CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 15 OF 2017

(Arising out of order dated 04.10.2017 passed in Appeal No. 2194-2198/2014 Jaipur by the Rajasthan Tax Board)

M/s Devans Modern Breweries Ltd. **......Appellant**
SP 3-6, RIICO IND. Area, Kehswana, Kotputli
Jaipur
Through V.K. Dewan Son of Shri D.C. Dewan
Vice President of Company

VERSUS

1. **The State of Rajasthan**
   Through its Principal Secretary,
   Finance Department, Govt. of Rajasthan,
   Jaipur

2. **Union of India**
   Through the Secretary,
   Ministry of Finance, North Block,
   New Delhi

3. **Rajasthan Tax Board**
   Ajmer
   Through its Chairman/ Member

4. **The Commissioner,**
   Commercial Tax Department,
   Rajasthan, Jaipur

5. **The Assistant Commissioner,**
   Commercial Taxes Department,
   Anti Evasion,
   Rajasthan Circle-III,
   Jaipur

6. **State of Bihar**
   Through the Secretary,
   Ministry of Finance,
   Patna, Bihar

7. **Deputy Commissioner,**
   Commercial Taxes Department,
   Patliputra Region,
   Patna, State of Bihar **......Respondents**

WITH

CST/16/2017, CST/17/2017, CST/18/2017, CST/19/2017

APPEARANCE:

Shri Pankaj Ghiya, Advocate for the appellant

None for the State of Rajasthan

None for the State of Jharkhand

None for the State of Bihar

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: 20.12.2024

FINAL ORDER NO's. 59940-59944/2024

JUSTICE DILIP GUPTA:

The order dated 04.10.2017 passed by the Rajasthan Tax Board, by which five appeals filed by M/s Devans Modern Breweries Ltd.[1] have been dismissed and the assessment orders for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 have been upheld, has been challenged in these five appeals.

2. The issue involved in these appeals relates to demand of central sales tax on movement of goods from the manufacturing unit of the appellant situated in the State of Rajasthan to its depots in the State of Bihar and the State of Jharkhand. The impugned order has treated the movement to be arising out of inter-state supply of goods instead of inter-state stock transfers as claimed by the appellant.

3. The appellant holds a license for the manufacture and sale of liquor under the Rajasthan Excise Act, 1950[2] and is also a registered

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1 the appellant
2. the Rajasthan Act

dealer under the Rajasthan Value Added Tax Act, 2003[3] as well as under the Central Sales Tax Act, 1956[4]. The appellant manufactures beer under various brand names at its brewery located in the State of Rajasthan. Various States have created separate entities which are State Beverages Corporations to facilitate and regulate retail sale of liquor, including beer, in their States. The State of Bihar has established The Bihar State Beverages Corporation Limited[5], while the State of Jharkhand has established the Jharkhand State Beverages Corporation Limited.

4. Shri Pankaj Ghiya, learned counsel for the appellant has submitted that the issue involved in these appeals had also come up for consideration before this Tribunal earlier in matters concerning three companies, namely, M/s Carlsberg India Pvt. Ltd., M/s United Breweries Ltd., M/s Mount Shivalik Industries Ltd. and this Tribunal in Central Sales Tax Appeal No. 21 of 2014 connected with 13 other Central Sales Tax Appeals, by a detailed order dated 21.10.2024, set aside the order dated 24.11.2014 passed by the Rajasthan Tax Board. Learned counsel pointed out that while deciding the five appeals, the Rajasthan Tax Board had placed reliance upon an earlier order passed by the Rajasthan Tax Board on 24.11.2014 in Appeal No’s. 1229-1233 of 2014, which order dated 24.11.2014 was assailed by M/s United Breweries Ltd. in Central Sales Tax Appeal No. 16 of 2014 connected with Central Sales Tax Appeal No’s. 17 of 2014, 18 of 2014, 19 of 2014 and 20 of 2014, and all these appeals were allowed by the Tribunal by order dated 21.10.2024 treating the movement of goods

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3. the RVAT Act
4. the Act
5. the Corporation

as arising out of inter-state stock transfers. Learned counsel, therefore, submits that as the order on which reliance was placed by the Rajasthan Tax Board has been set aside by this Tribunal by a detailed order dated 21.10.2024, the present appeals which challenge the order dated 05.09.2018 passed by the Rajasthan Tax Board, deserve to be allowed.

