IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).NO. 19326 OF 2012 (M)

PETITIONER:

AMRUT DISTILLERIES LTD.,
CHULLIMADA, PAMPAMPALLAM - 678 621, PALAKKAD DISTRICT,
KERALA, REPRESENTED BY DEPUTY GENERALMANAGER (P & A)

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT(S):

1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY TO
   GOVERNMENT, TAXES (F)DEPARTMENTS,
   THIRUVANANTHAPURAM - 695 001.

2. THE COMMISSIONER OF EXCISE, EXCISE HEAD QUARTERS,
   NANDAVANAM, THIRUVANANTHAPURAM - 695 033.

3. THE JOINT EXCISE COMMISSIONER, CENTRAL ZONE,
   KOCHI 682 025.

4. EXCISE INSPECTOR, AMRUT DISTILLERIES, PAMPAMPALLAM,
   PALAKKAD DISTRICT - 678 621.

R1-R4 BY ADV. GOVERNMENT PLEADER, SRI. V.K. RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 19326 OF 2012 (M)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P-1	TRUE COPY OF THE TRANSPORT PERMIT, DELIVERY NOTE, INVOICE AND THE GOODS CONSIGNMENT NOTE ALONG WITH THE GATE PASS ISSUED BY THE PETITIONER COMPANY.
EXT.P-2	TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER ON 23.10.2005 BEFORE THE STATION HOUSE OFFICER AT WALAYAR.
EXT.P-3	TRUE COPY OF THE SHOW CAUSE NOTICE NO.XC3-4927/08 DATED 29.09.2009 ISSUED BY THE 2ND RESPONDENT THROUGH THE 3RD RESPONDENT.
EXT.P-4	TRUE COPY OF THE EXPLANATION DATED 22.10.2009 SUBMITTED THE COMPANY.
EXT.P-5	TRUE COPY OF THE NOTICE NO.XC3-4927/08 DATED 20.04.2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
EXT.P-6	TRUE COPY OF THE HEARING NOTE DATED 30.04.2012 SUBMITTED BY THE PETITIONER.
EXT.P-7	TRUE COPY OF THE NOTICE DATED 21.07.2012 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXT.P-8	TRUE COPY OF THE COMMUNICATION DATED 26.06.2012 ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.

RESPONDENTS' EXHIBITS :

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

= = = = = = = = = = = = = = = = = =

W.P. (C) No. 19326 of 2012

- - - - - - - - - - -- - - - - - - - - - -

Dated this the 20th day of November, 2015

J U D G M E N T

The petitioner is a company engaged in compounding, blending and bottling of Indian Made Foreign Liquor (IMFL) and is functioning with due licence under the Kerala Abkari Act and the Rules framed thereunder. According to the petitioner, the petitioner manufactures various popular brands of IMFL in the Distillery and on the basis of demand from the Kerala State Beverages Corporation warehouses at Kozhikode and Kannur, the petitioner company has forwarded 275 cases each of IMFL, through its transporter by name 'M/s.Aswin Transports'. But, the above consignment did not reach the destination and complaints were filed by the petitioner company before the police authority. The petitioner also filed a complaint before the Judicial First

Class Magistrate Court, Palakkad against the transport contractor and its workers, including the driver alleging offences punishable under Sections 420, 405 and 407 read with 34 of the Indian Penal Code. During the course of investigation, on the complaint of the petitioner, the police officials at Paravoor Police Station, Kannur has seized large quantity of IMFL from it's local limits and on investigation, it was found that the seized item was part of the missing consignment from the petitioner company. Officials of the petitioner company has co-operated and fully assisted the Paravoor police in the investigation conducted by them and the police have arrested one of the main accused, Sri. Venu in connection with the above offence, driver of the vehicle and another culprit one Sri. Santhosh. The petitioner company also filed a private complaint, before Judicial First Class Magistrate Court Palakkad against the transporter as well as the driver, who had taken delivery of the consignment from the company. Charge sheet has also been filed alleging the offences under Sections 420, 405 and 407 read with Section 34 of the Indian Penal Code against the accused. While so, the petitioner has received Ext.P3 show cause notice, issued by the 2nd respondent, directing to show cause as to why the licence issued to the company should not be cancelled. The petitioner had sent Ext.P4 reply and during the personal hearing the petitioner has submitted a further hearing note along with copies of relevant documents in the matter.

2. However, without considering the contentions raised by the petitioner, in the reply as well as in the hearing note, the 2nd respondent again issued Ext.P7 notice, directing the 4th respondent to recover an amount of Rs.5,43,613/- and Rs.1,58,285/- towards sales tax and profit, which the Corporation would have earned, if the consignment was sold by it. Therefore, the

4th respondent issued Ext.P8 order, directing the petitioner to remit the above said amount within seven days. According to the petitioner, Exts.P7 and P8 are arbitrary, illegal and issued in violation of the principles of natural justice.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that Ext.P8 order has been passed in violation of the principles of natural justice and that would amount to arbitrariness and illegality. Put it differently, an opportunity of being heard was not given to the petitioner, before passing the order requiring the petitioner to remit a huge amount to the respondent. More specifically it is contended that, in Ext.P3 show cause notice, no claim as ordered in Exts.P7 and P8 had been raised. So, in Exts.P4 and P6 replies, the

petitioner had no opportunity to give explanation opposing the claim quantified in Ext.P8.

5. Per contra, learned Government Pleader advanced arguments, contending that the petitioner had been given an opportunity of being heard by issuing Ext.P3 and in response to Ext.P3, the petitioner had submitted Exts.P4 and P6. Therefore, it cannot be said that Ext.P8 order was passed in violation of the principles of natural justice.

6. The short question that arises for consideration in this Writ Petition is, whether Ext.P7 and P8 are issued in violation of the principles of natural justice and vitiated by arbitrariness. Going by Ext.P3 show cause notice, issued by the 2nd respondent, it is seen that as regards the pecuniary loss no claim was raised against the petitioner and the petitioner was asked to show cause, if any, for not cancelling all the licences issued to him under Kerala Distillery Ware House Rules, 1968 and

Kerala Foreign Liquor (Compounding, Blending & Bottling) Rules, 1975, as per Section 26(b) of the Abkari Act, for the grievous breach of embezzlement of 550 cases of Indian Made Foreign Liquor. It appears that an allegation of misconduct during the course of transportation alone is alleged against the petitioner.

7. Going by Ext.P8 order, it is seen that an amount of Rs.5,46,613/- and Rs.1,58,285/- towards sale tax and profit, which the Corporation could have earned, if the consignment was sold by it, are claimed from the petitioner and further by Ext.P7 the petitioner is directed to pay the above said amount, within seven days from the date of notice.

8. Indisputably, no explanation was sought from the petitioner before imposing the liability of huge amount, on him and the same would amount to violation of the principles of natural justice. In short, the order imposing the liability of huge amount is put on the

back of the petitioner and it is nothing less than arbitrariness and illegality.

9. In the above view of the matter, Exts.P7 and P8 will stand quashed and the respondents are at liberty to proceed in accordance with law, observing the principles of natural justice. It is made clear that this order will not stand in the way of raising the claim in accordance with law and also in observance of the procedure, if the respondents are so advised.

This Writ Petition is disposed of accordingly.

Sd/-
K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge