

**IN THE INCOME TAX APPELLATE TRIBUNAL, COCHIN**

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 421/Coch/2023  
Assessment Year : 2016-17

Kerala State Beverages (M&M) Corporation Ltd., Bevco Towers, Cantonment House Road, Vias Bhavan PO, Trivandum-695033 PAN : AAACK9431G	vs.	The ACIT, Circle-1(1) Trivandrum
(Appellant)		(Respondent)

For Assessee :	Shri K.S. Madhu, CA
For Revenue :	Shri Sanjit Kumar Das, CIT-DR

**(Heard in Hybrid Bench)**

Date of Hearing :	25-03-2025
Date of Pronouncement :	27-05-2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M :**

The assessee has filed the present appeal against the impugned order dt. 23-03-2023, passed u/s. 250 of the Income Tax Act, 1961 ('The Act') by the Ld. Commissioner of Income Tax(Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'] for the AY. 2016-17.

2. In the interest of justice, the slight delay of three days in filing the present appeal is condoned.

3. The only issue that arises for our consideration in the present case is whether the stock transferred to the warehouse of the assessee by the Excise Authorities due to the change in the Abkari Policy of the Government of Kerala is the stock of the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record: The assessee is engaged in wholesale and retail trading in beverages. For the year under consideration, the assessee filed its return of income on 17-10-2016, declaring a total income of Rs. 53,49,88,940/-. Subsequently, the assessee filed the revised return of income on 31-03-2018, returning an income of Rs. 60,87,61,120/-. The return filed by the assessee was selected for scrutiny, and statutory notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has classified an amount of Rs. 12.32 crores as "due from Govt. of Kerala (Bar License)". During the assessment proceedings, the assessee submitted that this amount is due from the Government, since the amount was paid to different parties to buy back the stock of beverages during the period of state state-imposed prohibition. The

assessee submitted that the same was carried out pursuant to a Government order. As the stock that has been bought back by the assessee has not been included in the books in any manner and the assessee also failed to produce the Government orders, the AO, vide order dt. 28-12-2018 passed u/s. 143(3) of the Act, added the stock to the closing stock of the assessee, and consequently to the business income of the assessee. Accordingly, the AO made an addition of Rs. 12,32,57,000/- to the total income of the assessee.

5. The Ld.CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and held that the stock implied to be held by the assessee as its own stock and the State Government never meant to take back the liquor stock from the assessee. Thus, the Ld.CIT(A) held that the stock was the property of the assessee and the assessee was duty-bound to add the stock to its closing stock. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the Ld.AR submitted that the amount paid to the bar owners was pursuant to the Government order for buyback of stock of beverages, and the assessee was not the owner of the stock and was acting merely as an agent.

7. On the other hand, the Ld.DR vehemently relied on the order passed by the lower authorities.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis that the assessee has classified an amount of Rs.12.32 crores as due from the Government of Kerala and the stock that has been bought back was not included in the books of the assessee, the AO added the stock to the closing stock of the assessee. As per the assessee for the FY. 2015-16, the Government of Kerala cancelled the licenses of all Bars of hotels except those of five-star hotels as per the new Abkari Policy of the Government. It is the plea of the assessee that on 31-03-2015, the Commissioner of Excise, Government of Kerala issued directions to close down the Bars of the hotels, except those having five-star hotels and freeze the balance stock of the liquor kept in those hotels immediately. From the perusal of the said directions dt. 31-03-2015, issued by the Commissioner of Excise, Government of Kerala, forming part of the Paper Book, we find that directions were also issued to make necessary arrangements for the transfer of stock of the liquor to the concerned warehouse of the assessee. As per the assessee, when the stock was taken back by the Government, the bar owners approached the Government for the price of the liquor taken from them. As the Government was having financial

constraints, the assessee was directed to pay the amount to the bar owners. Accordingly, as per the assessee, it paid an amount of Rs.12,32,57,000/- to various bar licensees as directed by the Government towards the cost of the liquor surrendered, during the year under consideration. The assessor has also placed on record another letter dt. 07-07-2015 issued by the Government of Kerala directing the assessee to release the amount to the bar owners only after ascertaining any liabilities due to the Excise Department from the bar owners. Thus, the assessee was directed to deduct the liability, if any, found pending to the Excise Department, and the balance payment be made to the licensees. As per the assessee, it submitted a request to the Government of Kerala for the reimbursement of the amount paid to the bar owners, and the Government of Kerala agreed to the adjustment of the above amount against future Excise Duty and Sales Tax remittances. In this regard, the assessor has placed on record a letter dt. 16-08-2017 issued by the Government of Kerala permitting the assessee to set off an amount of Rs. 15,05,55,704/- paid to the bar licensees against the future Excise Duty/Sales Tax remittances. Thus, it is the claim of the assessee that since it paid these amounts on behalf of the Government and the said amount was due as on 31-03-2016, it has shown this amount as receivable from the Government of Kerala. In order to further support the contention that there was no purchase of

