

Supreme Court of India

State Of Kerala vs Mcdowell & Co. Ltd on 15 February, 1994

Equivalent citations: 1995 AIR 1445, 1994 SCC Supl. (2) 605

Author: R Sahai

Bench: Sahai, R.M. (J)

PETITIONER:

STATE OF KERALA

Vs.

RESPONDENT:

MCDOWELL & CO. LTD.

DATE OF JUDGMENT 15/02/1994

BENCH:

SAHAI, R.M. (J)

BENCH:

SAHAI, R.M. (J)

BHARUCHA S.P. (J)

VENKATACHALA N. (J)

CITATION:

1995 AIR 1445

1994 SCC Supl. (2) 605

JT 1994 (2) 199

1994 SCALE (1) 752

ACT:

HEADNOTE:

JUDGMENT:

The Judgments and Order of the Court were delivered by R.M. SAHAI, J. (dissenting)- The short but important question of law that arises for consideration in this appeal directed against the judgment and order of the Kerala High Court is whether the bond executed under Section 7 of the Kerala Abkari Act for deferred payment of duty on export by the manufacturers of Indian-made foreign liquor in Form VI was a bond within meaning of Article 13 of the Kerala Stamp Act, 1959 (hereinafter referred to as 'the Act') or an agreement as defined in Article 5 of the Schedule of the Act.

2. The manufacture, sale and supply of Indian-made foreign liquor in the State of Kerala is governed by the Kerala Abkari Act. Under it a distiller is permitted to export liquor manufactured by it outside the State after obtaining permission from the excise authorities. Since such liquor is consumed in another State the Government in exercise of its power under Section 17 of the Act issued notification

levying confessional duty of Rs 0.50 per proof liter. But if the quantity exported did not reach the destination or there was wastage etc. then the liability to pay normal duty arose. To ensure such payment the distiller is required to execute a bond under clause (b) of sub-section (1) of Section 7 of the Abkari Act which reads as under:

"No liquor or intoxicating drug shall be exported unless its export is permitted by the Government or any officer authorised by the Government in this behalf and unless-

(a) the duties, taxes, fees and such other sums as are due to the Government under this Act, in respect of such liquor or intoxicating drug, have been paid, or

(b) a bond for such payment on its exportation or reexportation has been executed."

The terms of the agreement are entered as provided in Form VI. Relevant portion of the agreement is extracted below :

"Whereas the boundens have permitted by the Government under the Distillery and Warehouse Rules, 1968 and the amendments thereof made from time to time (hereinafter called the Rules) to remove to bulk litres to proof litres) of I.M.E.I. of the strength of degrees under proof from our distillery at Varanad to without previous payment of duty thereon subject to the conditions that (1) the boundens shall on or before the expiration of the currency of the permit from the date hereof deliver or cause to be delivered the above mentioned to bulk litres of I.M.E.L. into the custody of the Government Officer in charge of tile said imported (2) the boundens shall on demand to pay or cause to be paid to the said Government Officer duty at the tariff rate on all or any portion of the abovementioned litres of I.M.E.L. OSP which shall not be so delivered. Now the conditions of the above written obligation are that in case the boundens commit breach of all or any of the provisions herein contained or contained in the Rules the boundens shallforthwith pay to the Government the said sum of... and upon the payment of such sum the above-written obligation shall be void and of no effect, otherwise this shall or and remain in full force and effect."

3. In 1982 the Board of Revenue issued a circular that such documents executed by the distillers were being treated as agreements when in fact they were bonds, therefore, the duty be levied accordingly and the short levy may be recovered from them. This circular was quashed by the High Court and the Board of Revenue was directed to decide afresh after affording opportunity of hearing to the distiller. In pursuance of this direction the Board of Revenue on 26-12- 1988 decided the dispute afresh and held that since obligation in the bond was to pay a fixed sum of money to Government on condition that the condition shall be void if a specified act was not performed the document was a bond and not an agreement. This order was challenged again by the distiller in the High Court. Both the Division Bench and the learned Single Judge held the agreement executed in Form VI could be a bond for rpurposes of Stamp Act only if the obligation was created by or under the instrument and not if it was in respect of pre-existing right. The High Court was of opinion that since the bond executed by the distillers was an obligation incurred under Section 7 of the Abkari

Act it was not an obligation created under the bond. It is the correctness of this view that has been assailed by the State.

