

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 23884 of 2008 (R)

PETITIONERS:

1. EMPEE DISTILLERIES LTD., NEW INDUSTRIAL DEVELOPMENT AREA, MENON PARA ROAD, KANJIKODE P.O., PALAKKAD - 678 621 REP. BY ITS REGIONAL SALES MANAGER T.N.SATHISH.
2. JAGAJIT INDUSTRIES LIMITED, 37/171, CHITTOOR ROAD, BEHIND ANUPAM LODGE, ERNAKULAM, KOCHI 682 011, REPRESENTED BY ITS ASSISTANT REGIONAL MANAGER, SUDHAKARA ALVA.

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

RESPONDENTS:

1. THE EXCISE COMMISSIONER, THIRUVANANTHAPURAM.
2. THE EXCISE CIRCLE INSPECTOR, KSBC FL-9 SHOP, ALAPPUZHA.
3. THE MANAGER, KSBC FL-9 SHOP, KSBC WARE HOUSE, ALAPPUZHA.

R2 & R3 BY ADV. SRI.C.S.AJITH PRAKASH
R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 23884/2008

PETITIONER'S EXHIBITS:

EXT. P1 PHOTOCOPY OF TRANSPORT PERMIT NO.056082 DATED 28.6.2008 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE-IN-CHARGE OF THE ASSISTANT EXCISE COMMISSIONER, THIRUVANANTHAPURAM TO THE FIRST PETITIONER

EXT. P1(a) PHOTOCOPY OF INVOICE NO.291 DATED 2.7.2008 OF THE FIRST PETITIONER

EXT. P2 PHOTOCOPY OF TRANSPORT PERMIT NO.056064 DATED 28.6.2008 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE-IN-CHARGE OF THE ASSISTANT EXCISE COMMISSIONER, THIRUVANANTHAPURAM TO THE FIRST PETITIONER

EXT. P2(a) PHOTOCOPY OF INVOICE NO.101 DATED 2.7.2008 OF THE SECOND PETITIONER ADDRESSED TO THE THIRD RESPONDENT

EXT. P3 PHOTOCOPY OF MAHAZAR DATED 4.7.2008 PREPARED BY THE SECOND RESPONDENT

EXT. P4 PHOTOCOPY OF COMPLAINT DATED 8.7.2008 OF THE FIRST PETITIONER VIDE NO.EDL/FS/ALAPPUZHA/2008 ADDRESSED TO THE FIRST RESPONDENT

EXT. P5 PHOTOCOPY OF TRANSPORT PERMIT NO.056392 DATED 2.7.2008 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE-IN-CHARGE OF THE ASSISTANT EXCISE COMMISSIONER, THIRUVANANTHAPURAM TO THE FIRST PETITIONER ALONG WITH INVOICE NO.45 DATED 4.7.2008 AND CONNECTED DOCUMENTS

EXT. P6 PHOTOCOPY OF TRANSPORT PERMIT NO.056858 DATED 9.7.2008 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE-IN-CHARGE OF THE ASSISTANT EXCISE COMMISSIONER, THIRUVANANTHAPURAM TO THE FIRST PETITIONER ALONG WITH INVOICE NO.31 DATED 12.7.2008 AND CONNECTED DOCUMENTS

EXT. P7 PHOTOCOPY OF TRANSPORT PERMIT NO.056950 DATED 10.7.2008 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE-IN-CHARGE OF THE ASSISTANT EXCISE COMMISSIONER, THIRUVANANTHAPURAM TO THE FIRST PETITIONER ALONG WITH INVOICE NO.348 DATED 12.7.2008 AND CONNECTED DOCUMENTS

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.23884 of 2008 R

Dated this the 13th day of October, 2015

JUDGMENT

Both the petitioners are the approved suppliers of IMFL brands to the Kerala State Beverages (Manufacturing & Marketing) Corporation Limited (KSBC). As part of their manufacturing and distribution process, the petitioners are said to have transported 700 cases of IMFL brands covered by Exhibits P1 and P1(a) and 625 cases of IMFL brands covered by Exhibits P2 and P2(a) together in one truck to the premises of the third respondent on 02.07.2008.

2. When the consignments reached the third respondent on 04.07.2008 the IMFL stock was unloaded and kept in the warehouse. Nevertheless, the second respondent declared the consignments as having been seized on the ground that two different consignments under two permits had been transported through one vehicle. As a

result, the second respondent prepared Exhibit P3 mahazar, on receipt of which the petitioners also submitted Exhibit P4 reply.

3. At any rate, assailing Exhibit P3 mahazar the petitioners have approached this Court.

4. Sri.Millu Dandapani, the learned counsel for the petitioners has submitted that both the petitioners have got valid permits to transport the IMFL brands and that no law or regulation prohibits the petitioners from transporting the consignments in one vehicle. According to him, Exhibit P3 mahazar is uncalled for.

5. The learned counsel has also brought to my notice that soon after filing of the writ petition, on the strength of the interim order given by this Court, the petitioners got the stock released.

6. The learned Government Pleader, in tune with the averments made in the counter affidavit filed by the first

respondent, has submitted that transporting about 1300 cases of IMFL brands in bulk in one single truck would lead to a lot of damage. According to him, it is detrimental not only to the Government but also to the suppliers. Eventually, the learned Government Pleader has submitted that the seizure was effected only with a view to avoiding loss of IMFL on account of excess loading of the transport vehicle.

7. Indeed, it is the specific contention of the learned counsel for the petitioners that neither the permits nor any other regnant regulations governing the IMFL prohibit the petitioners from transporting consignments under two permits through one vehicle. On the other hand, the learned Government Pleader has brought to my notice what is said to be the loss occasioned earlier because of the bulk transportation in one truck beyond the permissible limit.

8. The writ petition was filed in 2008. On the strength of the interim order given by this Court the stock was also released long back. Whether there is an infraction of any rule or regulation in transporting the consignments under two permits through one vehicle has now become academic in view of efflux of time. If one were to assume that there was a statutory prohibition, in my view, its violation, at best, is purely technical.

In the facts and circumstances, Exhibit P3 mahazar is quashed and the writ petition is allowed.

Dama Seshadri Naidu, Judge

tkv