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011, he submitted that the course of action adopted by the respondents is violative of the said provisions.

[14] Mr. P.N. Goswami, learned standing counsel, Excise Department, on the other hand, referring to the Entries-8 and 51 of the 7th Schedule (List-2) of the Constitution of India. He submits that the State Government having absolute power in the matter, the impugned decision contained in the letters dated 5th June, 2015; 6th June, 2015 and 8th June, 2015 are unimpeachable. In this connection, he has also referred to Entry-4 of List-I. According to him, the provisions of the Legal Metrology Act, 2009 and the Rules of 2011 framed thereunder even if applicable cannot interfere with the power of the State. He also placed reliance on 2(two) decisions in Government of Haryana -Vs- Haryana Brewery Limited & Anr. reported in (2002) 4 SCC 547 and in Mohan Meakin Breweries Limited -Vs- Commissioner of Excise, Bihar reported in AIR 1970 SC 1171 to buttress his argument.

[15] Mr. T.J. Mahanta, learned senior counsel representing the respondent Nos. 6 and 7 submits that the petitioner involved in WP(C) No.3447/2015 before assailing the impugned letters ought to have disclosed her stock in the wine shop. According to him, all the parties having agreed to the impugned decision, the petitioners cannot alone raise objection in respect of the impugned decision.

[16] Mr. R. Dubey, learned counsel representing the other respondents submitted that the petitioner involved in WP(C) No.3680/2015 being not authorized, could not have filed the writ petition. According to him, the bonded warehouse is an extension of the manufacturing unit. He also placed reliance on the decision of the Apex Court in State of Uttar Pradesh & Ors. -Vs- Mohan Meakin Breweries Limited & Anr. reported in (2011) 13 SCC 588.

[17] As has been held by the Apex Court in Har Shankar & Ors. -Vs- Deputy Excise & Taxation Commissioner & Ors. reported in (1975) 1 SCC 737, there is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to act of intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. While engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to Governmental control.

[18] In Empire Industries Limited & Ors. -Vs- Union of India & Ors. reported in AIR 1986 SC 662, dealing with the provisions of Central Excises and Salt Act as amended by Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980, the Apex Court held that manufacture, bleaching; dyeing and printing are even etymologically manufacturing processes. Amendment brought to the term manufacture so as to include these processes was held not ultra vires Entry -84 List-I to 7th Schedule of the Constitution. In paragraph 49 of the said judgment, the Apex Court held thus:-

49. Imposition of tax by legislation makes the subjects pay taxes. It is well recognised that tax may be imposed retrospectively. It is also well settled that that by itself would not be an unreasonable restriction on the right to carry on business. It was urged, however, that unreasonable restrictions would be there because of the retrospectivity. The power of the Parliament to make retrospective legislation including fiscal legislation are well settled. (See Krishnamurthi & Co. v. State of Madras, (1973) 2 SCR 54; AIR 1972 SC 2455). Such legislation per se is not unreasonable. There is no particular feature of this legislation which can be said to create any unreasonable restriction upon the petitioners.

[19] In State of A.P. & Ors. -Vs- McDowell & Company & Ors. reported in (1996) 3 SCC 709, the Apex Court held that the power to make a law with respect to manufacture and production and its prohibition (among other matters mentioned in Entry-8 in List-II) belongs exclusively to the State Legislatures. It was held that Entry-8 in List-II is a specific and special entry and not subject to any entry of List-I. Applying the pith and substance rule, it was held that once the legislation exclusively falls under any of the Entries in List-II of 7th Schedule, the States competence cannot be challenged. It was also held that trade or business in intoxicating liquor is not a fundamental right under Article 19(1)(g) of the Constitution of India.

