

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 375 of 2009 (T)

PETITIONER:

K.S. DISTILLERY (A UNIT OF
SREEDHARAN & CO. (P) LTD)., VARAM, KANNUR
REP. BY ITS JOINT MANAGING DIRECTOR, K. ANUP.

BY ADVS.SRI.K.P.DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE SECRETARY
TO GOVERNMENT, EXCISE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.
3. THE EXCISE INSPECTOR,
K.S. DISTILLERY, VARAM, KANNUR - 670 594.

R1 TO R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-12-2015, ALONG WITH WPC. 423/2009, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WPC 375/2009

PETITIONER'S EXHIBITS:

EXT. P1 PHOTOCOPY OF APPLICATION DATED 30.8.2008 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT

EXT. P1(a) PHOTOCOPY OF NON SUPPLY CERTIFICATE DATED 23.8.2008 ISSUED BY THE GOVERNMENT OF KARNATAKA TO THE PETITIONER

EXT. P2 PHOTOCOPY OF THE CHALAN DATED 8.9.2008 ISSUED TO THE PETITIONER REFERRED TO IN THE WRIT PETITION (CIVIL)

EXT. P2(a) PHOTOCOPY OF CHALAN DATED 8.9.2008 ISSUED TO THE PETITIONER REFERRED TO IN THE WRIT PETITION (CIVIL)

EXT. P3 PHOTOCOPY OF NOTIFICATION G.O.(P)NO.150/2007/TD DATED 6.7.2007 ISSUED BY THE GOVERNMENT OF KERALA

EXT. P4 PHOTOCOPY OF JUDGMENT OF THIS HONOURABLE COURT DATED 3.10.2008, RENDERED IN WPC 29190/2008 Y

EXT. P5 PHOTOCOPY OF THE ORDER NO.XC2-28283/08 DATED 15.12.2008 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER

EXT. P6 PHOTOCOPY OF ORDER NO.C1-197/2009 (A) DATED 10.2.2009 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, KANNUR TO THE PETITIONER

EXT. P7 PHOTOCOPY OF NOTICE DATED 1.7.2009 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER

EXT. P8 PHOTOCOPY OF CHALAN DATED 1.7.2009 TOWARDS REMITTANCE OF RS.1,20,000/- ISSUED BY THE THIRD RESPONDENT

EXT. P8(a) PHOTOCOPY OF CHALAN DATED 1.7.2009 TOWARDS REMITTANCE OF RS.40,000/- ISSUED BY THE THIRD RESPONDENT

RESPONDENT'S EXHIBITS:

EXT. R1(a) A COPY OF THE GAZETTE PUBLICATION OF THE KERALA RECTIFIED SPIRIT AMENDMENT RULES, 2007

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.375 & 423 of 2009

Dated this the 2nd day of December, 2015

COMMON JUDGMENT

In both the writ petitions, the petitioner raises identical issues against the same set of respondents. This Court has accordingly proposed to dispose of both the writ petitions through a common judgment.

2. The petitioner, a distillery, requires Extra Neutral Alcohol (ENA) as one of the raw materials for the purpose of manufacturing liquor. It has, in fact, periodically obtained permits to import ENA, which is not a portable spirit and not suited for human consumption.

3. In W.P.(C)No.375/2009, the petitioner distillery could not use six import permits having the validity period up to 23.08.2008. Similarly, in W.P.(C)No.423/2009 it could not use six more permits with different dates of validity.

4. Thus being unable to use the import permits, when the petitioner distillery surrendered them to the department, it demanded Rs.10,000/- per each permit as cancellation charges. Aggrieved, the petitioner has filed the present writ petitions.

5. The learned counsel for the petitioner has submitted that though Exhibit P3 Government Order dated 06.07.2007 incorporated Rule 7A in Kerala Rectified Spirit (Amendment) Rules, 1972, the requirement of paying Rs.10,000/- per each permit is confined to revalidation. Accordingly, he seeks the interdiction of Exhibit P5 order in W.P.(C)No.375/2009 and Exhibit P10 order in W.P.(C)No. 423/2009.

6. Per contra, the learned Government Pleader has, first, submitted that Exhibit P3 Government Order contains an explanatory note to the effect that the charge of Rs.10,000/- shall be paid not only for the revalidation but also for cancellation. In the alternative, the learned counsel

has drawn my attention to Exhibit R1(a) dated 14.12.2007 through which the Government removed the ambiguity and expressly incorporated the expression “revalidation/cancellation”.

7. The learned Government Pleader has strenuously contended that since both the impugned orders were issued subsequent to Exhibit R1(a) amendment, the petitioner cannot be permitted to contend that Exhibit P3 Government Order has not specifically contained any requirement that the permit holder should pay the cancellation fee of Rs.10,000/-.

8. In reply, the learned counsel for the petitioner has submitted that the petitioner had earlier approached this Court and invited judgments to the effect that the respondent authorities should consider the petitioner's claim keeping in view Exhibit P3 Government Order. He has further contended that in the impugned orders passed subsequently, there is no reference at all to Exhibit R1(a)

amendment.

9. Be that as it may, it is not in dispute that Exhibit R1(a) amendment to Rule 7A was effected on 14.12.2007, whereas Exhibit P5 order in W.P.(C)No.375/2009 and Exhibit P10 order in W.P.(C)No.423/2009 were issued subsequently.

10. It is trite to observe that once an authority has the power and has, in fact, exercised the said power, mere absence of reference to the said power in any order impugned does not denude the order of its binding nature.

In the facts and circumstances, I do not find any merit in the writ petitions and accordingly dismiss them. No order as to costs.

Dama Seshadri Naidu, Judge

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