4. 'Bond' dictionarily means a certificate or evidence of debt. In Oxford Dictionary it is defined as, "a binding engagement, agreement, deed by which person binds himself to 'pay another; government's or public company's documentary promise to repay borrowed money". Stroud's Judicial Dictionary defines it as, "an obligation by deed". Black's Law Dictionary defines it as, "a certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents debt its holder is a creditor. Commonly, bonds are secured by a mortgage". Thus a bond is a promise to pay money at a future date. It is an instrument in writing or written acknowledgement for the payment of debt.

5. Bonds can be categorised in different ways. They may be classified on "the basis of purpose for which the bonds are issued" or on, "nature, form or terms and hence may involve difference in rights and obligation" (American Jurisprudence, 2nd Edn., Vol. 64). In England, bond is an obligation in writing and under seal to pay money. It may be a simple or conditional bond. The former requires payment on a date named in the bond whereas in latter if the obligator does some particular act or abstains from so doing, the obligation shall be void or remains in force. It is a word normally used in the statutes to indicate security or obligation to pay money to public bodies. But what is it, what is its meaning, how it should be construed or understood depends on the language of the statute, the context in which it has been used and the purpose it seeks to achieve.

"There is nothing inherent in the word 'bonds' which makes them in every case either synonymous or different in meaning. To determine their meaning the courts must look to the context in which such words are used in the relevant statute or other provision of law, to the intent and purpose of such provisions and to the circumstances in which such words are used." (American Jurisprudence, 2nd Edn., Vol. 64).

6. The definition of the word 'bond' in the Kerala Act is reproduced below " 'Bond' includes-

(i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(ii) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

7. Section 2(5) of, the Indian Stamp Act is also extracted :

"(5)(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another."

Both Section 2 of the Kerala Act and Section 2 of the Indian Stamp Act are identical. The purpose of extracting the definition is to demonstrate that whereas clause (a) of the Indian Stamp Act or the Kerala Act deals with conditional obligation clauses (b) and (c) are concerned with simple obligation. In *Gisborne & Co. v. Subalbowri*¹ it was observed that, "the definition of a bond in Section 2(5) of the Act is precisely what we understand by a bond in England and it is an obligation of a different character from a covenant to do a particular act". This observation was made on Section 5(2) as it stood in the original Stamp Act and was similar to what is Section 5(2)(a) now in the Act. In *Chimnaji v. Ranu*² where the defendant promised to repay with interest the sum borrowed and promised in addition to pay 'peonies' of nagli in the month of Phalgun of the year and on failure to give with at the rate of quarter of a mound for every maund per year, it was held that proper stamp duty payable on it was as required for agreement. Similar view was taken in *Venkata Chinnaya Rau v. Venkataramaya Garu*³. The plaintiff's sister by deed of gift made over certain landed property to the defendant, her daughter. By terms of registered deed it was stipulated that a certain sum shall be paid until a village could be given to them. The defendant executed in plaintiff's favour a Kararnama promising to give effect to the stipulation in the deed. It was held that it was not a bond and was properly stamped as agreement. These decisions were rendered on Section 5(2) but they are relevant for the present Section 5(2)(a) of the India Stamp Act and Article 13 of the Kerala Act. The principal ingredient or the main basis which makes an agreement a bond according to the definition is the obliger obliging to pay the oblige. The obligation, therefore, must arise from the agreement. The word 'oblige' according to dictionary means, "bind (person, oneself) by oath, promise, contract, etc., to person or to do"; in other words a person who executes a bond binds himself to pay the amount. But this binding must arise from the instrument or document executed between the parties. If the recital is only in respect of something which is already existing then it is mere agreement in respect of existing state of affairs and not an obligation arising out of the instrument.