5. No one has appeared for the States of Rajasthan or for the State of Jharkhand and the State of Bihar. The State of Jharkhand and the State of Bihar are supporting the appellant.

6. A perusal of the facts of these five appeals and the facts of the fourteen appeals decided by the Tribunal on 21.10.2024 clearly show that they are similar. The Liquor Sourcing Policy framed by the State of Bihar and the Liquor Policy framed by the State of Jharkhand which came up for consideration in the decided appeals has also come up for consideration in these five appeals. The Master Agreement entered into between the appellant and the Corporation at Patna and the Master Agreement entered into between the appellant and the Corporation in Jharkhand are identical.

7. After a detailed consideration of the clauses of the Master Agreement, the Liquor Policy and the decisions on which reliance was placed, the Tribunal recorded the following findings in the order dated 21.10.2024:

> "46. It would now be appropriate to examine the facts of the present case in the light of the provisions of the Liquor Policy, the Master Agreement, and the License issue to the appellants.
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> 47. As noticed above, the appellants manufacture beer at the breweries in the State of Rajasthan. The State of Bihar and the State of Jharkhand have created Corporations to facilitate and regulate retail sale of beer in their States.

48. Under the **Liquor Policy**, the Corporation is the wholesaler for all kinds of liquor, including beer. A manufacturer desirous of supplying beer to the Corporation for subsequent distribution shall have to submit documents, including the Master Agreement. The Corporation issues OFS on the depots of Carlsberg in the State of Bihar based on the stock requirements of the Corporation, but the Corporation has the right to decide the quantity for which OFS can be issued and the Corporation is also under no obligation to procure any specified minimum quantities of any brand of beer during the currency of the contract. This apart, the Corporation is not under any legal compulsion to procure all or any brand produced by the manufacturer simply because they have signed the Master Agreement. The OFS indicates the validity date within which the manufacturer has to complete the delivery and if the manufacturer does not supply the entire quantity indicated in the OFS within the validity period, the order for the remaining quantity lapses automatically. The stocks have to be delivered at the concerned depots of the Corporation at the cost and risk of the manufacturer. Any delivery that deviates from the OFS is not acknowledged by the Corporation and would not be unloaded at the depots. What is important to note is that the supply to the Corporation against an OFS is considered under clause 10.1 of the Liquor Policy as an agreement to sell under section 4(3) of the Sale of Goods Act. The Corporation has also to take necessary care of the stored stock but any stock of beer lying unsold for a period of over six months from the date of bottling or from the date the stocks are declared unfit for human consumption at the depot, has to be drained out by the Corporation. The Corporation pays the manufacturer only for the stocks sold. The manufacturer has to pay VAT as per the provisions and rates applicable in the Bihar VAT.

49. The **Master Agreement** provides that the quantity of beer to be procured and distributed shall be determined by the Corporation from time to time keeping in view the demand of beer supplied by the manufacturer. The manufacturer has to bottle, seal, pack, load, transport, unload and stock the beer at the depots of the Corporation at its cost and risk. The manufacturer has also to deliver the liquor in good condition within such time and at such depots as may be specified by the Corporation. Delivery by the manufacturer has to be in line with the OFS placed by the Corporation and shall be completed within the period specified by the Corporation. The Corporation has to specify the quality of beer to be delivered and the manufacturer has to adhere to such quality specification. The Corporation also has the right to forthwith terminate any or all OFS placed on the manufacturer and forfeit the deposits on certain conditions. The manufacturer has to deliver the beer at a price indicated by the Corporation but payment for the beer delivered shall be made only after the disposal of beer.