[20] The decisions on which Mr. Saikia, learned senior counsel for the petitioners have placed reliance are to buttress the basic thrust of his argument that taxable event is only at the stage of manufacture and not subsequent thereto and thus, the State Government is precluded from applying the amendment brought vide notification dated 1st June, 2015 on the basis of the impugned letters so as to make it retrospective. As noted above, the question raised in the writ petition is as to whether the respondents can affix new MRP even for productions of pre 1st June, 2015. The ratio of the said decisions, as extracted by Mr. Saikia, are reproduced below:

1. M/s McDowell & Co. Limited (supra)

- Excise duty is a duty on the production or manufacture of goods and can be imposed at stages subsequent to the manufacture or production.
- Excise duty can be collected at a stage subsequent to the manufacture or production of the excisable article by inserting a provision in the Excise Law.
- Intending purchasers of Indian liquor who seek to obtain distillery passes are also legally responsible for payment of excise duty which is collected by them from the Excise Department.

2. Bombay Types International Limited (supra)

- Excise Duty is primarily a duty on production or manufacture.
- It is an indirect tax which the manufacturer or producer passes on to the ultimate consumer & ultimate incidence will always be on the consumer.
- Legislative competence on the taxing authority is to levy Excise Duty at a convenient stage so long as the character of the impost (ie excise duty) is not lost.
- Method of collection does not affect the essence of the duty but only relates to the machinery of collection for administrative convenience.

3. Wallace Flour Mills Limited (supra)

- Excise is a duty on manufacture or production but realization of the same may be postpone for administrative convenience to the date of removal of the goods from the factory.

4. M/s Newman Press (supra)

- Excise authorities are competent to levy the excise duty as prevailing o

n the date of removal of the excisable goods from the factory.

#### 5. Delhi Cloth Mills (supra)

- Excise duty and countervailing duty are primarily levied upon a manufacturer or producer of excisable commodities manufactured or produced, irrespective of its sale.
- It is a duty on excisable goods, not upon sale or proceeds of sale of the goods.
- The taxable event is the production or manufacture of liquor.
- An excise duty imposed on manufacture or production of excisable goods does not cease to be so merely because the duty is levied at a stage subsequent to manufacture or production. This principle of Central Excise is applicable to State Excise also. State Excise Duty does not cease to be an excise duty because it is collected at the stage of issue of liquor out of the distillery or at the subsequent stage of declaration of excess wastage.

#### 6. S.K. Patnaik (supra)

- Excise duty is essentially a duty on manufacture of goods and the taxable event is the manufacture of excisable goods.
- Countervailing duty is imposed when excisable articles are imported into the State in order to counter balance the excise duty, which is leviable on similar goods if manufactured within the State. In case of countervailing duty the incidence of the impost is on the import of the excisable articles i.e. at the time of entry into the State.
- 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 in the facility of postponement of collection of duty under the State Act or the Rules framed thereunder, can in no way affect the incidence of duty on the imported goods.

#### 7. Polyset Corporation (supra)

- Date on which goods are excisable to excise duty is the date of their clearance from the factory and the rate which is prevailing on the date of clearance is the rate applicable to the charged.

#### 8. Medley Pharmaceuticals Limited (supra)

- For the purpose of levy of excise duty an article must satisfy two requirements to be goods - (a) it must be movable and (b) it must be marketable.
- Marketability is an essential criteria for charging duty. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The word marketable means saleable or suitable for sale and to charge duty it need not in fact be marketed but same should be capable of being sold to consumer.
- Manufacture of patent and proprietary drugs is completed only after labeling is completed for the purpose of levy of excise duty.

## 9. H.M.M. Limited (supra)

- Although taxable event for levy of excisable duty is manufacture or production, the payment of duty is related to the date of removal of such articles from factory.