8. "A bond is a deed wherein a party acknowledging himself to be bound or indebted to another in a certain sum of money. It is sometimes called an obligation in a special sense of the word; and the parties are called respectively the obliger and the obligee". (Leak's Law of Contract). The word 'obligation' used in the Stamp Act is in the special sense, and not in the ordinary sense. In Abkari Act it is on the other hand in ordinary or normal sense. It is further clear from use of the word 'whereby'. It means, "in consequence of which" or "in accordance with which". In other words the obligation to pay must arise from the instrument, that is, the responsibility to pay or liability to pay must be created or accrue from the instrument itself. It must be in consequence of it.

9. Various High Courts had occasion to consider this entry and the consistent view appears to be that the bond for purposes of the Stamp Act should be understood and construed in special sense and not in ordinary sense. It has been held an instrument which for purposes of levy of stamp duty must create an obligation to pay for the first time. It must not be in recognition of any 1 ILR 8 Cal 234: 10 CLR 219 2 ILR (1880) 4 Bom 19: 4 Ind Jur 413 3 ILR (1882) 4 Mad 137, 140: 6 Ind Jur 127 preexisting right. As far back as 1895, in *Hira Lal Sircar v. Queen Empress*¹, it was held that the word 'oblige' indicates that a document can be a bond only when it creates an obligation to pay money as is the case with those documents which are known as bonds but is not the case with the acknowledgements of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by instrument, but arises from the promises to repay advances and to pay for goods, which the law always implies when money is borrowed or goods are purchased. In *Mai Dhan Gupta v. Board of Revenue*², it was held that where an obligation to pay was a preexisting one the document executed subsequently giving the nature of the obligation or the terms and conditions of the contract shall be a mere agreement. In *Dadri Railways Pvt. Ltd. v. Chinaria Transport Co.*³, it was held that in order that a certain document should be bond within the meaning of Section 2(5) of the Act, it was necessary that document itself should create its liability to pay money to another person. Where, however, there is a preexisting liability and the subsequent document merely evidences the liability of the debtor for the balance of the money due from him, that document would not be a 'bond' but merely an 'agreement'. In *Patel Stone Trading Company v. Ramsingh*⁴, it was held that the real test to decide as to whether a particular document is a bond or not is to find out after reading the document as a whole as to whether an obligation is created by the document itself or it is merely an acknowledgement of a preexisting liability. If there is merely an acknowledgement of a pre-existing liability which could have been enforced apart from the document itself then the matter stands on a different footing. But if the document creates an obligation itself with an express promise for payment of an amount, such a document will have to be termed as a bond within the meaning of Section 2(c)(ii) of the Bombay Stamp Act. The most important decision is the one decided by a Full Bench in *Hindustan Sugar Mills Ltd. v. State of U. P.*⁵, where the assessee who went up in revision against the order passed by the Assessment Officer and succeeded in obtaining interim order restraining the assessing authority from realising sales tax on condition that it furnished a security to the satisfaction of the Sales Tax Officer and in order to comply which it executed a document by a joint declaration by the sureties guaranteeing performance of that had been undertaken by the assessee and in case of default to be bound jointly and severally in favour of the Governor of Uttar Pradesh it was held that in order to bring the case within the definition of the word 'bond' it was necessary that the obligation should be created by the instrument itself. In another seven-Judge Full Bench in *Mahabir Prasad v. Peer Bux*⁶, it was held :

"Clause (a) will not be applicable to a transaction where the obligation to pay money arises as a consequence of the commission of a breach of some other obligation. This clause will not apply where the obligation accrues on the non-performance of some stated act, because on the language of clause (a), on the non-performance of the specified act the 4 ILR 22 Cal 757 5 1969 ALJ 333 6 1971 RLR 531 7 AIR 1975 Bom 79: 1979 Mah LJ 616 8 AIR 1972 All 8: 1971 All LJ 885 9 AIR 1972 All 466: 1972 All WR (HC) 433 obligation to pay money is to become void, not become enforceable. The sequence of events stipulated in clause (a) cannot be reversed in order to bring an

instrument within the purview."

10. In *Secretary, Board of Revenue v. Sellwell Tea Agencies*¹⁰ a Full Bench of the Kerala High Court held that an instrument could be termed as a bond only if an obligation to pay on its basis was created for the first time. Same view was taken by Kerala High Court in *Mathai Mathew v. Thampi*¹¹.

