[2025] 8 S.C.R. 11 : 2025 INSC 833

M/s United Spirits Ltd.
v.
The State of Madhya Pradesh & Ors.

(Civil Appeal No. 5113 of 2025)

14 July 2025

[J.B. Pardiwala and K.V. Viswanathan,* JJ.]

Issue for Consideration

Did the appellants-manufacturers cause to effect the entry of goods into the local area as required u/s.3(1)(a) r/w ss.2(1)(aa), 2(1)(b) and 2(3), M.P. Entry Tax Act, 1976, rendering them liable for entry tax for the period 01.04.2007 to 31.03.2008; is there an inseverable link between the manufacturers and the ultimate retailers.

Headnotes†

M.P. Entry Tax Act, 1976 – s.3(1)(a) r/w ss.2(1)(aa), 2(1)(b) and 2(3) – Incidence of taxation – "entry of goods into a local area"; "entry tax"; "caused to be effected the entry of goods" – Appellants, manufacturers and suppliers of beer and Indian Made Foreign Liquor (IMFL), if caused to effect the entry of goods into the local area as required u/s.3(1)(a) r/w s.2(1)(aa), 2(1)(b) and 2(3) rendering them liable for entry tax – Plea of the appellants that sales are made by the State Government warehouse in charge to the authorized retailers, who are also license holders for retail sale of IMFL and beer and there is no privity of contract between the appellants and the retailers and; it is only the State Government warehouse which cause to effect the entry of the goods – High Court upheld the levy of entry tax on the appellants – Challenge to:

Held: Impugned order not interfered with – s.3(1) r/w s.2(1)(aa) and 2(1)(b) and 2(3), makes it clear that the appellants by the sale to the warehouse caused to be effected the entry of goods and the entry was occasioned on the account of the sale into the local area for consumption, use or sale therein – Also, it is not disputed that the appellant is a dealer as defined under

* Author

the Madhya Pradesh VAT Act 2002, as it stood then – The only contention of the appellants is that the State warehouse is also a dealer – That makes no difference since it cannot be disputed that the appellants occasioned the entry of goods and the levy of entry tax on them, which could always be passed on, is justifiable in law. [Paras 31-33, 36]

M.P. Entry Tax Act, 1976 – ss.3B, 14 – Appellants contended that as notification u/s.3B was not issued, no entry tax could be levied:

Held: Contention rejected – High Court rightly held that s.3B is only a machinery provision and in the teeth of s.14, it is not correct to say that there cannot be any assessment or collection of Entry Tax merely because there is no notification u/s.3B – s.3B is an enabling provision – Further, the 'non-obstante' in s.3B will not foreclose the operation of s.14, since s.3B will override only if there is a contrary provision – In the absence of any notification u/s.3B, there is nothing contrary in s.14 for the non-obstante in s.3B to be invoked to override s.14. [Paras 32, 33]

M.P. Entry Tax Act, 1976 – State canalising the supply of beer and Indian made foreign liquor (IMFL) into the local area – If there is an inseverable link between the manufacturers and the ultimate retailers:

Held: In case a canalising agency or intermediary agency is involved, unless their role is merely that of a name lender, the sale will not be treated as an inseparable or an inseverable sale – If an independent canalising agency enters into back-to-back contracts and there is no direct linkage or causal connection between the export by foreign exporter and the receipt of the imported goods in India by local users, then the integrity of the entire transaction would be disrupted and would be substituted by two independent transactions – Applying the tests to the present canalising transaction, there is no doubt that there are two independent transactions, one between the appellant-manufacturers and the State Warehouse and the other between the State warehouse and the retailers – Contention of the State that its role is only supervisory and the warehouses didn't purchase beer and IMFL from the manufacturer, not accepted. [Paras 25, 27]

Words and Phrases – "caused to be effected the entry of goods"; "Cause" – M.P. Entry Tax Act, 1976. [Paras 29, 31]

Case Law Cited

Hyderabad Industries Ltd. v. Union of India & Ors. **[1999] 3 SCR 471 : (2000) 1 SCC 718;** *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras & Anr.* **[1970] 3 SCR 147 : (1969) 3 SCC 349**; *State of Karnataka v. Azad Coach Builders Private Ltd. & Anr.* **[2010] 12 SCR 895 : (2010) 9 SCC 524 – followed.**

M/s Bhagatram Rajeevkumar vs. Commissioner of Sales Tax, M.P. and Others **[1994] Supp. 6 SCR 91 : (1995) Supp. 1 SCC 673 – held inapplicable.**

K. Gopinathan Nair & Ors. v. State of Kerala **[1997] 3 SCR 226 : (1997) 10 SCC 1;** *Kerala State Warehousing Corpn. v. State of Kerala* **(2005) 10 SCC 142 – relied on.**

A.G. Varadarajulu & Anr. v. State of T.N. & Ors. **[1998] 2 SCR 390 : (1998) 4 SCC 231;** *Union of India and Anr. v. G.M. Kokil & Ors.* **[1984] 3 SCR 292 : (1984) Supp. SCC 196 – referred to.**

Books and Periodicals Cited

Oxford Dictionary, 8th Edition.