[21] In Haryana Brewery (supra), the Apex Court was concerned with the provisions of Punjab Brewery Rules, 1956. It was held that the State has the power to levy excise duty on alcoholic liquors for human consumption only after it brewed and becomes fit for human consumption. It was so held in reference to Schedule-7 list-II of Entry-51 of the Constitution of India. As in the instant case in the said case also, there was provision in the rules empowering the Excise Commissioner to cost charge to be made up at the close of each quarter in respect of all the breweries at the close of each quarter, if the licensee executes a bond in Form B-16 for its payment, defer the payment to a date not later than the 15th day of the month succeeding the quarter in respect of which the duty was charged. Rule 32 of the Rules empowered the State Government to levy duty, which was in force on the date when it was issued from the warehouse. In paragraph 12 of the said judgment, it was held thus:-

12. We agree with the contention of Mr. Divan, and this is also not disputed by Mr. Anand, that the State has jurisdiction to levy excise duty only on beer after it has been brewed and has become fit for human consumption. This is the settled position as laid down by this Court in Mohan Meakin and Modi Distillery cases. The only question which, to our mind, really arises for consideration is how to determine the quantity of beer which is manufactured on which the excise duty is to be levied. Section 32 gives an answer to this question. The first part of the section states that subject to the rules which may be made by the Financial Commissioner excise duty is to be levied, inter alia, on the excisable article manufactured in or issued from a distillery, brewery or warehouse. A reading of this section leaves no manner of doubt that the stage at which excise duty can be levied is only after the process of manufacture has been completed and in fact it is to be levied when it is issued from the distillery, brewery or warehouse.

[22] In Mohan Meakin Breweries Limited (supra), the Apex Court was concerned with the notification dated 13th October, 1967 by which the duty on foreign liquor was enhanced from Rs.14.40 LP Litres to Rs.26.20 per LP Litres. The Superintendent of Excise, Patna directed the petitioner Company to pay the difference in duty. This judgment has been referred to so as to buttress the argument that there is no illegality in the action undertaken vide the impugned letters.

[23] In Mohan Meakin Breweries Limited (supra), the Apex Court was concerned with Uttar Pradesh Excise Act. Section 29 provided the manner in which duty was to be levied, which is quoted below:-

29 <<http://indiankanoon.org/doc/34630331/>>. Manner in which duty may be levied - Subject to Such rules as the Excise Commissioner may prescribe to regulate to the time, place and manner of payment, such duty may be levied in one or more of the following ways as the State Government may by notification direct:

(a) to (d) (omitted as not relevant)

(e) in the case of spirit or beer manufactured in any distillery established or any distillery or brewery licensed under Section 18 <<http://indiankanoon.org/doc/78068651/>> -

17(i) by a rate charged upon the quantity produced or issued from the distillery or brewery, as the case may be, or issued from a warehouse established or licen



sed under Section 18 <<http://indiankanoon.org/doc/78068651/>> (d);

(ii) by a rate charged in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe :

Provided that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under Section 18(d) <<http://indiankanoon.org/doc/78068651/>>, it shall be at the rate of duty which is in force on that article on the date when it is issued from the warehouse.\

[24] Referring to the aforesaid provisions, the Apex Court in paragraph 33 of the judgment held thus:-

23. Section 29 <<http://indiankanoon.org/doc/34630331/>>(e)(i) of the U.P. Excise Act makes it clear that in the case of beer manufactured in a brewery, excise duty may be levied, by a rate charged upon the quantity produced or issued from the brewery or issued from a warehouse. This means that in respect of beer that undergoes the process of filtration, the exigibility to excise duty will occur either at the end of the filtration process when it is received in storage/bottling tanks or when it is issued from the brewery. In regard to draught beer drawn directly from fermentation vessels, without further processing or filtration, the exigibility to excise duty will occur either at the end of fermentation process or when it is issued from the brewery.

[25] For a ready reference, the relevant provisions of the Assam Excise Rules, 1945, as quoted in the counter affidavit of the State respondents are reproduced below:-

Rule 4: Application for import of India made foreign liquor- Any licensed vendor or of foreign liquor wishing to import India made foreign liquor into Assam must either personally or through his agent first submit an application in Form 26 of foreign liquor series, to the Collector of the District of import for an import pass in Form 27 of foreign liquor series stating clearly-

(i) The name of the distillery or brewery or bonded warehouse or of the firm or licensed premises from which the import is to be made;

(ii) The amount of duty leviable on total quantity of liquor to be imported.