11. The bond under the Abkari Act is executed by a manufacturer for payment of exportation duty as required under sub-section (1) of Section 7 of the Abkari Act. It is the liability to pay under the statute which is reduced in the form of a bond as provided under Rules 47 and 50 of the Distillery and Warehouse Rules (referred to as Rules) framed under Section 29 of the Act. Even if no bond would have been executed the manufacturer would have been liable to pay duty as required under the Abkari Act and the notifications issued under it. But the mere fact that a document is executed to do what the law requires to be done does not alter either the nature of liability or the character of the document. In Halsbury's Laws of England it is stated that, "the test is not what the document calls itself or what form it adopts" but "what is the true meaning and effect of the writing". Therefore, a document under sub-section (1) of Abkari Act described as bond does not become bond for purposes of duty under the Stamp Act unless it satisfies the primary and basic criterion that payment is obliged to be made on a future date by the obliger in consequence of the obligation created under the instrument. The word 'bond' in Section 7 is used in the normal sense of creating a binding agreement between the Government and the manufacturer or distiller to pay the duty in respect of the liquor exported if it is not paid in the State where it is sent. But that is not a bond in terms as defined in the Stamp Act. Sub-section (1) of Section 7 extracted earlier prohibits any export without payment of duty as provided in the Act or the rules. The obligation to pay duty, therefore, arises under the Act and rules framed thereunder. Clause (b) only enables a distiller that it may instead of paying execute a bond on exportation or export. The execution of the bond for future payment no doubt arises on execution of bond but it is in respect of an amount which is due under the Act or the Rules. Liability is created by the Abkari Act and not by the bond executed under sub-section. The relevant portion of the agreement entered between parties in Form VI have already been extracted earlier. It also shows that the distiller obliges itself to pay the duty if the liquor exported does not reach the importer. The execution of the bond is in the alternative. It is further clear from combined reading of clauses (a) and (b) of the sub-section (1) of Section 7 of the Abkari Act. Clause (a) of Section 7(1) requires the duty to be paid on the amount due under the Act whereas clause (b) permits the distiller in alternative to execute a document to pay on later date. But the payment under (a) or deferred payment under (b) under the bond arises out of duty due and fixed under the Act. The liability to pay or the obligation undertaken to pay on later date does not arise as between a debtor and creditor but in lieu of liability which already exists in law. An instrument or document does not become bond under Stamp Act because it is so described but only when an obligation to pay arises in consequence of it. Mere use of the word 'bond' in Section 7 of the Abkari Act does not render it a bond for purposes of 10 1984 KLT 955 11 (1989) 1 KLT 138 stamp duty. The agreement in Form VI has been reproduced earlier. The distiller executing this agreement avails of the facility of exporting the liquor without payment of duty. But it undertakes to pay the amount if the duty on liquor sent to another State is not paid to it. The obligation to pay under the instrument, thus, arises not as a creditor or debtor in the commercial sense or special sense but for failure of duty enjoined

by law.

12. The meaning of ordinary and special bond is explained by Rule 51. A special bond is executed for specified occasion or particular consignment of spirit removed from distillery under Rule 50 without payment of duty on condition that duty shall be paid on the prescribed rate in case of failure to account for to the satisfaction of the Commission. The specified occasion as is clear from Form VI is the breach of condition of the permit issued by the Excise Authorities. The written obligation under the bond which gives rise to payment of money to Government is breach of any of the conditions of the permit granted by the Excise Officer. The obligation to pay arises not under the instrument but for breach of condition imposed by the Department. The obligation in consequence of which the amount is liable to be paid is not as a result of any relationship of debtor and creditor but violation or breach arising out of permission granted by the Excise Authorities. The agreement itself shows that the bounded shall be liable to pay the Government in case bounden commits breach of any condition of the permit issued by the department. The obligation to pay thus arises not as a creditor or debtor but for breach of the condition imposed not by the bond or agreement but of some condition imposed in the permit issued by the Excise Authorities. The liability to pay duty arises under the Abkari Act, the rules framed under it and not under the instrument. The Stamp Act does not visualise duty for extension of facility to the distiller. If the Legislature in Section 7(1)(b) would have used the word 'agreement' it would have been difficult for the department to claim duty on it as bond. The result shall be no different if it uses the word 'bond' as it is not the use of the word but nature of document which is decisive of duty. The Stamp Act is a fiscal statute. It should not be so construed as to cause unintended hardship. Since the language of the section does not admit of any doubt and the document executed in Form VI being in respect of right arising out of permit issued by the department it was not liable to be stamped as bond, but as agreement.