List of Acts

Central Sales Tax Act, 1956; Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976; Madhya Pradesh VAT Act, 2002; M.P. Entry Tax Act, 1976; M.P. Entry Tax (Amendment) Act No. 9 of 2007; The Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar (Sanshodhan) Adhiniyam, 2007; M.P. Foreign Liquor Rules, 1996.

List of Keywords

Entry tax; Payment of entry tax; Entry of goods; “Entry of goods into the local area”; “Caused to be effected the entry of goods”; Movement of the goods into the local area; Incidence for the levy; Beer; Indian Made Foreign Liquor (IMFL); State Government warehouses; Retailers; Manufacturer; License to manufacture and supply; Manufacturer, supplier of beer and IMFL; License holders for retail sale of IMFL and beer; Sales made by the warehouse; Sale into the local area for consumption; Canalising the supply of beer and Indian made foreign liquor into the local area; Canalising agency; Intermediary agency; No privity of contract; Dealer; Independent transactions; Transportation expenses; FL-9 license; FL-9A license; FL-10 license; FL-1 license.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5113 of 2025

From the Judgment and Order dated 19.08.2010 and 20.08.2010 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in WP No. 9678 of 2007

With

Civil Appeal No. 5114 of 2025

Appearances for Parties

Advs. for the Appellant:
Rohan Shah, Sumit Nema, Sr. Advs., Akshat Shrivastava, Satvic Mathur, Ms. Manjeet Kirpal, Akshat Shrivastava, Satvic Mathur, Mrs Pooja Shrivastava.

Advs. for the Respondents:
Nachiketa Joshi, Sr. A.A.G., Pashupathi Nath Razdan, Sidhartha Sinha.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. A short and interesting question falls for consideration in these appeals. The issue is whether the appellants are liable for the payment of entry tax under Section 3 of the *Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam*, *1976* [hereinafter referred to as the 'M.P. Entry Tax Act, 1976']. The High Court has repelled the challenge of the appellants. Aggrieved, they are in appeal(s) before us.

BRIEF FACTS: -

CASE OF THE APPELLANTS: -

2. In the writ petition filed by the appellants, their case was that they are involved in bottling and supplying of Beer and Indian Made Foreign Liquor (for short 'IMFL'). The appellants hold license under the M.P. Excise Act, 1944 to manufacture and supply beer and IMFL. They

supply the said goods after obtaining a No Objection Certificate [NOC] from the officer-in-charge posted at the factory. It was contended that the goods are transported to the State Government warehouse and the transportation pass is issued in the name of the concerned warehouse. According to the appellants, the sales are made by the warehouse in charge to the authorized retailers, who are also license holders for retail sale of IMFL and beer.

3. The appellants averred that under the M.P. Excise Act, FL-9 license is to manufacture IMFL products and FL-9A license is to produce franchisee products. FL-9 and FL-9A licensees can sell to FL-10 licensees only. According to the appellants, the FL-10 licensee in M.P. is the Excise Department, which runs the State Government warehouse. The retailers hold the FL-1 license and they purchase from FL-10 licensee after issuance of NOC by the respective District Excise Officers. According to the appellants, the sale is made by the Government warehouses to the retailers through the sale bill issued in the name of the retailers; that the Government warehouses deposit the amount payable to the appellants in their bank accounts and send intimation in respect of the goods sold in respect of the appellants to the Commissioner, who in turn transfers the amount from the bank of the Department to the appellants' bank account. The appellants submit that the retailers pay license fee in equal installments and at that point were paying 6% '*Parivahan Shulk*' (transportation expenses) by depositing the same with the Treasury. The appellants contend that the transaction is between the Government warehouses and the retailers.

