



GOVERNMENT OF KERALA

Abstract

Taxes Department - Excise - Establishment - Judgment of the Hon'ble High Court in I.A.No.8941/2012 in WP(C) No.26384/2005 filed by M/s Devicolam Distilleries, Kochi - Direction complied with - Orders issued.

TAXES (F) DEPARTMENT

GO(Rt) No. 460/2013/TD.

Dated, Thiruvananthapuram, 13/06/2013

- Read:-
1. Order No. XE1-1614/2005 dated 23-05-2005 of the Commissioner of Excise, Thiruvananthapuram.
 2. Judgment dated 18-11-2011 in WP(C) No.26384/2005 (N) filed by M/s Devicolam Distilleries.
 3. Representation dated 19-03-2012 submitted by M/s Devicolam Distilleries.
 4. Letter No.XC3-28937/11. dated 19-04-2012 from the Commissioner of Excise, Thiruvananthapuram.
 5. Judgment dated 10-07-2012 of the Hon'ble High Court in I.A.No.8941/2012 in WP(C) No.26384/2005 filed by M/s Devicolam Distilleries.

ORDER

M/s Devicolam Distilleries Ltd. has filed WP(C).No.26384/2005 (N), challenging the order of the Commissioner of Excise read as 1st paper above, wherein the Commissioner of Excise ordered that leave salary and pension contribution should be recovered from the licensees @ 25 % of the maximum of the scale of pay of the post to which the Excise officers are retained in Distilleries, Breweries, Pharmaceuticals, Kerala State Beverages Corporation, etc., with effect from 01-03-1997, under Rule 146 of Part I Kerala Service Rules.

2. The Hon'ble High Court, in its judgment read as 2nd paper above, directed the petitioner to make a representation highlighting their grievances to the 1st respondent (the Secretary to Government, Taxes Department), and if such a representation is made within one month from the date of judgment, the 1st respondent shall dispose of the same within two months, after giving an opportunity of hearing to the petitioner. The petitioner (M/s Devicolam Distilleries Ltd.) submitted a representation dated 19-03-2012 before the Government on 24-03-2012 which was not within the deadline stipulated in the judgment dated 18-11-2011. Therefore, Government have not passed any order on the same and informed the position to the Advocate General, Ernakulam - vide letter No.28578/F1/11/TD. dated 19-05-2012, with a request for vacation of the interim stay order prevailing in the case.

3. The Hon'ble High Court in its judgment, read as 5th paper above, disposed of the IA 8941/12 in WP(C)26384/05 with a direction to the Government that the Government shall condone the delay and shall dispose of the representation dated 19-03-2012 of the petitioner within two months from the date of receipt of a copy of this order after giving an opportunity of hearing to the petitioner.

4. In view of the compliance of the directions contained in the judgment dated 10-07-2012, the petitioner, M/s Devicolam Distilleries Ltd. was heard on 28-05-2013. During the hearing, the representative of the company argued that Rule 146 ie, the recovery of pension contribution of the Government staff on deputation to Foreign Service, is not applicable to the Excise staff since they are deployed in distilleries from Excise Department. They also stated that Foreign Service is termed as borrower service and Excise Staff posted in the distillery are not engaged in any foreign service and salary drawn by the Excise staff posted in the distillery is from the Consolidated Fund of the State, though the amount is recovered from the distillery in terms of the provisions under Abkari Act and Distillery and Warehouse Rules. The representative of the Distillery argued that since the staff deputed to the distilleries draw their salary from the Consolidated Fund of the State, they cannot be considered as staff in Foreign Service.

5. Government have examined the matter on the basis of the report of the Commissioner of Excise and in the light of the relevant rules in existence. In Rule 14 of the Kerala Distilleries & Ware House Rules, 1968 Part I, and Kerala Foreign Liquor (Compounding, Blending & Bottling) Rules, 1975, it is clearly laid down that the cost of establishment for the employees employed in the distillery, blending units, etc., including allowances, leave salary and pensionery contribution is to be paid by the licensee at such rate as may be prescribed by Government from time to time.

6. The Distilleries challenged the above said order as the staff deployed in the distilleries are not covered under Rule 12(9) of Part I, KSRs , ie. Foreign service. But Rule 12(9) of KSRs defines Foreign Service as "in which one officer received his pay with sanction of Government from any source other that the consolidated fund of Government of India or of a State". As per the Abkari Rules and licence conditions of Kerala Distillery and Warehouse Rules, 1968, since the Excise Supervisory Staff are rendering their service in a distillery, the distiller is liable to pay the rate at which the cost of establishment fixed by the Government from time to time. Moreover, the posts are created only for the establishment of that distillery. The service of those staff are only for the licensee. So this service of the Excise Personnel is similar to that of foreign service as mentioned in 12(9) of KSRs.

7. The service rendered by the Excise staff is for the smooth functioning of the firm, besides to safe guard Government revenue, and to prevent any possible malpractices. Further, for the overall supervision of the distillery, Government machinery cannot be used with free of cost exclusively for a private firm and so the licensee is liable to remit the enhanced cost of establishment charges of Excise staff deployed in the distillery. As per licence conditions No. 9, 2 and 6 of the licence in form 1, 11, 111 and IV respectively, the licensee is bound by departmental orders concerning distilleries issued from time to time. As per Rule 4 of Kerala Distilleries & Ware House Rules, 1968 Part I, distilleries and ware house keepers are bound to obey all additional rule. Moreover, being the licence issuing authority, Government and Commissioner of Excise have powers to issue orders regarding the rate of cost of establishment charges, without any prior notice to the licensee.

8) In the light of the above facts and circumstances, the order passed by the Commissioner of Excise- vide order No. XE1-1614/2005 dated 23-05-2005, for recovery of salary and pension contribution @ 25% of the maximum of the scale of pay with retrospective effect from 01-03-1997, is legally binding. Hence, the arguments raised by M/s Devicolam Distilleries, Kochi deserve no merits and hence the representation read as third paper above is rejected by Government.

8. This order is issued in compliance with the direction contained in the judgment dated 10-07-2012 of the Hon'ble High Court, in I.A.No.8941/2012 in WP(C) No.26384/2005 filed by M/s Devicolam Distilleries.

(By Order of the Governor)

A. AJITHKUMAR
SECRETARY TO GOVERNMENT

To

1. The Commissioner of Excise, Thiruvananthapuram
2. The Advocate General, Ernakulam (with C/L)
3. The petitioner (through the Commissioner of Excise)
4. The Accountant General (A&E / Audit-ERSA), Kerala, Thiruvananthapuram.
5. The Registrar, High Court of Kerala, Ernakulam (with C/L)
6. Stock file / Office copy.

Forwarded /By Order

Section Officer