13. For these reasons the appeal fails and is dismissed. But there shall be no order as to costs.

BHARUCHA, J. (for himself and Venkatachala, J.) The Division Bench of the Kerala High Court held that the instrument before us, which shall be reproduced hereafter, was not a bond within the meaning of sub-clause (1) of clause (a) Section 2 of the Kerala Stamp Act, it was an agreement and chargeable to stamp duty accordingly. This appeal by special leave is filed by the State of Kerala there against.

15. The respondents make what is called Indian-made foreign liquor within the State of Kerala. They export the liquor to other States in India. The respondents are liable to pay excise duty on the liquor under the provisions of Section 17 of the Kerala Abkari Act at the rate prescribed under Section 18 thereof. Sub-section (1) of Section 7 of the Abkari Act permits them to export the liquor outside the State of Kerala if a bond for such payment is executed. It reads thus :

No liquor or intoxicating drug shall be exported unless its export is permitted by the Government or any officer authorised by the Government in this behalf and unless-

(a) the duties, taxes, fees and such other sums as are due to the Government under this Act, in respect of such liquor or intoxicating drug, have been paid, or

(b) a bond for such payment on its exportation or reexportation has been executed.

The bond is required to be executed in a form provided by the Rules made under the Abkari Act, called the Distillery and Warehouse Rules. The form (Form VI) reads thus : "Know all men by these presents that I/We..... (hereinafter called the bounden/boundens) and ... (hereinafter called the surety) are bounden to the Governor of Kerala (hereinafter called the Government) in the sum of Rs ... (Rupees ...) to be paid to the Government for which payment we bind ourselves and our legal representatives, Dated ... this ... the ... day of ... corresponding to the ... day of.... (Signed) Whereas the bounden has/boundens have been permitted by the Government under the Distillery and Warehouse Rules 19 ... and the amendments thereof made from time to time (hereinafter called the Rules) to remove ... liters of spirits of the strength of degrees ... under/over bonden proof from his/their ... at ... to the ... at ... without previous payment of duty thereon subject to the condition that (1) the bounden/boundens shall on or before the expiration of ... days from date hereof deliver or cause to be delivered the above-mentioned ... litres of spirits into the custody of the Government Officer in charge of the said.... (2) The bounden/boundens shall on demand to pay or cause to be paid to the said Government Officer duty at the accepted rate on all or any portion of the above-mentioned litres of spirits which shall not be so delivered.

Now the condition of the above written obligation is that in case the bounden/boundens commits/commit breach of all or any of the provisions herein contained or contained in the Rules, the bounden/boundens shall forthwith ... pay to the Government the said sum of Rs ... and upon the payment of such sum, the above-written obligation shall be void and of no effect otherwise this shall be and remain in full force and effect : Provided further that the bounden/boundens and the surety hereby agree that all sums found due to the Government under or by virtue of this bond shall be recovered from the bounden/boundens and their properties movable and immovable as if such sums are arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force or in such other manner as the Government may deem fit.

The liability of the surety under the bond is co-extensive with that of the bounden/boundens and it shall not be affected by the Government giving time or any other indulgence to the bounden/boundens.

Signed by the bounden/boundens ... In the presence of witnesses 1.2.

Signed by the surety
In the presence of witnesses. 1.
2."

16. The instrument executed in the aforesaid terms by the respondents was held to be a bond within the meaning of the Kerala Stamp Act by the Board of Revenue and, accordingly, liable to stamp duty under Article 13 of its Schedule. The respondents impugned the decision in a writ petition which was allowed by a learned Single Judge of the Kerala High Court. The appeal filed by the State of Kerala before the Division Bench of the Kerala High Court was dismissed by the judgment under appeal. The Division Bench held that the instrument in question was not a bond but an agreement because the obligation mentioned in it was incurred under Section 7 of the Abkari Act and not an obligation created under it.