CASE OF THE RESPONDENT- STATE: -

4. In the return filed by the State, they contended that the State Government neither purchases nor sells the liquor. The State referred to three documents that had a crucial bearing on the disposal of the present case.

   i) First is the communication issued by the Additional Secretary, (Finance Department), Government of M.P. to the Excise Commissioner under the subject "Collection of Indian Made Foreign Liquor and provision of its supply to its retail licensees". The communication states that the Manufacturing Units are allowed to store liquor in the departmental godowns. The

Manufacturing units declare the Ex-godown price of their liquor in due course and supply of liquor is effected to retail contractors by adding 5% additional fee on this cost. Retail contractors would deposit the amount with the specified bank and the bank would deposit the amount through the treasury in the government account. The Deputy Commissioners would be sent the statement of the amount deposited twice every month. Out of the amount collected during the previous month, payment of amount due to the manufacturing unit would be made by the Excise Commissioner and the expenditure would be debited from the expenditure account pertaining to the Commercial Tax Department.

ii) The second communication also dealt with the same issue as above with certain minor changes which are not material. There was a clarification that the 5% amount would be transferred to the departmental head, and the remaining amount to the concerned manufacturing unit.

iii) The third and the most important document annexed to the counter affidavit is the "Guidelines for the Officers-in-charge of Foreign liquor warehouse" issued on 27.3.2002. Under the guidelines, it is mentioned that Foreign liquor warehouse be established at the Divisional Headquarters of the State. Manufacturing Units would store foreign liquor and that supply of collected liquor would be effected to the retail contractors at the rates reckoned after adding 5% amount to the rates declared by the manufacturing units. All arrangements of storage was to remain under the control of the Deputy Commissioners posted at the Divisional Headquarters; and the Divisional Deputy Commissioners would issue directions to the Officer-in-charge for issuance of No Objection Certificates to the manufacturing units after assessing the local demand. Retail sale licensee would make arrangement of loading on their own for effecting supply of foreign liquor stored in the warehouse. Collection Counter of Punjab National Bank is established in each and every store. Retail contractor would deposit the necessary amount in the account of the concerned manufacturing unit at the counter of this bank. Under Supply process, the following guidelines are mentioned:-

a) Demand note of each and every shop would be submitted individually in the prescribed form for taking supply of foreign liquor and beer by the licensee of retail sale from the store. Brand-wise/label-wise/size-wise and quantity of the manufacturing units would be clearly recorded in this demand note.

b) Warehouse officer would scrutinize the submitted demand letter. In case a few labels of liquor/beer mentioned in the submitted demand letter are not available, then the necessary amendment would be made in the demand letter.

c) Warehouse officer would give demand letter to the licensee after recording the note "liquor may be supplied according to the demand letter" for further submission in the computer room.

d) Computer room would prepare a delivery challan in the prescribed form and the manufacturing unit would make available the information about the amount to be deposited, to the retail contractor who is/are going to receive the supply.

e) In case liquor/beer is supplied to the licensee of retail sale without depositing the amount on the responsibility of the manufacturing unit on the basis of the authority letter issued by any manufacturing unit with the prior permission of the Excise Commissioner, the same would have to be mentioned categorically in the prescribed form.

f) In case any quantity of liquor/beer is supplied without depositing the prescribed amount on the responsibility of the manufacturing unit with the prior permission from the Excise Commissioner, then in each and every situation, supply of liquor/beer could be effected only after depositing the 5% amount reckoned at rates declared by the manufacturing unit.

g) Retail sale licensee would deposit the amount at the bank counter established in the warehouse itself and would tender the deposit receipt issued by the bank in the computer room.

h) After loading the information about the amount deposited in the computer room, Accounts-in-charge would submit the delivery challan to the Officer-in-charge for issuing the delivery order.

i) After issuance of the supply order by the Officer-in-charge/ liquor officer (whosoever would be in charge of the store) would take out liquor/beer for the purpose of effecting the supply. Batch number of the liquor/beer would be recorded in the delivery challan. Final information of the batches under supply along with vehicle number would be given in the computer branch and the Officer-in-charge so that transportation permit may be issued from the computer room. Permits would be issued through the computer only except in the cases of defects in which situation the work will be completed manually.

j) Officer-in-charge would ensure that necessary particulars of the liquor/beer, date and time of leaving vehicle, amount of duty, challan number and period given to take liquor to the place of destination are recorded on the permit.

k) Only after ensuring compliance of the above-said process, the Officer-in-charge would give permission to vehicle loaded with liquor/beer to move from the store.

l) At the end of each and every working day, stock verification would be carried out. The complete accounts statement of wine/liquor supplied up to 25th of each and every month would be prepared. All the accounts of the amount lying deposited in the collection account of the manufacturing units would be tallied. Officer-in-charge would submit the said accounts before the concerned Deputy Commissioners and Deputy Commissioners would direct the bank as to how much amount is to be transferred by them in their accounts out of the collection accounts of each and every manufacturing unit and how much amount would be deposited in the government treasury. Thereafter, Deputy Commissioners would issue directions to the bank to first of all deposit that much amount in the government treasury and the remaining amount would be credited to the accounts of the manufacturing unit. The available stock was to be insured.

