

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20156 of 2021

[Arising out of Order-in-Original No. BLR-NORTH-COMM-11-
2020-21 dated 26/11/2020 passed by Commissioner of
Central Tax, Bangalore North]

United Spirits Limited

UB Tower, #24, Vittal Mallya Road,
BANGALORE
KARNATAKA
560001

Appellant(s)

VERSUS

**Commissioner Of Central Taxes,
Bangalore North GST
Commissionerate**

HMT Bhavan, No 59, Bellary Road
Bangalore
Karnataka
560032

Respondent(s)

Appearance:

Shri Prasad Paranjape, Advocate for the Appellant

Shri P. Rama Holla, Superintendent(AR) for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No: 20178 / 2022

Date of Hearing: 01/04/2022

Date of Decision: 11/04/2022

Per : RAMESH NAIR

The issue involved in the present case is whether the appellant is liable to pay service tax on reverse charge basis on various fees paid by the appellant to the State Excise Department or to the Government or Government agencies during their business of

manufacture, import and sale of alcoholic beverages for human consumption?

2. Shri Prasad Paranjape, learned counsel appearing for the appellant submits that the amount on which the service tax was demanded is towards the payment of various fees such as permit fee, import/export pass fee, excise escort charges, supervision charges, and other related charges, additional fees paid in relation to manufacture, import distribution and sale of liquor. He submits that the licence fee, permit fee, import pass fee and export pass fee are payable to the State Government for parting with its exclusive privilege to import, export and transport liquor, which is in terms of Entry 8 of List-II of Seventh Schedule of the Constitution of India; according to which, production manufacture, possession, transport, purchase and sale of intoxicating liquors is the 'exclusive privilege' of the State. He submits that there is no *quid pro quo* in the licence fee and service, if any, rendered by the State Government; the licence fee charged by the State Government is neither any tax nor any fee, but it is the consideration charged by the State Government for parting with its privilege and granting it to licensee for manufacture and sale liquor. He submits that the licence fee charged by the State Government is not subject to tax as the same is not for any service. Pursuant to the GST Council meeting minutes and consequential retrospective amendment vide Section 117 of the Finance Act, 2019, it became even more clear that service tax is not

leviable or payable on the licence fee paid to the State Excise Department. He submits that even though the respondent had correctly dropped the service tax demand on licence fee, the respondent had erred in confirming the demand in respect of the permit fee, import pass fee, export pass fee and other fees/charges. He submits that the respondent has erred in holding that the permit granted for import/export of liquor cannot be treated as a licence. He submits that the respondent had erred in not appreciating that like the licensee fee, permit fee, import pass fee and export pass fee are also consideration charged by the State Government for parting with its exclusive privilege to import and export liquor. He submits that identical issue has been decided by this Tribunal in the case of Anheuser Busch Inbev India Ltd. Vs. CCT, Bengaluru North West [2021(52) GSTL 429 (Tri. Bang.)]; therefore the issue being squarely covered by the said judgement, it is no longer res integra. He also placed reliance on the following judgments:-

- i. Har Sharnkar Vs. Excise and Taxation Commissioner [(1975) 1 SCC 737]
- ii. State of Punjab and Ors. Vs. Devans Modern Breweries Ltd. and Ors. [(2004) 11 SCC 26]
- iii. Inertia Industries Vs. State of Rajasthan and Ors. [2001 SCC OnLine Raj 937]
- iv. State of Orissa and others Vs. Narain Prasad and Ors. [(1996) 5 SCC 740]
- v. Gupta Modern Breweries Vs. State of J&K and Ors. [(2007) 6 SCC 317]

3. Shri P. Rama Holla, learned Superintendent(AR) Appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides and perused the records. We find that the adjudicating authority has confirmed the demand in respect of various fees paid to the State Government in respect of manufacture, import and sale of alcoholic liquor. The adjudicating authority, though dropped the demand on licence fee, but confirmed the demand on all other fees. In our considered view, there is no difference between the licence fee and other fees as these fees are not charged against any service provided by the State Government. These fees were charged as per the Statutory levy; therefore not against provision of any service. Since there is no service is existing against fee paid by the appellant to the State Government, service tax cannot be charged on the said fees. This issue is no longer res integra as the same has been considered by this Tribunal in the case Anheuser Busch Inbev India Ltd. (supra), wherein the following order was passed:-

6. *After considering the submissions of both the parties at length and after going through various provisions of the Finance Act, 1994 and the various decisions relied upon by the appellant cited supra, we find that the only issue involved in the present case is whether the appellant is liable to pay service tax under Reverse Charge Mechanism on the Export Pass fee and Import Pass fee, Storage License Renewal fee, Excise Staff Salary and Overtime charges, Permit fee paid to the State Excise department. With regard to other fees, Learned Commissioner himself has granted relief in view of the amendment made in Section 117 of the Finance Act, 2019 with retrospect. Here it is pertinent to refer to the amendment in Section 117(1) vide Finance Act, 2019 which is reproduced herein below :*

117.(1) Notwithstanding anything contained in Section 66B of Chapter V of the Finance Act, 1994 as it stood prior to its omission vide Section 173 of the Central Goods and Services Tax Act, 2017 with

effect from the 1st day of July, 2017 (hereinafter referred to as the said Chapter), no service tax shall be levied or collected in respect of taxable service provided or agreed to be provided by the State Government by way of grant of liquor licence, against consideration in the form of licence fee or application fee, by whatever name called, during the period commencing from the 1st day of April, 2016 and ending with the 30th day of June, 2017 (both days inclusive).

