

GAHC010255112023



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

Case No. : Crl.Pet./1215/2023

DEEVRAJ SAHIL
D/O SRI DEBABRAT SIL
R/O BUDHSING JOTE,
P.O. BADRAJOTE
P.S. KHORIBARI, DIST. DARJEELING, WEST BENGAL, INDIA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECRETARY, DEPARTMENT OF EXCISE, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER OF EXCISE

ASSAM
HOUSEFED COMPLEX

GUWAHATI-06
ASSAM

3:THE SUPERINTENDENT OF EXCISE

DIBRUGARH

PIN CODE-786001

4:SRI NEEL KAMAL PATHAK
INSPECTOR OF EXCISE
CUM
INFORMANT AND INVESTIGATING OFFICER
DIBRUGARH (SADAR) CIRCLE
DIBRUGARH

ASSAM
PIN-78600

Advocate for the Petitioner : MR. P K SARMA

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

21.12.2023

Heard Mr P K Sharma, learned counsel for the petitioner and Mr I Borthakur, learned counsel appearing on behalf of Mr D Gogoi, learned Standing Counsel, Excise Department, Assam.

2) The petitioner has filed this application under Sections 482/397 and 401 of the Code of Criminal Procedure, 1973, seeking quashing of the impugned order dated 15.09.2023, passed by the learned SDJM(S), Dibrugarh, in connection with Dibrugarh Sadar Circle Excise Case No. 315/2023, rejecting the zimma/interim custody of the vehicle, an Ashok Leyland Truck, bearing Registration No. 14GG-0801, along with consignment of 1200 cases of Tuborg Strong Beer, bearing Invoice No. PSI/AR/2324/0833, dated 30.08.2023.

3) The allegation against the driver of the vehicle was that he had violated the conditions of Rule 338-A of the Assam Excise Amendment Rules, 2021, by exceeding the permitted time frame as the driver was supposed to exit Assam, within the time

frame of 72 hours.

4. It is submitted on behalf of the petitioner that he has not taken a detour and he was proceeding through the route as per the transit pass. Due to mechanical defect, the driver had halted for repair, which caused the delay in exiting the State of Assam through the assigned route.

5. It is submitted by the learned counsel for the respondent that Rule permits for extension of time, but instead of praying for extension of time, the petitioner has overstayed the assigned time in the State of Assam.

6. I have considered the submissions at the Bar with circumspection.

7. It is submitted on behalf of the petitioner that according to the expiry date, the beer which has been seized by the respondent authority in connection with this case will expire soon, which will result in heavy loss to be incurred by the petitioner. The learned counsel for the petitioner has relied on the decision in ***Sunderbhai Ambalal Desai –Vs- State of Gujarat with CM Mudaliar –Vs- State of Gujarat***; reported in (2002) 10 SCC 283, wherein it has been held and observed that-

“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.

19. *For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.*

21. *However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under [Section 451](#) Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”*

8. The learned counsel for the petitioner has also relied on a decision of this Court in Criminal Petition No. 1215/2019 (*Bijoy Shankar Roy –Vs- State of Assam & Anr.*), dated 13.11.2019, wherein, it has been held that-

“Of course, the petitioner has annexed bunch of documents in support of the contention that he has requisite documents in his hand as regard the articles seized from his possession and in view of the seizure list already prepared in this respect, there cannot be denial of such possession. As all relevant documents are also seized, the authority can carry out their investigation for verification and the permit and case will remain pending against him, pending outcome of such verification. But, keeping such valuable articles which is going to expire its validity in a close proximate, it will not be useful but will result huge loss to the petitioner.”

9. At this stage, the petitioner is willing to abide by the conditions of the transit pass. The petitioner is also willing to give an undertaking that the beer seized in connection with this case will not be sold in Assam and will be transported to Bordumsa, Arunachal Pradesh.

10. I have considered the submission of the petitioner that further interim custody of the seized articles by the respondent authority may result in heavy loss and damage to the seized articles.

11. Considering all aspects and in view of my foregoing discussions, the order dated 15.09.2023, in connection connection with Dibrugarh Sadar Circle Excise Case No. 315/2023, corresponding to Excise Case No. 151^{Ex}/2023, is hereby set aside and the seized articles of beer and the aforementioned vehicle be released in favour of the petitioner on due execution of Rs. 13,00,000/-, under the condition that the petitioner is liable for the outcome of the enquiry so conducted by the Investigating Agency or the respondent authority. The petitioner is also at liberty to file appropriate application before the concerned authority to validate the permit.

12. In terms of the above observations, criminal petition stands disposed of.

JUDGE

Comparing Assistant