5. An additional return was filed wherein it was averred that the appellants are under liability to pay VAT tax and the list of the dealers who are liable to pay VAT tax was annexed.

RELEVANT STATUTORY PROVISIONS: -

6. Till 31.03.2007, no entry tax was levied in the State of Madhya Pradesh on beer and IMFL. On 01.04.2007, the M.P. Entry Tax Act was amended by the M.P. Entry Tax (Amendment) Act No. 9 of 2007 i.e. *The Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar (Sanshodhan) Adhiniyam, 2007* (hereinafter referred to as 'the Amendment Act of 2007')

7. The original Act in Section 3 provided that an entry tax shall be levied on the entry in the course of business of a dealer of goods specified in Schedule-II, into each local area for consumption, use or sale therein.

8. Section 3 reads as follows:-

> "3- **Incidence of taxation**
>
> (1) There shall be levied an entry tax,-
>
> (a) **on the entry in the course of business of a dealer of goods** specified in Schedule-II, into each local area for consumption, use or sale therein; and
>
> (b) on the entry in the course of business of a dealer of goods specified in Schedule-III into each local area for consumption or use of such goods but not for sale therein; **and such tax shall be paid by every dealer liable to tax under the [M.P.VAT Act, 2002] who has effected entry of such goods**:.."
>
> (Emphasis supplied)

9. By the Amendment Act of 2007, an entry was added to Schedule-II which reads as follows:-

> "Indian made foreign liquor and beer."
>
> The rate of tax prescribed was @ 2%.

10. The Amending Act of 2007 introduced Section 3B which reads as follows:-

> ""**3-B. Special provisions for collection of entry tax on foreign liquor; -**
>
> Notwithstanding anything contained in this Act, the State Government may, by notification, specify the manner and appoint the competent authority, to collect entry tax in respect of India made foreign liquor and beer on such terms and conditions as may be specified therein."
>
> **4A. Provision for entry tax at enhanced rate.** –
>
> (ii) for sub-section (1), the following sub-section shall be substituted, namely: -
>
> (1) Notwithstanding anything to the contrary contained in this Act, the State Government may, by notification, specify the manner and appoint the competent authority to collect entry tax in respect of India made foreign liquor and Beer on such terms and conditions as may be specified therein, the entry tax payable by a dealer under this Act shall be charged on the value of such goods at a rate not exceeding thirty per centum as may be specified in such notification.. "

11. The other relevant sections from the Entry Tax Act are Section 2(1) (aa), 2(1) (b), 2(1)(l), 2(1)(m), 2(2), 2(3) and Section 14 which read as follows:-

> "2(1)(aa) *"entry of goods into a local area"* with all its grammatical variations and cognate expressions means entry of goods into that local area from any place outside thereof including a place outside the State for consumption, use or sale therein;"
>
> 2(1)(b) *"Entry tax"* means a tax on entry of goods into a local area for consumption, use or sale therein levied and payable in accordance with the provisions of this Act and includes composition money payable under Section 7-A"
>
> 2(1)(l) *"Value of goods"* in relation to a dealer or any person who has effected entry of goods into a local area shall mean the purchase price of such goods as defined in clause (s) of Section 2 of the Madhya Pradesh VAT Act, 2002 (No. 20 of 2002) and shall include excise duty and/

or additional excise duty and/or customs duty, if levied under the Central Excise and Salt Act, 1944 (No. 1 of 1944), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (No. 58 of 1957) or the Customs Act, 1962 (No. 52 of 1962), as the case may be or the market value of such goods if they have been acquired or obtained otherwise than by way of purchase;

2(1)(m) *"VAT Act"* means the Madhya Pradesh VAT Act, 2002 (No. 20 of 2002).

2(2) All those expressions, other than expression "goods" and "sale" which are used but are not defined in this Act and are defined in the Madhya Pradesh VAT Act, 2002 (No. 20 of 2002) shall have the meanings assigned to them in that Act.