6.1 *Further, we note that Learned Commissioner has wrongly considered the fee paid by the appellant to the State Excise department and various other Government departments/agencies as having an element of a quid pro quo in it and hence services provided by the State Excise department. We also note that the fee charged for grant of license is not a consideration for service, but a price charged for "exclusive privilege" parted by the State, the export fee does not have an element of service and therefore not a service and accordingly not subject to levy of service tax. The State Legislature is empowered to make laws in terms of Article 246 read with the Seventh Schedule of the Constitution of India. The State Legislature is empowered to make laws in respect of Entries 8 and 66 of the State List which cover production, manufacture, possession, transport, purchase and sale of intoxicating liquors and fees in respect of any of the matters in this List excluding fees taken in any Court. We further note that to deal with intoxicating liquor is part of the State responsibility and it is in exercise of these privileges, State has exclusive rights to manufacture, possession, consumption, transport etc. of liquor within its territory and to grant licenses and permits to ensure compliance. Further, we find that in August, 2019, the Finance Act, 2019 was enacted amending Section 66B of the Act, to the effect that service tax was not leviable on services provided by the State Government by way of grant of liquor licenses against consideration in the form of license fee or application fee "by whatever name called", during 1-4-2016 to 30-6-2017 along with this amendment the dispute regarding the leviability of service tax on fee paid to State Government in relation to alcoholic liquor for human consumption has come to an end and it is clear that service tax is not leviable on the said fees from April, 2016 to June, 2017. Specific inclusion of words "by whatever name called", the Legislature made it abundantly clear that any fee paid under the purview of State Excise legislation would not be leviable to service tax. Further, it is pertinent to note that the words "License Fee" are defined by Oxford Dictionary to mean "a fee paid to an organization for permission to own, use or do something". The Hon'ble Apex Court in the case of State of Orissa v. Narain Prasad*

cited supra specifically explained the meaning of expression "Privilege" and held that "Privilege really means the license or permit granted by the State". Further, in view of State of Punjab and Orissa v. Devans Modern Breweries Ltd. cited supra Import fee levied as price for parting with privilege given to the licensee by the State. Further, in view of Inertia Industries v. State of Rajasthan cited supra Permit fee charged by the State for allowing transport of liquor is the considerations charged by the State for parting with its exclusive privilege and is not liable to service tax. Further in view of the Hon'ble Supreme Court decision in the case of Gupta Modern Breweries v. State of J&K cited supra it is held that there is no quid pro quo between the Staff Salary and the services rendered hence the same is not liable to service tax. As far as levy of service tax on Storage License fee for CO₂ is concerned, we find that Learned Commissioner has observed that the said license is issued to the appellant by the State Excise department for the specific purpose of storing CO₂. The appellant has paid the fee against the renewal of license for storing CO₂ which fact is admitted by Ashish Jain, Manager of appellant in his statement dated 5-2-2018. In our view, the Learned Commissioner has rightly upheld the demand of service tax on Storage License Renewal fee which cannot be considered as fee paid towards grant of liquor license. Moreover, the Learned Counsel for the appellant has also not pressed against the confirmation of this demand hence we uphold the demand of service tax on Storage License fee for CO₂ along with interest.

7. *Further, we may also note that the issue with respect to tax liability on license fee and other application fee paid to the State authorities continued to be an issue under GST as well and the GST Council in its 26th meeting on 10-3-2018 recommended that GST was not leviable on license fee and application fee, "by whatever name called", payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by the Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era i.e. for the period from April, 2016 to 30th June, 2017.*

8. *In view of our discussion above and by following the ratios of the various judgments relied upon by the appellant cited supra, we are of the considered opinion that the appellant is not liable to pay service tax on Export Pass fee, Import Pass fee, Permit fee, Excise Staff Salary and overtime allowances/charges and we set aside the demand on all these services. We confirmed the service tax demand on Storage License fee for CO₂ which the appellant is liable to pay along with interest. We also hold that appellants are not liable to pay penalties in view of*

the fact that demand itself is not sustainable. In view of our discussion above, we allow the appeal of the appellant partly to the extent noted above. Hence, the appeal is partly allowed.

From the above, it can be seen that the various fees paid by the assessee in the aforesaid case were identical to the fees paid by the present appellant. Therefore, the facts of both the cases are absolutely identical.

5. Following the ratio of the above judgment, we are of the clear view that the fees paid by the appellant to the State Government during the course of manufacture and trading of alcoholic beverages does not amount to provision of any service. Accordingly, no service tax can be demanded. Hence, the impugned order is modified and appeal is allowed with consequential relief, if any.

(Order pronounced in open
court on 11/04/2022)

(RAMESH NAIR)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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