50. Clause 5A of 19C **License** requires Carlsberg to maintain minimum stock of liquor at its depots as

prescribed by the Commissioner from time to time and to recoup within 7 days in case the stock goes below the minimum limits.

51. The decision of the Allahabad High Court in **Central Distillery and Breweries**, notices that though the manufacturing unit of the revisionist was situated at Meerut in the State of Uttar Pradesh but as it was required to maintain a buffer stock of atleast two trucks without any guarantee of any purchase by the Delhi Administration, it established a warehouse at Delhi from where liquor would be supplied as and when the Delhi Administration placed orders. The movement of the goods from Meerut in the State of Uttar Pradesh to Delhi was, therefore, held not to be in pursuance of any transaction of sale. The sale, it was held, took place only at Delhi when an order was actually placed by the Collector of Central Excise, Delhi. The High Court, therefore, concluded that the Agreements did not bring about any sale.

52. The Karnataka High Court in **BASF India** noticed that manufacturing unit of the petitioner was situated in the State of Karnataka but it had warehouses in the States of Maharashtra, Tamil Nadu, Haryana and Uttarakhand. The writ petitioner had contended that after it received purchase orders, it transferred the stock to its godowns near the manufacturing unit of the customers and supplied the paint as and when the indent was received. The Karnataka High Court, in such circumstances, held that the purchase orders issued from time to time for supply of goods actually constituted a contract between the parties and thus the sale effected pursuant to such purchase orders was an inter-state sale in that State. The movement of goods from the State of Karnataka to where the manufacturing units of the buyers was situated was, therefore, held not to be because of the open purchase order.

53. In **Kelvinator of India**, the Supreme Court examined the three distribution Agreements executed between Kelvinator of India and the buyer companies. The Supreme Court accepted the contention advanced by Kelvinator of India that the sale of refrigerators by it to the three distributors took place at Delhi and that the distribution Agreements did not constitute agreements of sale since the number of refrigerators which were to be purchased by each of the distributors was not specified in the distribution Agreements, nor did the Agreements contain the price which was to be charged for each refrigerator. Under the Agreements, Kelvinator of India undertook to sell and the distributors undertook to purchase the products **"**as mutually agreed upon from time to time**"**. Thus, sales by Kelvinator of India to the distributors depended upon the future Agreements between the parties from time to time. The mode of dealings between the parties was that subsequent to the distribution Agreements, orders would be placed by the

distributors with Kelvinator of India, after the refrigerators reached the sale office and godown of Kelvinator in Delhi.

54. In the present case, in terms of the Liquor Policy of the State of Bihar, the Corporation is under no obligation to procure any specified minimum quantities of beer. The Corporation issues the OFS on the local depots of the appellants situated in the State of Bihar for supply of specified quantity of beer. The OFS have a validity period within which the goods are required to be delivered to the Corporation. Clause 10.1 of the Liquor Policy clearly provides that the supply of beer to the Corporation against OFS shall be construed as an agreement to sell under section 4(3) of the Sale of Goods Act. Clause 5A of the License also requires Carlsberg to maintain a minimum stock of liquor at its depots in the State of Bihar as prescribed by the Corporation from time to time and to recoup the stock within seven days in case it goes below the minimum limits. Carlsberg is, therefore, justified in asserting that in order to comply with the requirement of maintaining a minimum stock at the local depots in the State of Bihar and also to ensure the delivery of beer to the Corporation within the validity period prescribed in the OFS, it has to effect inter-state stock transfer of beer from its factory in the State of Rajasthan to its depots in the State of Rajasthan from time to time through Form-F, depending on estimation of market demand and that it is only when OFS is placed by the Corporation on the depots of the appellants in the State of Bihar that the goods are sold. Thus, it is the OFS that concludes the contract of sale between Carlsberg and the Corporation. The movement of goods from the State of Rajasthan to the depots of Carlsberg in the State of Bihar, therefore, cannot be said to have been occasioned by reason of any sale agreement. The appellants treated the sale from its depots in the State of Bihar to the Corporation in the State of Bihar as sale and paid local VAT.