2(3) Any reference in this Act to the expression "**has effected entry of goods**" with its grammatical variations and cognate expressions, whether used in isolation or in conjunction with any other words shall, wherever necessary, **be construed as including a reference to "has caused to be effected entry of goods**"

(Emphasis supplied)

"14. Assessment, collection etc. of entry tax.- Subject to the provisions of this Act and the rules made thereunder, the administration of this Act in so far as it relates to levy, assessment and collection of entry tax from dealers shall vest in the authorities specified in Section 3 of the Madhya Pradesh VAT Act, 2002 (No. 20 of 2002), and accordingly the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the Madhya Pradesh VAT Act, 2002 (No. 20 of 2002) shall assess, re-assess, collect and enforce the payment of entry tax including any penalty payable by a dealer under this Act as if the tax or penalty payable by such dealer under this Act or under the provisions of the Madhya Pradesh VAT Act, 2002 (No 20 of 2002) as made applicable under Section 13 to dealers in relation to tax levied under this Act is a tax or penalty payable under that Act and for

this purpose they may exercise all or any of the powers conferred upon them by or under that Act."

12. "Dealer" as defined under Section 2(i) of the Madhya Pradesh VAT Act, 2002 reads as under:-

> "**2(i)** - Dealer" means any person, who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes –
>
> (i) a local authority, a company, an undivided Hindu family or any society (including a cooperative society), club, firm or association which carries on such business;
>
> (ii) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to its;
>
> (iii) a commission agent, broker, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal;
>
> (iv) any person who transfers the right to use any goods including leasing thereof for any purpose, (whether or not for a specified period) in the course of business to any other person;"
>
> Explanation I - Every person who acts as an agent of a non- resident dealer, that is as an agent on behalf of a dealer residing outside the State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as - (i) a mercantile agent as defined in the Sale of Goods Act, 1930 (III of 1930); or (ii) an agent for handling goods or documents of title relating to goods; or (iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch of a firm or company situated outside the State, shall be deemed to be a dealer for the purpose of this Act.
>
> **Explanation II - The Central or a State Government or any of their departments or offices which, whether**

or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purpose of this Act.

Explanation III - Any non-trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which whether or not in the course of business buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment, commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purposes of this Act:

(Emphasis supplied)

13. "Goods" as defined in Section 2(m) reads as under:-

"2(m) "Goods" means all kinds of movable property including computer software but excluding actionable claims, newspapers, stocks, shares, securities or Government stamps and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of movable or immovable property, and also includes all growing crops, grass, trees, plants and things attached to, or forming part of the land which are agreed to be severed before the sale or under the contract of sale;"

14. "Sale" as defined in the M.P. VAT Act reads as under:-

"2(u) "Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for other valuable consideration and includes –

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods whether as goods or in some other form, involved in the execution of works contract;

(iii) a delivery of goods on hire purchase or any system of payment by installments;

(iv) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(v) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;

(vi) a transfer of the right to use any goods including leasing thereof for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge;"

CONTENTIONS OF PARTIES: -

15. We have heard Mr. Rohan Shah, learned Senior Advocate and Mr. Sumit Nema, learned Senior Advocate for the appellants and Mr. Nachiketa Joshi, learned Additional Advocate General for the respondent-State.

16. Learned counsels for the appellants reiterated the *modus operandi* of the transaction as set out hereinabove. They contended that depending upon the estimation of the retailers' requirement, each State Government warehouse would issue an indent on different manufacturers of different brands of IMFL to supply goods to the State Government warehouse.

17. Learned counsels contended that only after complying with the formalities of receipt of NOC from the State Government warehouse, the State Excise Officer would allow removal of exact quantity of the relevant brand by issuing a Transit Pass under Rule 14(1) of the M.P. Foreign Liquor Rules, 1996 to enable transportation for storage in the State Government Warehouse. They contend that an invoice

specifying the brand and quantities of IMFL was to be issued by the manufacturer, in the name of the State Government warehouse. They contend that there was no privity between the retailers and the manufacturers. Learned Counsels contend that from the price paid by the retailer, the State Excise Duty, VAT, and transportation Fees/commission are all deducted and only then the amount is transferred to the manufacturer by the Government warehouse. Learned Counsels contend that no direct sales can be made by the manufacturer to the retailers.

