

GAHC010143302023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./655/2023

SHRI SHIWJI GUPTA AND 2 ORS
S/O SHRI JAY PRAKASH GUPTA
PERMANENT RESIDENT OF VILL- PIPAHARI
P.O. MATIHARI, P.S. BIJAYPUR
DIST.GOPALGANJ, BIHAR, PIN-841426
PRESENTLY RESIDING AT-
BEHIND DIKRONG HOTEL, BANDERDEWA,
P.O. AND P.S. BANDERDEWA
DIST. PAPUMPARE,
ARUNACHAL PRADESH, PIN-791123

2: M/S T.K. BEER BONDED WAREHOUSE

NAHARLAGUN
DISTRICT PAPUMPARE

ARUNACHAL PRADESH
PIN- 791110
REP. BY THE ATTORNEY HOLDER
SRI SHIWJI GUPTA
AGED ABOUT 39 YEARS

S/O SHRI JAY PRAKADH GUPTA
PERMANENT RESIDENT OF VILL-PIPAHARI
P.O. MATIHARI
P.S. BIJAYPUR
DIST. GOPALGANJ
BIHAR

PIN-841426

PRESENTLY RESIDING BEHIND DIKRONG HOTEL
BANDERDEWA
P.O. AND P.S. BANDERDEWA

DIST. PAPUMPARE
ARUNACHAL PRADESH -791123

3: M/S T.K. IMFL BONDED WAREHOUSE

BANDERDEWA
DISTRICT PAPUMPARE
ARUNACHAL PRADESH
PIN-791123

REP. BY THE ATTORNEY HOLDER

SRI SHIWJJI GUPTA
AGED ABOUT 39 YEARS

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BANDERDEWA
P.O. AND P.S. BANDERDEWA

DIST. PAPUMPARE
ARUNACHAL PRADESH- 79112

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY ITS PP, ASSAM

2:SHRI REKIB UDDIN AHMED
INSPECTOR OF EXCISE (I/C

OFFICE OF THE INSPECTOR OF EXCISE

DIBRUGARH (SADAR) EXCISE CIRCLE

DIBRUGARH
ASSAM
PIN-7600

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 20.11.2023

Heard Mr. P.D. Nair, learned counsel for the petitioners, Shiwji Gupta, M/s T.K. Beer Bonded Warehouse, and M/s T.K. IMFL Bonded Warehouse. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for respondent no.1, and Mr. R.R. Gogoi, learned Standing Counsel for the Excise Department, respondent no.2.

2. The petitioners have filed an application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) seeking quashing of order dated 25.07.2022 passed by the learned Additional Chief Judicial Magistrate, Dibrugarh in Petition No.10/2022, *inter alia*, rejecting custody of the truck bearing registration no. AS-01-NC-2821 and liquor seized in connection with Excise Case no.05ex/2022. The petitioners have further prayed for quashing of the judgment and order dated 03.01.2023 passed by the learned Additional Sessions Judge, Dibrugarh, *inter alia*, rejecting Criminal Revision No.33(3)/2023 assailing the order dated 25.07.2022 passed in Petition No. 10/2022 in connection with Excise Case as captioned above.

3. Through the Petition No. 10/2022 dated 11.07.2022, the petitioners have prayed for zimma of the truck number 2821 and the liquor loaded in the said truck. Vide order dated 25.07.2022 passed in connection with the Excise Case no.05ex/2022, the learned Additional Chief Judicial Magistrate, Dibrugarh had rejected the said petition on the ground that releasing of the articles seized in connection with the excise case may jeopardize the process of investigation. It is averred that the said order was passed on 25.07.2022 and the truck number 2821 is still lying at the Police Station. As per Annexure-4 of the petition, i.e. the Registration Certificate of the truck, the truck was manufactured in the month of April, 2021 and the truck was purchased on hire purchase

with hypothecation from the Bank of India. The petitioner no.1 has to pay EMI every month and as the truck is still lying in the Police Station, he is suffering from financial loss.