17. Sub-clause (1) of clause (a) of Section 2 of the Kerala Stamp Act reads thus :

(a) 'Bond' includes-

(i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be."

18. Learned counsel for the appellant contended that under the instrument in question the respondents obliged themselves to pay the sum of money set out therein, the obligation to be void on the happening of events specified therein. There was, in his submission no warrant for holding that the obligation of the respondents arose under the Abkari Act and that, therefore, the instrument in question created no new obligation so that it was not a bond. Learned counsel for the respondents submitted that for an instrument to be a bond the obligation must be created thereunder. In the instant case, the respondents were obliged to pay the excise duty on the liquor exported by them outside the State of Kerala by reason of the provisions of the Abkari Act. The instrument in question, therefore, created no obligation and was merely an agreement and liable to be stamped accordingly. Learned counsel relied upon High Court judgments to which we shall now advert.

19. The Division Bench of the Calcutta High Court, in *Hira Lal Sircar v. Queen Empress*⁴ considered the case of moneylenders who were convicted under the Stamp Act. They lent money and the transactions were entered in their account books. The entries were signed by the debtors and were attested. The Division Bench held that these entries were not bonds but acknowledgements. Emphasis was placed upon the word obliges in the definition of a bond and it was said that no document can be a bond ... unless it is one which itself creates an obligation to pay money Documents acknowledging promises to repay advances or to pay for goods, which the law always implied when money was borrowed and goods were purchased, were not bonds. In *Mai Dhan Gupta v. Board of Revenue, U.P.*⁻⁵ the instrument was executed to ensure payment of the State Government's dues. A learned Single Judge of the Allahabad High Court held that the words in the definition of a bond 'obliges himself to pay money' made it clear that the obligation was not a pre-existing one. Where the obligation was a preexisting one an instrument executed subsequently setting out the nature of the obligation was a mere agreement. In the case before the learned Single Judge, while the instrument did not create any fresh liability or obligation, it imposed a personal liability upon a person who was not otherwise liable and it was held that it was a bond. In *Hindustan Sugar Mills Ltd. v. State of Up.*⁸, the facts were that the company was assessed to sales tax. It

appealed and asked for stay of recovery thereof. The tax court granted a stay on condition that the appellant furnished security to the satisfaction of the Sales Tax Officer. In order to comply with that condition one Adukiya executed an instrument for and on behalf of the company. The question which a Special Bench of the Allahabad High Court considered was was this instrument a bond. The Special Bench noted that the Stamp Act described a bond as an instrument which by a person obliged himself to deliver money. These words, in its view, indicated that the obligation to pay money should arise under the terms of the instrument itself. In other words, the obligation should be created by the instrument. In the case before the Special Bench, the liability to pay sales tax existed under the provisions of the Sales Tax Act itself and the mere recital in the document that Adukiya would discharge the liability did not create a new liability under and by the instrument. The instrument was, therefore, held not to be a bond. In *Patel Stone Trading Co., Nagpur v. Ramsingh*⁷, a learned Single Judge of the Bombay High Court considered an instrument in which the defendant acknowledged liability in a stated amount and expressly promised to repay the same. The learned Judge held that the document was executed for the purposes of creating an obligation whereby the defendant agreed to pay to the plaintiff the stated amount and interest thereon. This being the dominant purpose and intention of the instrument, it was a bond. On passage the learned Judge said, and upon this sentence much emphasis was laid. In the present case, either in the statute or common law there was no preexisting right or liability between the parties.

20. In our view, the definition of bond in sub-clause (1) of clause (a) of Section 2 of the Kerala Stamp Act is clear and unambiguous. It must be read as it stands, nothing may be read in or implied. The word 'whereby' must be read as meaning what it ordinarily does namely, 'by which'. An instrument, therefore, by which a person puts himself under an obligation to pay a sum of money to another on condition that the obligation shall be void if some specific act is, or is not, performed is a bond. The only question to pose is : Has the executant of the instrument put himself under an obligation, or bound himself, to pay a sum of money to another, the obligation to be void under specified circumstances? If the executant can be sued for that sum of money only upon the strength of the instrument, the instrument is a bond.

