IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3527 OF 2014

Oaisis Alchohol Limited .. Petitioners
vs.
State of Maharashtra & ors. .. Respondents

Mr. D.B. Sawant for the Petitioner.
Ms Vaishali Nimbalkar, AGP for Respondent Nos.1 to 4.

CORAM : M. S. SONAK, J.
DATE : 27 JANUARY, 2015

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] As against, Demand Notice dated 17 March 2007, the petitioners preferred an appeal before the Collector, which has since been dismissed. Thereafter, the petitioners have preferred second appeal before the Commissioner of State Excise being Appeal No.99 of 2014. It is the case of the petitioners that during pendency of such second appeal, the Commissioner has not made any order with regard to stay upon the Demand Notice. The petitioners, therefore, preferred a revision before the State Government. The Revision Application is also pending and no orders have been made therein.

3] Learned counsel for the petitioners points out that the petitioners are dealing with the manufacturing of industrial alcohol. In view of the settled position in law, the State Government is constitutionally incompetent to levy any excise duty upon the manufacturing of industrial alcohol. In these circumstances, learned counsel submits that there is absolutely no justification to decline stay on the demand notice, pending the hearing and final disposal of the statutory appeal.

4] Learned AGP for the respondent Nos.1 to 4 submitted that both the appeal and revision proceedings are pending. As such this Court ought not to exercise its writ jurisdiction. Further the learned AGP pointed out that this is a case where there was deficit in matter of production and the impugned orders proceed on the basis that such deficit was in breach of law. The penalty is imposed on the basis that if the full quantity were to be manufactured, the same could have been utilised for the purposes of manufacturing of IFML, with regard to which State Government has full competence to levy excise duty and other levies.

5] Having heard learned counsel for the parties, in my opinion, the petitioners have made out a case for obtaining interim reliefs of stay upon the Demand Notice dated 17 March 2007 during the pendency and final disposal of Appeal No.99 of 2014 pending before the Commissioner of State Excise.

6] However, considering the circumstance that the two Authorities have ruled against the petitioners and further that demand in the present case is in an amount of Rs.63,90,696/-, it would be appropriate if the petitioners deposit with respondent No.3 an amount of Rs.15 Lacs, as a condition precedent for availing interim reliefs/stay. The contentions raised by the petitioners and on behalf of the respondents can always be adjudicated by the Commissioner of State Excise in the pending appeal. The Commissioner of State Excise should endeavour to dispose of the appeal as expeditiously as possible and in any case within a period of three months from the date of deposit of amount of Rs.15 Lacs by the petitioners. In case, the appeal is decided in favour of the petitioners, the respondents to refund amount of Rs.15 Lacs alongwith interest thereon at the rate of 8% per annum within a period of one month from the date decision by the Appellate Authority. In case, the amount is not refunded within a period of one month, the same shall carry interest at the rate of 11% per annum. Learned counsel for the petitioners submits that presently the respondents charge interest at the rate of 24% and therefore same should be basis when it comes to refund of the amount. Such an issue can be gone into the appropriate case.

7] Accordingly, the impugned Notice shall stand stayed, if the petitioners within a period of four weeks from today deposit the amount of Rs.15 Lacs with respondent No.3.

8] With the aforesaid directions, this petition is disposed of. No order as to costs.

(M. S. SONAK, J.)

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