4. Vide order dated 03.01.2023 passed in connection with Criminal Revision No. 33(3)/2023, the learned Additional Sessions Judge, Dibrugarh had upheld the order of the learned Additional Chief Judicial Magistrate, Dibrugarh and it was held that the order was not found to be perverse or irregular.

5. The learned counsel for the petitioners laid stress in his argument that the learned Additional Chief Judicial Magistrate, Dibrugarh did not consider the prayer for zimma as the DTO was directed to find out the engine number and chassis number of the vehicle and till date, the DTO has not provided the engine number and chassis number of the vehicle. It is also submitted that the driver of the vehicle took a different route as he was not aware of the legal impediments relating to taking a different route. It is also submitted that the observation of the learned Additional Chief Judicial Magistrate, Dibrugarh that such an offence under the Excise Act as alleged to have been committed by the petitioners results in loss of revenue is not true, as the petitioners have already paid the revenue for the articles transported by the said truck. It was observed by the learned Additional Sessions Judge, Dibrugarh that the matter is still under investigation and Offence Report was also not filed and finally the revision petition preferred by the petitioners was rejected. The petitioners have thus vehemently and fervently submitted to set aside and quash the impugned orders.

6. The learned standing counsel for the respondent no.2 raised serious objection against the zimma petition of the truck as well as liquor transported through the truck and it is submitted that Offence Report has been submitted and it has manifested serious offence in violation of Rule 338 A of the Assam Excise Rules committed by the petitioners. It is also submitted that the petitioner is a habitual offender and there are several instances of the petitioner no.1 changing routes. It is also submitted that if any

problem surfaces during the journey, the driver or the owner of a vehicle can change the route by rectifying and modifying transit by informing concerned officer. The petitioner, however, did not rectify or modify the transit route, but stealthily used a different route. It is submitted that in case of offences under the Excise Act, 2000, the vehicle and articles seized are liable to be confiscated under section 74 of the said Act.

7. I have considered the submissions at the bar with circumspection. I have also considered the fact that the truck which was purchased through hypothecation and hire purchase is lying in the Police Station since 10th June, 2022. I have also considered the submission that the truck is getting damaged as it is lying in the open. The petitioners have relied on the decision of Honourable the Supreme Court of India in the case of *Sunderbhai Ambalal Desai vs. State of Gujarat with C.M. Mudaliar vs. State of Gujarat*, reported in (2002) 10 SCC 283 wherein it has been held and observed as follows:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

8. I have also considered the submissions made by the learned standing counsel for the respondent no.2 that authenticity of the liquor whether it is fit for human consumption has not been provided by the petitioners till date and the batch of the liquor transported through the truck number 2821 has not been provided by the petitioners. After considering the submissions at the bar with circumspection, I deem it proper that the petitioners' prayer for zimma of the liquor may be considered by the learned trial Court as and when the Court deems fit and proper. On the other hand, relying on the decision of Honourable the Supreme Court of India in the case of *Sunderbhai Ambalal Desai (supra)*, I deem it proper to direct the learned trial Court to pass an order of interim zimma of the aforementioned truck bearing registration no. AS-01-NC-2821

seized in connection with this case allowing interim zimma to the petitioner no.1 after proper verification of the ownership and the registration certificate of the truck under any condition which the learned trial Court deems fit and proper. The order of interim zimma shall be passed within 15 (fifteen) days from the date of this order. In the result, the order dated 25.07.2022 passed by the learned Additional Chief Judicial Magistrate, Dibrugarh in Petition No.10/2022 and the judgment and order dated 03.01.2023 passed by the learned Additional Sessions Judge, Dibrugarh passed in Criminal Revision No. 33(3)/2023 are modified to that extent as indicated above.

9. In terms of the above observation, this criminal petition stands disposed of.

JUDGE

Comparing Assistant