HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.26538 OF 2000

PC: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Sri M.R.K.Choudary, learned senior counsel for the petitioner and the learned Government Pleader for respondent Nos.1 and 2.

The petitioner prays for Mandamus declaring Memo No.59091/Ex.III-1/99-6 dated 24.11.2000 rejecting the request of petitioner for refund of licence and late fee paid by the petitioner with interest at 12% per annum as illegal, arbitrary and contrary to the order dated 20.02.1998 in W.P.M.P. No.1304 of 1998 and order dated 09.12.1997 in W.P. No.22213 of 1994.

The brief facts of the case are as follows:

The petitioner is a unit established and run by Sri Sarvaraya Sugars Limited, a company registered under the Companies Act. Through proceedings Cr.No.8603/Ex/75/C.4 dated 26.05.1975, the Distillery Licence to establish and run a distillery was granted under A.P. Distillery Rules, 1970 (for short '1970 Rules'). The petitioner avers that it has established and operated Distillery in terms of the licence dated 26.05.1975. While matters stood thus, on 26.04.1977, a fire accident occurred in the unit run by the petitioner. The petitioner claims to have suffered financial loss, operations were disturbed and for non-payment of excise duty, action was initiated against the petitioner by the Excise Department. The petitioner, challenging the recovery of excise duty, filed writ petition No.10056 of 1986. On 01.08.1990, the writ petition was disposed of. The petitioner thereafter, from the material available on record, it appears had undertaken steps to restart the unit. Towards this objective, the petitioner through letter dated 08.12.1990 requested the

Commissioner of Excise to renew licence. We consider it appropriate to excerpt letter dated 08.12.1990 hereunder:

> "The case relating to payment of Excise duty levied on Rectified spirit lost in the fire accident was disposed of in our favour by the High court on 1-8-90 (W.P.No.10056 of 1986. We may add here that the original licence issued for the year 1977-78 was submitted along with our renewal application for the year 1978-79. Every year an amount of Rs.3,000/- (Rupees Three thousand only) per year towards licence fee was being paid, up to the year 1984-85. The licence duly renewed for the years 1978-79 to 1984-85 were not sent to us in spite of repeated requests."

The Director of Distilleries through letter No.C1/3370/91/DDB/Ex. dated 13.09.1991, called upon the petitioner to pay licence fee under Rule 5 (a) of 1970 Rules for the period 1985-86 to 1991-92. Through the very same letter, the petitioner was called upon to comply with a few more procedures for processing the request to renew the licence dated 26.05.1975. The petitioner claims to have applied for renewal of licence for the periods starting from 1978-1985, however, the respondents did not grant renew licence to petitioner. After enough correspondence was exchanged between the parties, the 2nd respondent through proceedings Cr.No.15576/Ex/94/J5 dated 25.11.1994, called upon the petitioner to pay late fee to take further action on the application for renewing licence. On 28.11.1994, the petitioner paid Rs.18,51,250/- towards late fee and communicated the same by telegram to respondents. Through proceedings No.15576/94/Ex/J5 dated 07.12.1994 the respondents renewed the licence for the period 1978-79 to 1994-95. Having complied with all the objections of the respondents and obtaining renewal of licence through communication dated 07.12.1994 the petitioner seems to have realized that there is no necessity to pay renewal fee for the period 1978-79 to 1994-95 much less late fee. The levy and demand either licence fee for said period or collecting late fee of Rs.18,51,250/- was protested through various letters addressed by petitioner to the respondents. The 1st respondent after examining the material on record and the statutory position under 1970 Rules rejected the claim for refund of late fee. The relevant portion of the order reads as follows:

> "The Chief Executive, M/s. Sri Sarvaraya Sugars Limited, has filed WPMP No.1304/98 in WP No.22213/94 in the High Court for condonation delay in submitting the application for refund of licence fee and late fee. The court condoned the delay by its order dated 20.2.1998. The Chief Executive, M/s. Sri Sarvaraya Sugars Limited submitted an application in the reference 3rd

cited requesting the Govt to refund the licence fee and late fee with 18% interest duly enclosing the order of the High court in WPMP No.1304/98 dated 20.2.1998 in WP No.22213/94.

