

Delhi HC refuses to stay levy of 14% service tax on liquor makers

Delhi High Court on Thursday refused to stay a government notification which brings into force from June one the levy of 14 per cent service tax on manufacture of alcohol on contractual basis.

The liquor companies, which have business establishments here, had sought an interim stay on the May 19 notification to ensure that the tax was not levied.

They had also challenged the amendments made to the Finance Act 2015 by which service tax is going to be levied on those who manufacture alcohol for human consumption on "job-work basis".

The companies have contended there was no service provided in such arrangements.

Disagreeing with the contention, a bench of justices Badar Durrez Ahmed and Sanjeev Sachdeva said, "prima facie there is a service. There is a scent of service."

The court, however, issued notice to the Centre and city government and sought their responses on the liquor makers' plea which also contended that the government cannot levy service tax on them as it fell under the ambit of the states.

"No stay. But we will examine it. Notice," the court said and listed the matter for hearing on September 10 for final disposal.

Additional Solicitor General (ASG) Sanjay Jain, assisted by central government standing counsel TP Singh, told the bench that there was no service where alcohol was manufactured by the brand owners themselves.

But under the contract manufacturing arrangement where brand owner gets the alcohol made by a manufacturer and pays for or reimburses the expenses incurred on raw materials and statutory levies by the liquor maker, there was an element of service, the ASG said.

In this category, manufacturer receives a consideration for carrying out the manufacturing activity and thus provided a service, the ASG told the court.

Another arrangement taxable for service tax was where the brand owner provides the brand to a person holding licence to make alcohol in a state, and then "the brand provides taxable service - intellectual property service", the ASG said.

He also said where a distillery is taken on lease, the rent collected by the owner of the plant is taxable under "renting of immovable property service".

The international liquor-cum-spirit companies have sought quashing of the recent amendments to the Finance Act which removed manufacturing of alcohol on job-work basis from the negative list.

In 2012, such activity of manufacture of alcohol was put in the negative list.

They have contended that the amended provisions of the Act were ultra vires of the Constitution.
They also sought quashing of the notification saying this too was ultra vires the Constitution.

(PTI)