18. According to the learned Counsels for the appellants, it is the Government warehouse which causes the movement of goods into the local area, which is the incidence for the levy as defined under Section 3(1)(a) read with Section 2(1)(aa), 2(1)(b) and 2(3) of the M.P. Entry Tax Act. According to the learned Counsels, since the State Government warehouses not only sells but, in any event, undisputably distributes the goods they would be "dealer" as per Explanation II to Section 2(i) of M.P. VAT Act, 2002. According to the learned counsels, levy cannot be mulcted on the manufacturers as they do not effect the entry of goods or cause to effect the entry of goods and it is only the State Government warehouse which cause to effect the entry of the goods. That even otherwise, the manufacturers cannot be mulcted with the liability as the value of the goods would be clear only at the hands of the State Government warehouse which effects the sale to the retailer and for this reason, without notification being issued under Section 3B of the Entry Tax Act, no levy can be effected. Further, they contend that since the State Government warehouse causes to effect the entry of the goods, it is they who will ultimately pass it on to the retailers after the levy is made. They further contend that with effect from 01.04.2008 when the entry tax on IMFL and beer was withdrawn, an increase in 2% of the transportation fee was brought in and it was made to 8% from the originally fixed 6% chargeable by the warehouse on the retailers. So praying, they contend that the writ petitions ought to have been allowed, and the communication dated 13.06.2007 issued by respondent no. 2 and the communication 21.06.2007 issued by respondent no. 3 directing the manufacturers to pay entry tax ought to have been quashed. To buttress the submission, they further referred to the communication dated 02.06.2007 issued by Commissioner, Commercial Tax to the Excise Commissioner directing that the entry tax ought to be paid by the warehouse of the excise department.

19. Mr. Nachiketa Joshi, learned Additional Advocate General, submitted that the judgment of the High Court upholding the levy on the manufacturers called for no interference. Learned Senior Advocate contends that the High Court has correctly found that the warehouses neither purchase liquor nor sell liquor and that the Department only supervises the sale made by the manufacturer to the retail contractors. Learned Senior Advocate contends that the High Court has rightly found that Section 3B was only an enabling provision which was in the nature of a machinery provision and even without a notification under Section 3B of the Act, Section 14 could enable the levy of entry tax on the manufacturers. Learned Senior Advocate contends that the non-obstante part of Section 3B will not override Section 14 as there is no conflict between the two provisions and the two can be harmoniously interpreted. Learned Senior Advocate for the State also drew our attention to the communication of the Commissioner, Commercial Tax dated 04.10.2008 to the Excise Commissioner correcting the communication of 02.06.2007 and clarifying the position that it is only the manufacturing units which were liable to pay the entry tax. Learned Senior Advocate contended that the High Court has correctly relied on the judgment of this Court in ***M/s Bhagatram Rajeevkumar*** vs. ***Commissioner of Sales Tax, M.P. and Others***, 1995 Supp. (1) SCC 673 to sustain the levy on the manufacturers.

QUESTION FOR CONSIDERATION:-

20. The question that arises for consideration is: -

Did the appellants cause to effect the entry of goods into the local area as required under Section 3(1)(a) read with Section 2(1)(aa), 2(1)(b) and 2(3) of the M.P. Entry Tax Act, 1976, rendering them liable for entry tax for the period 01.04.2007 to 31.03.2008?

ANALYSIS AND REASONS: -

21. The principal argument of the learned Counsels for the appellants is that there is no privity of contract between them and the retailers and that it is the State Government warehouse which sells the goods to the retailers. According to the learned Counsels for the appellants, it is the warehouse which causes the movement of the goods into the local area. Alternatively, it is contended that undisputedly the State Government warehouse distributes the goods and whether as a seller or as a distributor they acquire the status of a dealer under

the Act, which makes them liable for the payment of the Entry Tax. The stand of the State Government is that the warehouse neither purchases nor sells the liquor and the work undertaken is only to supervise the sale made by the manufacturer to the retailer. This contention of the State found favour with the High Court.

22. The model adopted by the State, as set out in the Paragraphs hereinabove for the transaction, clearly points to the State canalising the supply of beer and Indian made foreign liquor into the local area. The question that would then arise is: - is there an inseverable link between the manufacturers like the appellants and the ultimate retailers? While the manufacturers contend that the sale by them is made to the State warehouse and thereafter the State warehouse makes the sale to the retailers, the State contends that there is an inseverable link and it is the manufacturers who causes the sale to the retailers and the State is discharging only a supervisory role.

23. Under the *modus operandi* adopted, as set out in hereinabove, it will be clear that demand note for each and every shop is submitted to the warehouse by the retailer. After assessing the local demand, the Divisional Commissioner issues directions to the Officer in charge for issuance of a No Objection Certificate to the manufacturing units. The manufacturing units were allowed to store beer and IMFL in departmental godowns. The manufacturing units declare the Ex-godown price and supply of liquor is effected by the warehouse after levying 5 per cent additional fee. The retail buyer deposits the amount with the warehouse and the transfer of money to the manufacturer is made by the warehouse and thereafter, delivery is taken by the retailer from the warehouse.