The Government have carefully, examined the request of the Chief Executive, M/s.Sri Sarvaraya Sugars Limited, for refund of licence fee and late fee, keeping in view of the provisions of AP Excise Act, 1968 and AP Distillery Rules, 1970. There is no such provision for refund of licence fee and late fee, as the unit had failed to apply for renewal of licence within the stipulated period specified under condition 13(b) of the licence conditions. Therefore, Govt hereby reject the request of the Chief Executive, M/s.Sri Sarvaraya Sugars Limited, for refund of licence fee and late fee as per condition 13(b) of the licence conditions of AP DR,1970."

Hence the writ petition.

The respondents filed counter affidavit and the reply of respondents is three fold. Firstly due to the fire accident dated 26.04.1977, the respondents suffered loss of recovery of excise duty and secondly, the petitioner made application for grant of renewal of D2 licence for the years 1978-79 to 1984-85 and as matter of fact on 28.07.1993 licence fee for renewal of D2 licence for the said period was made. According to respondents, admittedly the payment of licence fee is beyond the period prescribed under 1970 Rules and collection of late fee is justified. Thirdly that there is no provision of law for refund of late fee paid for renewal of the licence. According to respondents, admittedly there is no licence in favour of petitioner after 1978, and that under Rules, a renewal of licence can be considered, if a valid licence subsists in favour of the licencee. In other words, the renewal cannot be considered unless licence fee is paid and period regularised by the respondents.

The short and long of respondents reply as set out in counter affidavit and understood by this Court is that admittedly there is no renewal with the expiry of the period granted in proceedings dated 26.05.1975. The unit can apply for renewal of D2 licence as provided for by the 1970 Rules. There is delay in applying for renewal of licence, payment of licence fee and consequently, the collection of late fee is justifiable. It is also the case of the respondents that the petitioner must in law have a licence in its favour for claiming renewal of a licence. Unless the licence is renewed consistently, the renewal cannot be granted for a period claimed by the petitioner and circumstances demand levy of late fee, and the same is collected strictly in accordance with law and no exception can be taken and respondents pray for dismissal of writ petition.

The learned counsel appearing for the parties have substantially reiterated the stand taken in respective pleadings. For brevity and to avoid repetition, we are not reiterating these contentions.

The petitioner prays for Mandamus to declare the communication dated 24.11.2000 as illegal and consequently prays for refund of late fee paid by it. Therefore, in our considered view, the entitlement for any relief depends upon how the petitioner establishes a right in fact, and how the right is violated by the respondents. Admittedly, there is no provision for refund of licence fee or late fee paid under 1970 Rules. Therefore, the claim for refund is not supported by statutory Rules. Adverting to the facts of the case on hand that in 1977 an accident occurred in petitioner unit. The manufacturing activity was stopped by petitioner therefrom. There was litigation between the parties on the obligation of petitioner to pay excise duty on the stocks available in petitioner unit at the time of accident. The matter ended in favour of petitioner. Thereafter, through its letter dated 08.12.1990, the petitioner requested for renewal of D2 licence. The request for renewal of D2 licence was taken up and considered at the instance of the petitioner. The petitioner must show the subsisting licence for any of the years from 1978-1990 to enable the petitioner to get the licence renewed for subsequent years. The learned senior counsel appearing for the petitioner has fairly stated that though it is alleged in the affidavit that the licence fee was paid, there is no evidence in support of such assertion. Once this position is admitted, in the considered opinion of this Court, the procedure followed by the respondents to consider the request of petitioner for renewal on payment of licence and late fee cannot be faulted. Admittedly, licence fee was not paid within the validity of licence period and late fee is attracted to belated payment. The petitioner with a view to possess D2 licence from 1978 till 1991-92 paid licence fee and late fee without demur. Further it is not the case of the petitioner that the levy or demand of late fee is contrary to Rules. On the contrary, the admitted case is late fee is paid as per the 1970 Rules but there is no necessity to pay the late fee. We are not impressed with this submission. No other ground is urged. In our considered view, the petitioner failed to make out a case for grant of any relief against the impugned proceedings. The writ petition fails and accordingly dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

____________________ **DILIP B.BHOSALE, ACJ**

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S.V.BHATT,J

Date:04.11.2015

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