Rule 6: Payment of duty- Duty is not refundable except under certain circumstances - On receipt of the application so endorsed the Treasury Officer shall receive the sum payable by the applicant in respect of duty and credit it to the appropriate head of account. Except as provided in Rule 13, the amount so paid shall not be refunded to the applicant in any circumstances, nor shall any application for a refund on the ground of neglect by the consignor or carrier of the liquor, or on account of wastage in transit be entertained. The Treasury Officer shall return the application endorsed by him to the applicant and shall furnish him with a receipt in duplicate. The applicant shall then present the application and one copy of the receipt to the Collector.

Rule 7: Issue of pass- On receipt of the application and the receipt presented by the applicant the Collector shall issue a pass in quadruplicate in Form 27 of foreign liquor series sanctioning the import by the applicant of foreign liquor of the kind and quantity specified in the pass to the place mentioned in the application. The original copy shall be retained by the Collector for record and for verification of the consignment on arrival. The duplicate and triplicate copies shall be sent to the Collector or such other officer as may be authorized in this behalf of the place of export. The quadruplicate copy of the pass shall be given to the applicant. A register of passes shall be maintained by the Collector.



duty or countervailing duty, as the case may be at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area on any excisable article including manufactured in any brewery or distillery licensed or established under Section 16. Section 16 provides for establishment or licensing of distilleries, breweries and warehouses. The Excise Commissioner with the sanction of the State Government may establish or license a warehouse wherein any intoxicant may be deposited and kept without payment of duty.

Rule 2(ii) of the Assam Bonded Warehouse Rules, 1965 defines Bonded Warehouse as the premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty has not been paid. Rule 25-ii providing for removal of spirits from warehouse also provides for such removal on payment of duty for local consumption or use and in case of foreign liquor for export to other States or Territory in India. Rule 28 providing for payment of duty and allowances, provides that the duty levied under Rule (1) shall be payable at the rate imposed under Section 21 of the Act on the spirits imported or transported and shall be paid before the removal from the warehouse, to which it has been taken, of the spirits which have been gauged and proved.

[29] Section 22 of the Act providing for method of levy of duty. It provides for such levying inter alia in case of spirit or beer manufactured in any distillery or brewery established or licensed under Section 16, as follows:-

22. (i) as a rate charged upon the quantity produced in or issued from the distillery or brewery as the case may be, or issued from a warehouse established or licensed under Section 16, clause (d), or

(ii) as a rate charged in accordance with such scale or equivalents calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the State Government may prescribe:

Provided that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under Section 16, clause (d), it shall be at the rate of duty in force in respect of such article on the date of issue from such warehouse.

[30] While it is true that as per the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011, there are certain defined manner of declarations to be made on every packet but the same is always subject to the aforesaid provisions of the entries to List-II of the 7th Schedule. It is in such circumstances, the decisions on which Mr. Saikia, learned senior counsel for the petitioners have placed reliance, will have to be tested. The expression manufacture finds mention in the said decisions on which emphasis has been made towards challenging the impugned letters by which the amendment brought vide notification dated 1st June, 2015 is sought to be implemented, will have to be understood in its extended term in reference to the provisions of the Assam Excise Act, 1910; Assam Excise Rules, 1945 and the Assam Bonded Warehouse Rules, 1965 and also in reference to Entries under List-II of the 7th Schedule to the Constitution of India. When tested in the said touchstone, none of the judgments are applicable to the case in hand. That apart, the notification dated 1st June, 2015 by which the amendment has been brought is also not under challenge.

[31] Mr. P.N. Goswami, learned standing counsel, Excise Department, categorically submitted that the impugned decision will be implemented only in respect of those stocks lying in the warehouse and not the stocks which have already reached the retail outlets from the warehouses prior to 1st June, 2015.

[32] For all the aforesaid reasons, I do not find any merit in the writ petitions there being no infirmity in the impugned decision conveyed vide impugned letters dated 5th June, 2015; 6th June, 2015 and 8th June, 2015. Consequently, all the writ petitions are dismissed, without, however, any order as to costs.