liquor by the assessee from the bar owners and the assessee was not the owner of the stock of beverages brought back from the bar owners pursuant to the Government's directions, the assessee has placed on record a letter dt. 27-02-2025, which reads as follows:



GOVERNMENT OF KERALA

Taxes (A) Department

No-A3/48/2017/Taxes 27-02-2025,Thiruvananthapuram

From

The Additional Chief Secretary to Government

To

The Chairperson & Managing Director,  
Kerala State Beverages Corporation,  
Thiruvananthapuram

Sir,

Sub: KSBC - Income Tax Appeal before income Tax Appellate Tribunal  
-Confirmation regarding Stock taken back from Bar Licensees -  
reg.

Ref: Letter No. KSBC/3865/2024-FA4 dated 13.2.2024 from the  
Chairperson & Managing Director, Kerala State Beverages  
Corporation, Thiruvananthapuram

I am to invite your attention to the reference cited and to inform that Government, as per the Abkari Policy 2014-15, had decided not to accord sanction to renew Excise Licenses (FL-3 License) of bar attached hotels except that of Five Star Hotels functioning in Kerala for the financial year 2014-2015. Hence all the bars in the State, except Bars in the Five Star Hotels were closed. The freezed liquor stocks from the Bar premises were transferred to KSBC FL 9 warehouses under transport permit issued by the Excise Department.

In this context, I am to inform the following as confirmation to the Abkari Policy 2014-15:

1. The Kerala State Beverages Corporation (KSBC) has acted only as a facilitator for transfer of liquor stock and disbursed payments to Bar Licensees under the directions of Government. This was not a purchase and the stock was not meant for re-sale.
2. The KSBC had functioned as a Nodal Agency for implementing the Abkari Policy of the Government since Warehouse facility

- with Excise supervision was only available with the KSBC.
3. At no point of time did the KSBC have the ownership of these stocks legally and the complete ownership of the liquor remained with the Government of Kerala throughout the process.
  4. The liquor stock taken by the Government was proposed to be destroyed and KSBC initiated action to destroy the same, as per Government direction in the presence of Excise officials, after obtaining necessary approval from the Excise Department and the Pollution Control Board.

This confirmation is issued to the Chairperson & Managing Director, KSBC for presenting before the Hon'ble Income Tax Appellate Tribunal.

Yours Faithfully,  
PRAMOD M V  
JOINT SECRETARY

For the Additional Chief Secretary to Government.

Approved for Issue,  
Signed by Jagadish Babu M  
Date: 27-02-2025 12:10:21

Section Officer.

9. Therefore, having perused the documents placed on record by the assessee, we find merit in the submission of the assessee that it acted merely as an intermediary between the bar owners and the Government of Kerala for the transfer of liquor stock and disbursement of payment under the directions of the Government. Thus, from the various directions issued by the Government of Kerala/Excise Department, it is clear beyond doubt that the assessee had no ownership over the stocks of liquor kept in its warehouse facility and the complete ownership of the liquor remained with the Government of Kerala throughout the process. Before concluding, it is further pertinent to note that part of the stock in the assessee's warehouse was also destroyed vide an order dt. 14-03-2023, pursuant to the directions issued by the Commissioner of Excise, Kerala. Therefore, the impugned addition of Rs. 12,32,57,000/- by adding the stock to the closing stock of the assessee is deleted.

Accordingly, the sole issue raised by the assessee before us is allowed.

10. In the result, the appeal by the assessee is allowed.

Order pronounced on 27-05-2025 by way of proper mentioning  
on the Notice Board

Sd/-  
[INTURI RAMA RAO]  
ACCOUNTANT MEMBER

Sd/-  
[SANDEEP SINGH KARHAIL]  
JUDICIAL MEMBER

Cochin,  
Dated: 27-05-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT
- 5) Guard file

By Order

Asst. Registrar  
I.T.A.T, Cochin