24. The issue of when can a sale which involves a canalizing agent/ intermediary be said to be inseverable has arisen in the context of exemption sought by assessees under the Central Sales Tax Act before this Court in several cases. In ***K. Gopinathan Nair & Ors.*** v. ***State of Kerala***, (1997) 10 SCC 1, this Court, after analyzing the precedents applicable to the issue, summarised the law in Para 14 and 15 as under: -

> **"14.** In the light of the aforesaid settled legal position emerging from the Constitution Bench decisions of this Court the following propositions clearly get projected for deciding whether the concerned sale or purchase of goods

can be deemed to take place in the course of import as laid down by Section 5(2) of the Central Sales Tax Act:

(1) The sale or the purchase, as the case may be, must actually take place.

(2) Such sale or purchase in India must itself occasion such import, and not vice versa i.e. import should not occasion such sale.

(3) The goods must have entered the import stream when they are subjected to sale or purchase.

(4) The import of the goods concerned must be effected as a direct result of the sale or purchase transaction concerned.

(5) **The course of import can be taken to have continued till the imported goods reach the local users only if the import has commenced through the agreement between foreign exporter and an intermediary who does not act on his own in the transaction with the foreign exporter and who in his turn does not sell as principal the imported goods to the local users.**

(6) **There must be either a single sale which itself causes the import or is in the progress or process of import or though there may appear to be two sale transactions they are so integrally interconnected that they almost resemble one transaction so that the movement of goods from a foreign country to India can be ascribed to such a composite well-integrated transaction consisting of two transactions dovetailing into each other.**

(7) A sale or purchase can be treated to be in the course of import if there is a direct privity of contract between the Indian importer and the foreign exporter and the intermediary through which such import is effected merely acts as an agent or a contractor for and on behalf of the Indian importer.

(8) **The transaction in substance must be such that the canalising agency or the intermediary agency through**

which the imports are effected into India so as to reach the ultimate local users appears only as a mere name lender through whom it is the local importer-cum-local user who masquerades.

15. If the aforesaid conditions are satisfied then obviously the transaction of sale or purchase would be in the realm of sale or purchase in the course of import entitling it to earn exemption under Section 5(2) of the Central Sales Tax Act. **But if on the contrary the transactions between the foreign exporter and the local users in India get transmitted through an independent canalising import agency which enters into back-to-back contracts and there is no direct linkage or causal connection between the export by foreign exporter and the receipt of the imported goods in India by the local users, the integrity of the entire transaction would get disrupted and would be substituted by two independent transactions, one between the canalising agency and the foreign exporter which would make the canalising agency the owner of the goods imported and the other between the import canalising agency and the local users for whose benefit the goods were imported by the wholesale importer being the canalising agency. In such a case the sale by the canalising agency to the local users would not be a sale in the course of import but would be a sale because of or by import which would not be covered by the exemption provision of Section 5 sub-section (2) of the Central Sales Tax Act**."

(Emphasis supplied)

25. From the summary of principles set out hereinabove, it will be clear that in case a canalising agency or intermediary agency is involved, unless their role is merely that of a name lender, the sale will not be treated as an inseparable or an inseverable sale. It will also be clear that if an independent canalising agency enters into back-to-back contracts and there is no direct linkage or causal connection between the export by foreign exporter and the receipt of the imported goods in India by local users, then the integrity of the entire transaction would be disrupted and would be substituted

by two independent transactions. In ***K. Gopinathan Nair (supra)*** it was held that transactions were not integral and were two separate transactions.

26. Similar view has been expressed by this Court in ***Hyderabad Industries Ltd.*** v. ***Union of India & Ors.***, (2000) 1 SCC 718, ***Kerala State Warehousing Corpn***. v. ***State of Kerala***, (2005) 10 SCC 142 and ***State of Karnataka*** v. ***Azad Coach Builders Private Ltd. & Anr.***, (2010) 9 SCC 524. It will be observed that while the tests applied have been common, factually differing conclusions have been arrived at by this Court depending upon the facts operating in the respective cases.

27. Applying the tests to the present canalising transaction, we have no manner of doubt that there were two independent transactions, one between the appellant – manufacturers and the State Warehouse and the other between the State warehouse and the retailers. Hence, it will be difficult to accept the contention of the State that the role of the State is only supervisory and the warehouses didn't purchase beer and IMFL from the manufacturer.