55.There can, therefore, be no manner of doubt that the movement of goods from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants in the State of Bihar or the State of Jharkhand was not occasioned by any prior contract of sale or agreement to sell. The appellants had merely stock transferred beer from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants situated in the State of Bihar or the State of Jharkhand. The movement of goods did not occur from the State of Rajasthan to the State of Bihar or the State of Jharkhand pursuant to the Master Agreement or the Liquor Policy.

56. The learned senior counsel for the State of Rajasthan is, therefore, not justified in placing reliance on clause 2 of the Master Agreement and clause 3.1 of the Liquor Policy to contend that the movement of goods was occasioned as

a result of the Master Agreement and so would result in an inter-state sale.

57. As noticed above, clause 2 of the Master Agreement deals with delivery. Clause 2.1 specifies the manner in which the beer is to be stacked and delivered to the depots of the Corporation. It provides that the appellants will be liable to bear the cost and risk towards loading, transporting, unloading and stacking liquor at the depots of the Corporation and the Corporation will not be liable for any transit risk. Clause 2.2 provides that the beer should be delivered in good condition within such time and at such depots of the corporation as specified by the Corporation. Clause 2.3 talks of transit loss, while clause 2.4 provides that the delivery shall be required to be made in terms of the OFS to be placed by the Corporation. It is, therefore, clear that the time and place of delivery of the stock of beer has been left unspecified. The delivery of beer has also been left open for the parties to determine from time to time. None of the clauses of the Master Agreement contemplate manufacture and delivery of liquor to the depots of the Corporation from outside the State of Bihar. The clauses merely discuss the manner in which the goods are to be delivered at the depots of the Corporation and issues incidental to it. In fact, there is no reference to the manufacturing activity undertaken by the appellants. The Master Agreement merely grants an option to the Corporation to purchase goods at a subsequent date as and when required by the Corporation. The Corporation does not actually purchase or agree to purchase beer from the appellants under the Master Agreement. If the Corporation does not place OFS on the appellants, the latter cannot sue the Corporation for damages because the Master Agreement has not been breached. There is no binding obligation that the Corporation has to purchase the goods under the Master Agreement. The Master Agreement, therefore, cannot be treated to be an agreement to sell. It would, in fact, be in the nature of a standing order or a tender which does not amount to a sale or an agreement to sell. **It is, therefore, clear that none of the clauses of the Master Agreement contemplate or refer to any inter-state delivery of the goods from the State of Rajasthan to the State of Bihar or the State of Jharkhand. The movement of goods cannot also be considered incidental to the Master Agreement. Reliance placed by the Rajasthan Tax Board and the learned senior counsel for the State of Rajasthan on clause 2 of the Master Agreement to justify that the movement of goods occurred incidental to the Master Agreement, is not correct.**

58. The matters pertaining to United Breweries and Mount Shivalik are similar.

59. **It will, therefore, not be possible to sustain the order dated 24.11.2014 passed by the Rajasthan Tax Board. It is, accordingly, set aside and all the**

fourteen appeals filed by Carlsberg, United Breweries and Mount Shivalik are allowed."

(emphasis supplied)

8. A perusal of the order dated 04.10.2017 passed by the Rajasthan Tax Board shows that it has reproduced the observations of the Rajasthan Tax Board in Appeal No's. 1229-1233 decided on 24.11.2014. It is the order passed in these five appeals that were assailed by M/s United Breweries Ltd. in Central Sales Tax No's. 16/2014, 17/2014, 18/2014, 19/2014 and 20/2014 that were allowed by this Tribunal by order dated 21.10.2024.

9. Thus, for reasons stated in the aforesaid order dated 21.10.2024 passed by the Tribunal, the order dated 04.10.2017 passed by the Rajasthan Tax Board in Appeal No's. 2194 of 2014, 2195 of 2014, 2196 of 2014, 2197 of 2014 and 2198 of 2014, which have been assailed in Central Sales Tax Appeal No's. 15 to 19 of 2017, deserves to be set aside and is set aside. All the five appeals are, accordingly, allowed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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