21. The respondents become liable to pay excise duty on the liquor they make at the point of time at which it is made. Collection of the amount of excise duty is ordinarily deferred until the liquor is cleared from the respondent's distillery. Section 7 of the Abkari Act entitles the appellants to clear the liquor for export outside the State of Kerala upon their executing an instrument in a form set out in the Rules made under the statute. The instrument in question permits the respondents to remove the quantity of liquor stated therein from their distillery to a location outside the State of Kerala without payment of the excise duty thereon subject to the condition that the respondents would deliver the same into the custody of the Excise Officer in charge of the importer thereof and the respondents would on demand pay or cause to be paid to that Excise Officer excise duty on all or any portion of such liquor not delivered. The obligation of the respondents under the instrument in question is that if there be a breach of all or any of its provisions or of the Rules they would forthwith pay to the State of Kerala the sum of money mentioned in it, representing the amount of the excise duty payable upon the quantity of liquor to be exported, upon payment the obligation would be void and of no effect. By the instrument in question, therefore, the respondents avail themselves of the advantage of clearing from their distillery for export outside the State of Kerala,

liquor without paying excise duty thereon. They do so upon the condition that the liquor shall be delivered into the custody of the Excise Officer in charge of the importer and excise duty shall be paid to that Excise Officer on all or any portion of the liquor which is not so delivered. As required by the Abkari Act, the respondents obliged themselves in the event of breach of the condition, to pay to the State of Kerala the sum of money mentioned in the instrument in question, being the amount of the excise duty. Under the instrument in question the respondents clearly oblige or bind themselves to pay to the State of Kerala a specified sum of money and can be sued thereon. The instrument in question is, therefore, an instrument whereby a person obliges himself to pay money to another, the obligation to become void if a specified act is performed. It is a bond within the meaning of the Kerala Stamp Act.

22. It was submitted in the alternative by learned counsel for the respondents that, even though the instrument in question may be a bond, it was not liable to duty under Article 13 of the Schedule of the Kerala Stamp Act but was liable to duty under Article 32 which related to indemnity bonds. Entries 13, 25, 32, 40 and 50 deal with bonds. Article 25 deals with Customs or Central excise bonds. Article 32 reads, "Indemnity Bond The same duty as a Security Bond (No. 50) for the same amount". Article 50 deals with security bonds and the duty payable thereon when the amount secured exceeds Rs 1000 is Rs 60. Article 13 reads, so far as is relevant, thus :

SI. No. Description of instrument Proper stamp duty

13. Bond as defined by Section 2(a), not Two rupees fifty being a debenture and not being raise for every Rs 100 otherwise provided for by this Act or by or part thereof the Kerala Court Fees and Suits Valuation of the amount or Act, 1959 (10 of 1960) or other value secured. enactment for the time being in force.

23. Article 13 is the residuary entry applicable to bonds which are not expressly provided for in the Schedule. Article 13 can have no application to the instrument in question if it is an indemnity bond. It must then bear the duty provided for under Article 32.

24. We have already analysed the instrument in question. It indemnifies the State of Kerala against loss of excise duty in the event that delivery of the liquor exported is not made to the Excise Officer in charge of the importer or in the event that the excise duty is not paid to him by reason of failure of delivery of all or any part of the liquor. The instrument in question must, therefore, be assessed to duty under the provisions of Article 32 of the Schedule.

25. Our attention was drawn to the fact that it had been averred by the respondents that another distillery had been permitted to export liquor outside the State of Kerala without executing a bond but only upon entering into a revolving credit arrangement. All that we need to say in this behalf is that an appropriate application may be made by the respondents, which the State of Kerala will consider in the light of the applicable law.

26. In the result, the appeal is allowed. The judgment and order under appeal is set aside. The writ petition filed by the respondents is allowed only to the extent that it is declared the instruments

executed by them in Form VI of the Distillery and Warehouse Rules made under the provisions of the Kerala Abkari Act shall be liable to stamp duty under Article 32 of the Schedule to the Kerala Stamp Act.

27. There shall be no order as to costs.