28. This, however, does not resolve the issue in favour of the appellants. Under Section 3 of the M.P. Entry Tax Act, 1976, the incidence of taxation is on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein. The further requirement is that such tax was to be paid by every dealer liable to tax under the VAT Act who has effected entry of such goods. Entry Tax is defined as a tax on entry of goods into a local area for use, consumption or sale therein levied and payable in accordance with the provisions of the M.P. Entry Tax Act. Section 2(3) of the M.P. Entry Tax Act states that any reference to the expression "has effected entry of goods" shall be construed as including a reference to "has caused to be effected entry of goods."

29. The other crucial question that arises is whether the appellant manufacturers have "caused to be effected the entry of goods." In the pocket Oxford Dictionary, 8th Edition, "Cause" is defined as follows:

> "person or thing that occasions or produces something"

In the context of construing Section 5(3) of the Central Sales Tax Act, 1956 which used the phrase "occasioning the export", this Court in ***Azad Coach Builders (supra***) held as follows: -

> **"27.** The phrase "sale in the course of export" comprises in itself three essentials: (*i*) that there must be a sale; (*ii*) that goods must actually be exported; and (*iii*) that the sale must be a part and parcel of the export. **The word "occasion" is used as a verb and means "to cause" or "to be the immediate cause of". Therefore, the words "occasioning the export" mean the factors, which were the immediate cause of export.** The words "to comply with the agreement or order" mean all transactions which are inextricably linked with the agreement or order occasioning that export. The expression "in relation to" are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed. Therefore, the test to be applied is, whether there is an inseverable link between the local sale or purchase and export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim under Section 5(3) for exemption from State sales tax is justified, in which case, the same goods theory has no application."

30. In ***Coffee Board, Bangalore*** v. ***Joint Commercial Tax Officer, Madras & Anr.***, (1969) 3 SCC 349, Chief Justice Hidayatullah, speaking for the Court, held as follows:

> **"28.** ……. The word "occasion" is used as a verb and means "to cause" or "to be the immediate cause of". Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export……."

31. Reverting back to Sections 3(1) read with 2(1)(aa) and 2(1)(b) and 2(3), it is clear that the appellants by the sale to the warehouse caused to be effected the entry of goods and the entry was occasioned on the account of the sale into the local area for consumption, use or sale therein. It is also not disputed that the appellant is a dealer as defined under the Madhya Pradesh VAT Act 2002, as it stood then. The only contention of the appellants is this that the State warehouse is also a dealer. That makes no difference since it cannot be disputed

that the appellants certainly occasioned the entry of goods and the levy of entry tax on them, which could always be passed on, is perfectly justifiable in law.

32. The further contention that no notification having been issued under Section 3B of the M.P. Entry Tax Act 1976, there could be no levy of entry tax has only to be stated to be rejected. The High Court has rightly held that Section 3B is only a machinery provision and in the teeth of Section 14 of the M.P. Entry Tax Act, it is not correct to say that there cannot be any assessment or collection of Entry Tax merely because there is no notification under Section 3B.

33. Section 3B of the M.P. Entry Tax is an enabling provision. Further, the 'non-obstante' in Section 3B will not foreclose the operation of Section 14, since Section 3B will override only if there is a contrary provision. In the absence of any notification under Section 3B, there is nothing contrary in Section 14 for the non-obstante in Section 3B to be invoked to override Section 14. (See ***A.G. Varadarajulu & Anr.*** v. ***State of T.N. & Ors.***, (1998) 4 SCC 231 and ***Union of India and Anr.*** v. ***G.M. Kokil & Ors.***, 1984 Supp SCC 196).

34. On this score, The High Court in the impugned order has found rightly as follows:

> "**13.** In our opinion as Section 14 deals with the assessment and collection of entry tax and State has chosen not to issue notification under Section 3B by enacting special procedure for collection of entry tax on foreign liquor, it is open to the State to recover as per general procedure prescribed in Section 14. We do not find any legal impediment for applicability of the provision of Section 14 as under Section 3B no notification to the contrary or otherwise has been issued by the State Government so as to override the procedure provided in Section 14. When something is required to be done so as to bring the non-obstante clause into play till that thing has been done, non-obstante clause would not come into play. Thus in the instant case, we are of the considered opinion that charging section is Section 3(1) and in the absence of the notification under Section 3B which is a machinery provision, State can recover the entry tax as per general machinery provided under Section 14."

35. In ***Bhagatram (supra)*** cited by the State the question was whether entry tax on goods such as sugar on which no sales tax is leviable, was justified. This Court answered the question in favor of the State. For the reasons that we have stated above, we find no relevance of ***Bhagatram (supra)*** for the present controversy.

36. For the reasons aforestated, we find no grounds to interfere with the impugned order. Civil Appeals are dismissed. No order as to costs.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Divya Pandey